

PR Treasury Issues Guidance on the Requirement to Pay the Sales Tax in Bi-monthly Installments

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An McV Tax Alert

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Act 46-2017 (“Act 46”) amended the Puerto Rico Internal Revenue Code of 2011 (“Code”) to, among others, require that certain merchants remit in bi-monthly installments the sales tax collected during any given month. See our McV Tax Alert from June 21, 2017.

On July 28, 2017 the Puerto Rico Department of Treasury (“Treasury”) issued Administrative Determination No. 17-07 (“AD 17-07”) establishing the requirements to comply with the obligation to pay the sales tax in bi-monthly installments (“BMI”) and the effective date for the application of this requirement. Following is a summary of the most important provisions of AD 17-07:

Scope of BMI Requirement

- For the time being, BMIs will only apply to the sales and use tax (“SUT”) remitted to Treasury. The BMI requirement will not apply to the SUT deposits that merchants are required to make directly to the municipalities. Thus, the due date for the SUT payment to the municipalities will continue to be the date for filing the Municipal SUT Return (i.e., no later than the 20th day of the month following the month in which the transaction took place).
- The BMI requirement will only apply to the sales tax that the merchant was required to remit no later than the 20th day of the month following the month in which this tax was collected.

Merchants required to make BMIs

- The following merchants are required to pay the sales tax in BMIs:
 - Large taxpayers (i.e., banks, insurance companies, brokerage and securities firms, businesses engaged in telecommunications, or entities with a volume of business of \$50 million or more for the prior taxable year), and
 - Merchants with a monthly sales tax volume deposited during the prior natural year in excess of \$2,000 (the “\$2,000 Criterion”).

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- For purposes of the \$2,000 Criterion, the term “deposited” refers to the sum of the SUT deposited on the import and purchase of inventory for resale, plus the SUT deposited on sales made by the merchant. AD 17-07 establishes a method to determine whether a merchant complies with the \$2,000 Criterion (i.e., the “Simple Method”), as follows:
 - Merchants that sell tangible personal property or taxable services with sales in excess of \$228,600 for the immediately preceding natural year (i.e., \$2,000 divided by 10.5% and the product multiplied by 12 months and rounded to the nearest hundredth) will be deemed to comply with the \$2,000 Criterion, and will be required to make the BMIs.
 - Merchants engaged exclusively in the sale of services rendered between merchants (i.e., business-to-business services) or designated professional services with sales in excess of \$600,000 for the immediately preceding natural year (i.e., \$2,000 divided by 4% and the product multiplied by 12 months), will be deemed to comply with the \$2,000 Criterion, and will be required to make the BMIs.
 - Provided, however, that merchants engaged in the sale of taxable items subject to the 10.5% SUT and services subject to the 4% SUT will be subject to the BMI requirement when the sum of their sales of taxable items and services, for the immediately preceding natural year, exceeds \$228,600.
- The determination as to whether a merchant is required to make BMIs must be made annually, based on the total sales for the immediately preceding natural year. For purposes of making this determination, the information to be used will be the total taxable sales reported in the Monthly SUT Returns, Form SC 2915, filed through Treasury’s Internal Revenue Unified System (“SURI” for its Spanish acronym).

Due Date of the BMIs

- First installment is due on the 15th day of each month
- Second installment is due on the last day of the month
- If the due date falls on a Saturday, Sunday or a federal or state holiday, the due date will be the next business day.

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Manner of Making the BMIs

- As provided by AD 17-07, the BMIs can be made only through SURI. To make the corresponding payment, the merchants must undertake the following steps to secure the correct application of the deposit:
 - Access the “Sales and Use” Account in SURI.
 - In the “Accounts Alert” menu, press the link “Make a deposit for the period.”
 - Select the payment alternative.
 - Complete the required information and make sure that the “Return Payment” option is selected in the “Type of Payment” box.
 - Once the payment is made, the system will issue a confirmation of the transaction that can be printed for the records of the merchant.

Minimum Amount to Remit with each BMI

A merchant will be in compliance with the BMI requirement, if the sum of both installments deposited during a month amounts to at least:

- 80% of the SUT determined for such month. For these purposes, the term “determined” means the “Total SUT Determined” reported in the Monthly SUT Return, net of the following credits:
 - Credit for taxes paid by a reseller merchant in the purchase or import of inventory for resale;
 - Credit for uncollectible accounts;
 - Credit for sales of property of the merchant; and
 - Overpayment of prior periods to be credited against the tax of the current month. (All credits jointly referred to as “Applicable Credits”); **or**
- 70% of the SUT remitted during the same month of the preceding year. For these purposes, the term “remitted” means the “Total SUT Determined” reported in the Monthly SUT Return for the same month of the preceding year, net of the Applicable Credits.

The amount to be remitted as the first installment must be the lesser of (i) 80% of the SUT collected on actual sales during the days 1 through 14 of each month, net of the Applicable Credits, or (ii) half of 70% of the SUT determined,

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net of the Applicable Credits, pursuant to the Monthly SUT Return for the same month of the preceding year. For these purposes, the “SUT Collected” is defined as the SUT collected at the time of receiving the payment in the case of merchants that report the SUT under the cash basis method, or as the SUT invoiced to clients in the case of merchants that report the SUT under the accrual method.

Penalty for Failure to Deposit the BMIs

- In addition to any other applicable penalties, merchants that fail to make the SUT BMIs will be subject to a 10% penalty on the amount of the tax that was not deposited.

Effective Date

- Large taxpayers - the BMI requirement will be effective beginning in August 2017. Thus, the first installment is due by August 15, 2017.
- Merchants that comply with the \$2,000 Criterion - the BMI requirement will be effective beginning in September 2017. Thus, the first installment is due by September 15, 2017.

Merchants under the Taxpayer Rehabilitation Program and Voluntary Withholding Agents

- Merchants that are currently making weekly SUT payments under the Taxpayer Rehabilitation Program (“Program”) must continue to remit the SUT on a weekly basis. Accordingly, such merchants are not required to comply with the BMI requirement.
- Nonetheless, the sum of all weekly SUT payments for any given month must be equal to, at least, (i) 80% of the SUT determined for said month, or (ii) 70% of the SUT remitted for the same month of the preceding year, in both instances, net of the Applicable Credits. If a merchant fails to comply with the 80% or 70% thresholds, it will be subject to the 10% penalty for failure to remit the BMIs in addition to any other applicable penalty under the Code.
- Once a merchant completes the weekly SUT installment payments under the Program, said merchant will have to comply with the BMI requirement.
- Treasury also determined that merchants engaged in mail order sales that have entered into a closing agreement with Treasury to voluntarily collect the

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SUT on such sales, are not required to comply with the BMI requirement.

To access Treasury's AD 17-07, please follow this [link](#).

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