



## Sales and Use Tax Matters: Municipality of San Juan Amnesty and Proposed Bills for SUT Free Zones

By: Sandra Marie Torres-Martínez

### MSJ AMNESTY FOR THE MUNICIPAL PORTION OF THE SUT (“M-SUT”)

On March 26, 2019 the MSJ approved Municipal Ordinance Num. 23, Series 2018-2019 to, among other things, provide for an amnesty period to cover the M-SUT (“MSJ Ordinance 23”). This article summarizes its main provisions:

- A. **Amnesty period:** MSJ Ordinance 23 provides for an amnesty period that started on May 1, 2019 and ends on September 30, 2019 (“Amnesty Period”).
- B. **Periods covered:** Periods started **before** January 1, 2019 (i.e. monthly M-SUT returns for months ended up to December 31, 2018), (“Periods Covered”).
- C. **Amounts covered:** The **total** amount owned for interest, surcharges and penalties regarding the applicable M-SUT. The amounts covered includes those that result from monthly returns already filed or those voluntarily disclosed for the above-mentioned periods (“M-SUT Amnesty”).
- D. **M-SUT debts already notified by the MSJ:** A taxpayer that wishes to apply for the M-SUT Amnesty that has a claim against a M-SUT debt assessed by the MSJ, must submit the evidence supporting such claim within the Amnesty Period. The Finance Office must analyze the request to then notify the taxpayer the amount due. If such notice is issued after the Amnesty Period, the taxpayer will then have a 30-day period (from the date such notice was delivered) to submit the required payment.

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- E. **Non-refundable filing fee:** MSJ Ordinance 23 provides for a non-refundable filing fee of 5% of the total owed but that will never be less than \$150 or higher than \$1,500.
- F. **Additional filing requirements:** A taxpayer who wants to file a request for the M-SUT Amnesty must not owe municipal license taxes to the MSJ. If there are municipal license taxes owed, those must be either paid in full or be under a valid payment plan.
- G. **Maximum authorized benefit:** MSJ Ordinance 23 uses the term “maximum authorized benefit” to denote the amount that must be paid under the ordinance. It provides that, the “maximum authorized benefit” is the **principal** amount of M-SUT owed for the Periods Covered excluding any interest, surcharges and penalties. However, if the taxpayer wants to avail itself of the payment plan option (mentioned below), the maximum authorized benefit will be the principal owed **plus** 10% of the principal owed (“Maximum Authorized Benefit”).
- H. **Debts under judicial proceedings:** Regardless of the payment option that a taxpayer selects (i.e. full payment or payment plan option) if there are debts under judicial procedure, the Maximum Authorized Benefit will **also** include an additional 10% of the principal owed. That means that in the case of taxpayers who elect to avail themselves of the payment plan options, with debts under a judicial procedure, they will need to pay 20% of the principal amount owed to enjoy the benefits of MSJ Ordinance 23.
- I. **Payment Plan Option:**
- I. MSJ Ordinance 23 provides for a payment plan option, not to exceed a 12-month period, which requires **an initial payment** of at least 20% of the Maximum Authorized Benefit,

2. No interest will be added under this option, and
3. The MSJ Ordinance 23 includes provisions for the non-compliance with this payment plan.
4. Taxpayers who had a previous payment plan with the MSJ and did not comply with it, may avail themselves of the benefits under M-SUT Amnesty but only by paying the Maximum Benefit in full (i.e. no payment option will be available unless certain conditions are met).

**Proposed Bills for SUT Free Zones**

On May 2 and 8, 2019 the Senate and the House of Representatives filed Bills 1263 and 2093, respectively, to among other things, provide for SUT Free Zones within the municipalities of San Juan and Caguas, respectively.

Since both bills were drafted with basically the same provision, this article summarizes the main provisions included in both bills are if there were one (the only difference being that one covers the MSJ and the other the Municipality of Caguas):

- A. **Taxpayers covered:** Businesses that generate a gross volume of business of less than \$10,000,000 **and** employ 50 persons or less (referred to as “PyME’s” in Spanish).
- B. **SUT Free Zone:** Geographic zone established **by Municipal Ordinance** where a PyME with a valid “SUT Free Trade Exemption Certificate” will be exempt from charging SUT (both at the State and Municipal levels) to its clients.
- C. **SUT Free Trade Exemption Certificate:** A certificate that a PyME must request to the Municipality which will state that it complies with all requirements provided by the specific “SUT Free Zone” Act and its regulations.
- D. **Requirements:** Both bills provide for numerous requirements in terms of the process for a PyME to avail itself of the SUT Free Zone benefits. However, at this time we understand that we must highlight **the following:**
  - I. To establish a SUT Free Zone there must be unoccupied buildings, spaces or locations within the zone and historic or commercial use (or a mix of both);

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Sandra provides corporate and expatriate tax services for clients in the manufacturing, advertising, retail and health industries. Her experience includes representation before the U.S. Internal Revenue Service, the Puerto Rico Department of Treasury and other local tax authorities. She also has experience in the negotiation of tax exemption grants, research on income, property, excise and municipal licenses issues, as well as with the review and preparation of individual and corporate Puerto Rico and United States tax returns. She leads Alvarado Tax & Business Advisors’ consulting practices for non-for-profit organizations and participates on a regular basis as speaker in seminars sponsored by the Puerto Rico Society of Certified Public Accountants related to taxation of non-profit entities and other tax issues.

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2. There must be a Municipal Ordinance that establishes the SUT Free Zone (both bills include numerous requirements to such ordinance); and
  3. The Planning Board must assist the Municipality with several tasks including, but not limited to, the certification of such SUT Free Zone.
- E. **SUT Free Zone Period:** Both bills provide for an initial term of 3 to 5 years period, which may

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be extended for a period equal to that originally obtained.

Both bills provide several penalties for non-compliance and that related regulations must be issued by the Puerto Rico Treasury Department and the Municipalities. We will cover those in a future newsletter should either of these bills be enacted.

**ATBA Comments**

M-SUT Amnesty

The Amnesty Period is a very short one. Therefore, if you owe (or think that you may have a M-SUT exposure that you want to address) a prompt evaluation must be done to determine if the benefits under the M-SUT Amnesty represent an option for you or your company.

We may assist you in determining if you or your company may benefit from the M-SUT Amnesty and if the payment option best suits your cash flow situation.

*Proposed Bills for SUT Free Zones*

At the time of issuing this newsletter, the bill for the MSJ SUT Free Zones had been approved by the Senate and sent to the House of Representatives. The one for the Municipality of Caguas is still pending to be approved by the House of Representatives. Therefore, we still need to see if these bills will have further changes and if they will be approved. Nevertheless, we want to keep you posted since they may represent a useful cash flow tool, if approved.

Contact one of our tax specialists to seek further guidance with regards to these and other tax and business topics.

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