



New Sales and Use Tax Return

By Yesenia Sánchez-Quiles

On October 30, 2015, the Puerto Rico Treasury Department ("PRTD") issued Administrative Determination 15-23 ("AD 15-23") to establish the process to complete and file the new monthly Sales and Use Tax (SUT) return to report and pay the special 4% SUT collected on services rendered to merchants which started on October 1, 2015.

Background

As informed in our Special Bulletin of The Tax Advisor of June 2015, Act 72-2015 created a three-phase transition process toward a Value-Added Tax ("VAT") system. The first phase started on July 1, 2015 with an increase in the SUT tax rate from 7% to 11.5%. The second phase of this transition process, which started on October 1, 2015, provided that certain service transactions between merchants, which previously had been exempt from SUT, will be taxable at a rate of 4%. The third and final phase is scheduled to be effective after April 2016, where the VAT will be fully implemented and will substitute the SUT.

Act 159-2015 clarified various issues and made multiple amendments to Act 72-2015 and in order to clarify these changes, the PRTD issued the Administrative Determination 15-21 ("AD 15-21"), which also introduced the new SUT return, Form SC 2915 F, "Sales and Use

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Tax Monthly Return Applicable to Services Rendered to Other Merchants and Designated Professional Services" ("Special 4% SUT").

AD 15-23

The purpose of the AD 15-23, is to: (1) establish the form and manner to complete the special 4% SUT monthly return and payment, and (2) to notify the process to report and pay the special 4% SUT on the services received from a non-resident person.

To such effects, the PRTD determined the following:

1. The special 4% SUT return is an additional form that only applies to merchants that provide designated services or to merchants that rendered services subject to the 4% SUT to other merchants.
2. Regular taxable services subject to the 11.5% SUT (i.e., telecommunication services, cleaning services, security services, among others), or regular exempt services shall continue to be reported in the Form SC 2915 A, "Monthly Sales and Use Tax Return".
3. Professional designated services with an exemption of the 4% SUT shall be reported in the special 4% SUT return.
4. Services subject to the 4% SUT that are provided by non-resident merchants shall be reported in the special 4% SUT return by the merchant who receive the services, regardless where they were rendered.
5. The special 4% SUT return can only be filed electronically through the "Integrated Merchants Web Application" better known as "PICO".
6. The due date of the special 4% SUT return is the 20th day of the month following the date of the transaction subject to the 4%.
7. The special 4% SUT return must be filed by merchants that are considered withholding

agents and have a green Merchant's Registry Certificate (Form SC 2918), even if the merchant had zero sales during a specific month.

Professional Designated Services

Merchants dedicated to provide professional designated services properly identified by the North American Industry Classification System ("NAICS"), also known as "Professional Merchants", must use the special 4% SUT return to report and pay such services. Professional Merchants with a green Merchant's Registry Certificate which are considered withholding agents must comply with the filing of the special 4% SUT return even if all the sales for the month are exempt or if there were no sales during the month. In the event that the Professional Merchants also sells other regular taxable services, additional returns may be required for the same month.

CODE NAICS	PROFESSIONAL DESIGNATED SERVICES
531210	Offices of Real Estate Agents and Brokers
531320	Offices of Real Estate Appraisers
541100	Legal Services
541110	Offices of Lawyers
541190	Other Legal Services
541211	Certified Public Accountants
541310	Architectural Services
541320	Landscape Architectural Services
541330	Engineering Services
541340	Drafting Services
541360	Geologists
541370	Surveyors
541690	Agronomists

Tax Return Specialists

As of October 1, 2015, the services for the preparation of tax returns and refund claims provided by tax preparers will be

ABOUT THE AUTHOR

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At ATBA Yesenia provides corporate tax and resolution services for clients in the manufacturing, service, wholesale, telecommunication, energy and retailing industries, among others. She also manages a government and corporate tax resolution practice specializing in tax audits from the Puerto Rico Department of Treasury, the United States Internal Revenue Service, and municipalities including, sales and use tax, volume of business, real and personal property resolution services for individuals and businesses. She also works to obtain licenses and permits required to operate regulated lines of business such as distribution or retail of alcohol, imports license, fire arms, public services such as maritime, road or air transportation, security services, certain energy production, distribution, retailing and communication services.

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considered professional designated services. However, additional services provided by the tax preparers to clients that are not registered merchants will be subject to the regular 11.5% SUT rate and the regular SUT return will be prepared. When the services are

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provided to other merchants, the applicable rate will be 4% and the special 4% SUT return shall be completed.

Merchants with Volume of Business of \$50,000 or less

Merchants with a volume of business of \$50,000 or less that hold a red Merchant's Registry Certificate will not be required to file the regular SUT return nor prepare the special 4% SUT return. However, in the event that such merchants receive taxable services (subject to the 4% or 11.5% SUT) from non-resident persons, the regular or the special 4% SUT return must be filed for that particular month to report such services and pay the applicable SUT.

ATBA Comments

It's important to verify your books and records in order to identify the type of services provided on a monthly basis to properly allocate the applicable SUT rate. The segregation of the services will be crucial to assist you in the process to determine which form should be prepared or if multiple SUT returns will be required for the same due date. The first special 4% SUT return is due on November 20, 2015. If you're not sure which SUT return is the one required for your type of business or if you have a requirement to file one, our consultants are ready to assist you.

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