



The New Municipal Code of Puerto Rico

By: **William Sánchez-Pabón**

In this month's issue, we will highlight certain matters included on Act 107 as approved on August 14, 2020 ("The Act"). The Act was originated from the Puerto Rico Senate Bill 1033 from May 8, 2020 and creates the new Municipal Code of Puerto Rico ("Municipal Code") and repeals certain main Acts. The Municipal Code consolidates 17 Municipal Acts approved during the past years and provides multiple changes to certain definitions and previously established processes.

The following are among the most important repealed tax related Acts:

1. Act 81-1991 – Autonomous Municipalities Act
2. Act 83-1991 – Municipal Property Tax Act ("MPTA")
3. Act 80-1991 – Municipal Revenue Collection Center Act
4. Act 113-1974 – Municipal License Tax Act ("MLTA")

CHANGES REGARDING TAXES PREVIOUSLY COVERED BY THE ABOVE-MENTIONED REPEALED ACTS

The introduction of the Municipal Code brings new changes in comparison to the previous Acts. In this article, we will provide a summary of the most important changes.

Alvarado Tax & Business Advisors LLC is a Limited Liability Company organized under the laws of Puerto Rico and is engaged in providing tax and business advisory services. We are a multidisciplinary tax and business advisory professional service firm, unencumbered by the constraints of association with an auditing firm, and the regulatory and disclosure rules of the Security and Exchange Commission.

Backed up by years of unmatched hands-on experience in public accounting, government and corporate tax, our team of tax consultants has redefined the market by providing professional tax and business advisory services through our "top-heavy" structure, designed specifically to provide high level tax consulting to our clients on a more personalized basis.

For information visit us at: www.alvatax.com or contact one of our Tax Professionals for an appointment:

Ph. (787) 999-4400
E. taxadvisors@alvatax.com

Alvarado Tax & Business Advisors is part of Taxand, the World's largest independent tax consulting organization.

Municipal Excise Tax on Construction

Book II (“Municipal Administration”) of the Municipal Code, includes new provisions related to the municipal excise tax on construction. Among these provisions are those related to the authority to impose excise taxes to “Any construction work within the territorial limits of a municipality, carried out by a private natural or legal person, or that is carried out by a private natural or legal person on behalf of or on representation of, or by contract or subcontract signed with a public agency or public corporation or instrumentality of the state or Municipal Government or the Federal Government, including that work that does not require the application or issuance of a permit, must pay the corresponding construction excise tax, prior to the start of the work.” For these purposes, the term “State Government” is defined as “The Government of Puerto Rico and its public agencies, including public corporations, as well as agencies and offices ascribed to these.”

This is important as under the Autonomous Municipalities Act, the term “State Government” only included the executive branch and public corporations. With the Municipal Code it now seems to include the construction work that belongs to the legislative and judicial branches.

In terms of the applicable municipal excise tax rate it provides that “The Municipal Construction Excise Tax will be the one *in force* as of the closing date of the duly called bid or *on the date of the award of the contract* for those construction works that do not require auctions *or that have been carried out under the request for proposals process.*” (*Emphasis added*). Previously, it did not consider relevant the date for construction work awarded through the Formal Proposal Requirement (known by its Spanish acronym as “RFP”).

Moreover, the Municipal Code defines the term “total cost of the construction work” as:

1. Total value of the bid or contract award; or

2. Total price established on the construction contract in private contracts or RFP; subject to the Director of Finance’s agreement that the contract price reasonably corresponds to the average cost per square foot generally accepted within the construction industry.
3. The allowed deductions are:
 - a. cost of acquiring land (previously non deductible), buildings already built and located at the work site;
 - b. study costs (previously non deductible);
 - c. designs and plans;
 - d. permits (previously non deductible), consulting and legal services.

In terms of the applicable exemption for construction work for the “State Government” or its instrumentalities, a public corporation, a municipality, or an agency of the federal Government when they are carried out by the Administration, as the “State Government” was modified, as previously mentioned, they now should include the Legislative and the Judicial Branches.

Municipal License Tax

Book VI, Chapter III (“Municipal License Tax”) of the Municipal Code provides multiple changes to certain terms related to the municipal license tax. We would like to highlight the following:

1. “Gross Revenues” definition – it now excludes all income, such as interest and dividends, that originates from a **person’s investment** on corporate stock or other investment instruments. It also **excludes** the **profit** generated on the sale of real and personal assets not related to the business operations.
2. “Person” definition - is any person, natural or legal, public or private, and any group of them.
3. “Volume of Business” definition - includes gross income from occasional sales, for which a temporary place of business is maintained. It also provides that when more than one business is located in the same municipality under the same employer’s identification number, a person may request authorization from the municipality to be considered as having a single business (then only one municipal license will be issued and such original will be placed in the main location and

ABOUT THE AUTHOR **William Sánchez-Pabón**

William is a Manager at Alvarado Tax & Business Advisors LLC (“ATBA”) and has over ten years’ experience between the corporate/individual tax advisory and accounting areas. William provides corporate tax services for clients in the telecommunications, construction, food and beverage industry. In addition, he provides accounting services to clients in the solar, real estate and food and beverage businesses.

Before joining ATBA, William worked for five years as a Controller in the sales and distribution industry. Prior to that, he worked in the audit and tax departments of other local accounting firms in San Juan and in the tax department of the Puerto Rico Telephone Company. William also worked as an experienced staff tax associate of Andersen’s Tax and Business Advisory Service Practice in San Juan until 2002. William joined Andersen in 2000.

William graduated from the University of Sacred Heart with a Bachelor’s Degree in Business Administration.

the remaining locations will display copies of such original license).

4. Businesses with branches in different municipalities - it provides that the volume of business to be included in each declaration per municipality will be that generated per location. When such determination cannot be made, then it will be computed as stated in the next bullet.
5. Businesses that carried out operations in several municipalities, or occasional sales for which a temporary place of business was maintained will allocate their volume of business as follows:

The New Municipal Code...
Continued from Page 2

- a. If a business carried its operations in two (2) or more municipalities, **where one of the activities cannot be assigned a volume business**, the volume of business will be calculated using a pro-rata of the volume business, based on the average number of square feet of the areas of the buildings used in each municipality, during the taxable period of the calendar year prior to the date of filing the volume of business declaration.
 - b. For manufacturing businesses, the above-mentioned pro-rata formula will be used regardless of whether the manufacturing process takes place in one municipality and sells it to another.
6. Municipal License Tax computation – the Municipal Code provides the following definitions:
- a. “Temporary Cease of Operations” – means the cease of operations for a period not exceeding 5 years with the intention of resuming operations in the same municipality. The termination must be notified to the Director of Finance on or before 30 days after the start of the next semester.
 - b. “Recommencement of Operations” - a person that have not operated during the entire calendar or economic year immediately prior to the reopening of operations, has the obligation to compute its volume of business on an annual basis.
 - c. “Transfer of operations” - means
 - i. The move from one municipality to another;
 - ii. A notification must be made to the Director of Finance of the municipality on or before 30 days after the start of the next semester;
 - iii. New municipality will consider the volume of business reported in the municipality where the
- business comes from, as long as the Director of Finance of said municipality certifies that the business was in compliance until the closing date.
 - iv. In the case of transfers in the middle of a semester, the new municipality will issue a Municipal License as if the semester had been paid in that municipality and will have the right to collect in the subsequent semesters.
- d. “Cease of Operations”- the intention to permanently cease operations in the municipality that operates without operating in any other municipality.
7. Provides an exemption on the income for forgiveness of debt from a loan granted to the taxpayer under the program known as the “Payroll Protection Program” under the CARES Act.
 8. Establishes among the requirements for the filing of the volume of business declaration, that for businesses with a volume of business in excess of \$3,000,000, such declaration must include audited financial statements certified by a CPA with license in Puerto Rico. Failure to do so will trigger such declaration as not been filed.
 9. Extensions of Time to File the Volume of Business Declaration – it provides that the municipality’s Director of Finance will grant these extensions under the rules and regulations established by the Management and Budget Office (known by its Spanish acronym as “OGP”). Nevertheless, such Director of Finance has the right to revoke the extension request within a 60 day term when the person is not in compliance with such municipality.
 10. Starting operations of any industry or business of “a newly created business” subject to the municipal license tax - the Municipal Code adds the phrase “a newly created business” but does not provide a definition or any further

Continues on Page 4

**Key Contacts at
Alvarado Tax &
Business Advisors LLC**

**Juan A. Alvarado-Zayas, Esq.,
CPA**

Managing Member
787-620-7730
jalvarado@alvatax.com

Juan Zaragoza-Gómez, CPA
Member

787-620-7740
jzaragoza@alvatax.com

Felipe Mariani-Franco, CPA
Member

787-620-7736
fmariani@alvatax.com

**Sandra Marie Torres-Martínez,
CPA**
Member

787-620-7728
storres@alvatax.com

**Edgardo Sanabria-Valentín,
CPA**
Member

787-999-3015
esanabria@alvatax.com

**Carlos R. González-Martínez,
CPA**
Member

787-620-7739
cgonzalez@alvatax.com

César De Jesús-Umpierre, CPA
Member

787-620-7734
cdejesus@alvatax.com

Rosirma García-Rivera, CPA
Member

787-620-7733
rgarcia@alvatax.com

We are Green. Are You?



Please consider the environment before printing this publication.

New Municipal Code... Continued from Page 3

clarification (including on Book VIII, “Definitions, Table of Contents, Derogations, Enforceability and Validity”).

11. Additions to the tax for failure to file the volume of business declaration – the Municipal Code adds the following provisions:
 - a. Voluntary payments will be credited to the owed debt formerly priced in strict order of maturity;
 - b. If the amount owed exceeds the partial payment, said payment will be credited against principal, interest, penalties and surcharges (in that order); and
 - c. The effectiveness of the provisions of this article are for payments made after January 1, 2021.

Municipal Property Tax

Book VII of the Municipal Code provides all the sections related to the Municipal Revenue Collection Center Act, the MPTA and the regulations previously issued under the MPTA. Below we mention the most significant changes related to this subject:

1. Exoneration on residential property - provides for the residential exemption limitation on real on property belonging to several people whether it is an estate, community of property or jointly owned condominium
 - a. Exoneration to any owner who resides the property and
 - b. Does not enjoy tax exoneration
 - c. The exoneration will not be divided if the property is not subject to division and shall be considered as one residence.
2. Changes in ownership – the new owner has the responsibility of notifying the change in ownership to the Municipal Revenue Collection Center (“CRIM” for its Spanish acronym) within 30 days of

acquisition regardless of the property’s registration at the Property Registry. Failure to notify will make the new owner liable for the tax receipts to previous owners including any interest, surcharges, and penalties in addition of also being responsible for any tax lien. Tax receipts that have been already issued will be modified and not canceled.

3. Payment due date falling on a Saturday, Sunday or holiday - states that when the real property tax payment due date falls on a Saturday, Sunday or a holiday, and to qualify for the discount, the due date will be the following business day.

4. It now provides that the ruling of the CRIM recognizing or refusing to recognize a tax exemption will be subject to the administrative review and judicial challenge procedures (under the MPTA this ruling was final and unappealable).

5. Estimated personal property tax payments - provides that if a payment due date falls on a Saturday, Sunday or a holiday, the due date will be the following business day. It also increases the additions to the tax from 5% to 10% for failure to pay or for making incomplete payments.

6. Regular tax deficiencies - the phrase “The CRIM will have a term of six (6) months to resolve and notify its final determination and if this term is not met, the original contribution prior to the difference will prevail” was added.

7. Mathematical Error - the Municipal Code added the caption “However, the taxpayer may request the review of said mathematical error through the CRIM’s review process established by regulations.” This now represents an additional option to the taxpayer.

8. Address for serving notice - adds a definition to the term “last known address” as that informed by the taxpayer (either postal or electronic) on the Personal Property Tax Return or any other form or official document submitted to the CRIM or in the form intended for such purposes by the CRIM.

9. Authentication of the Return; Penalty of Perjury or Refusal to Take an Oath or Affirmation - changed to the following:

- a. Article 7.170(b) this section of Refusal to Take an Oath or Affirmation states that “any person, agent or official of any institution, corporation or company who intentionally omits or refuses to take and sign any of the oaths, sworn statements or affirmation required by this Code or who without just cause refuses to answer any question that the CRIM,

its representatives or appraiser as required, will incur a misdemeanor and convicted that it may be punished with a fine of five hundred (500) dollars or imprisonment of six (6) months or both penalties at the discretion of the Court”.

ATBA Comments

With the approval of the Municipal Code the municipalities are now consolidated in the decisions and requirements across all municipal taxes. This should facilitate the interpretation of certain provisions previous included in the MLTA, especially for individuals and entities that have businesses in multiple municipalities.

Nevertheless, the Municipal Code provides changes that may provoke a debate regarding the applicability of which Act to the filings that have been made during the year 2020 as it was enacted on August 14, 2020 without making reference to a specific effective date (which should mean that it is effective immediately).

It is important to take into consideration that the new requirements for audited financial statements filing are very harsh, in terms of the volume of business declarations not being considered as filed until such audited financial statements are submitted. We understand that this requirement should be taken into consideration on a case by case basis, due to the fact that there are many taxpayers that contribute large amounts to the municipality’s economy and have significant delays in getting such financial statements issued.

Regarding the 60-day period for the Director of Finance to revoke an extension to time to file, we think that further clarification is needed to regulate and provide an uniform definition to the meaning of the phrase “in compliance with the municipality”, especially when each municipality may still have different views as to what constitutes “compliance.”

There are additional chapters and sections not included on this Newsletter considering that they are not tax related matters. However, it is advisable to review the Act for a complete overview of the same. At ATBA our tax

The New Municipal Code...
Continued from Page 4

professionals are available to assist you with these or any other tax related matters.

**Alvarado Tax & Business
Advisors LLC**

104 Cuarela Marginal Street
Martinez Nadal Expressway
Guaynabo PR 00969

PO Box 195598
San Juan PR 00919-5598

T. 787.999.4400

F. 787.999.4646

E. taxadvisors@alvatax.com

www.alvatax.com

www.taxand.com

Tax Is Our Business®

This publication supports Alvarado Tax & Business Advisors' marketing of professional services. It is intended for information purposes only and should not be regarded as written advice or recommendation to undertake any position, tax related or otherwise. Readers should not consider the information contained in this publication to be complete, nor act solely on the basis of the material contained herein. Moreover, due to changing laws and associated authoritative literature, that information may not continue to apply to a reader's situation. Therefore, we encourage the readers to contact us or another qualified professional advisor to thoroughly evaluate their specific facts and circumstances; to determine if any information contained in this publication remains valid and; to discuss the potential application of such information to their particular situations.

As provided in Department of Treasury Circular 230, this publication is not intended or written by Alvarado Tax & Business Advisors, to be used, and cannot be used, by a reader or any other person or entity for purposes of avoiding tax penalties that may be imposed on any taxpayer under the Internal Revenue Code.