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Tax

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Reduced SUT rate on prepared foods and other SUT topics

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The Puerto Rico Treasury Department ("PRTD") has recently issued several communications applicable to the filing and collection of the Sales and Use Tax ("SUT"). Following is a summary:

I. Non-withholding agents: Administrative Determination 19-02 ("AD 19-02")

In 2017, a new category of merchants known as "Non-withholding Agents" was created for merchants who sell articles that are delivered by mail and whose only link to Puerto Rico is that the buyer is a Puerto Rico resident. This type of Non-withholding Agents are required to file Quarterly Reports with the PRTD for all the sales made to Puerto Rico buyers during the corresponding quarter. Also, they must send an Annual Report to every purchaser on or before January 31 of each year.

Regarding the preparation and filing of the Annual Report for taxable year 2018, the PRTD issued Informative Bulletin 19-03 to postpone its due date for filing until July 1, 2019. Nonetheless, AD 19-02 now establishes that the 2018 Annual Report will be considered as filed whenever the Non-withholding Agents have complied with their obligation to submit the abovementioned Quarterly Reports.

II. Reduced rate for the sale of prepared foods: Administrative Determination 19-03 ("AD 19-03")

Act 257-2018 established a reduced SUT rate of 7% commencing on October 1, 2019, applicable to restaurants selling taxable items that are considered "prepared foods", "carbonated beverages", "confectionary products" and "candies". This reduced SUT rate does not apply to "alcoholic beverages".

According to AD 19-03, merchants who meet all the following requirements will be eligible to obtain authorization to collect and remit the reduced SUT rate of 7%:

1) the Merchant Registration Certificate must show at least one of the following NAICS Code: 72231, 72232, 72233, 72241 or 72251;
2) must be in compliance with the filing of all SUT returns;
3) must not have any tax debts; and
4) must maintain a fiscal terminal in each point of sales even if the annual volume of business does not exceed $125,000.

On September 23, 2019, those merchants that have complied with all the requirements listed above will be able to obtain, through their SURI account, a certificate for "Authorized Business – Prepared Food Reduced Rate" for each location. This certificate authorizes the merchant to collect the reduced SUT rate in the sale of prepared foods commencing on October 1, 2019.

In other topics, on July 1, 2019, Act 60 was signed into law, establishing the Incentives Code of Puerto Rico. Below are the amendments made by this law to the Puerto Rico Internal Revenue Code which directly affect the SUT:

a) amends Section 4010.01(ll) of the Code to include in the term "designated professional services": continuing education services, rendered by for-profit entities, that are certified by a Puerto Rico government agency, the Government of the United States, the Supreme Court of Puerto Rico, or any private non-profit organization to be offered to professionals that provide designated professional services;
b) amends Section 4050.09 of the Code to include furniture acquisition and maintenance, materials for schools and sports, and direct services offered via non-profit organizations or programs to help disadvantage communities, in the 15% maximum threshold of Municipal Improvement Funds that can be used.

Please contact our Tax Department should you require additional information regarding this or any other tax issue. We will be glad to assist you.



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