



## THE POWER OF BEING UNDERSTOOD

# PREEXISTING CONTRACTS FOR CONSTRUCTION CONTRACTS

Year 2015 Issue #13

**A**s you may recall from our previous Tax Alerts, the recently signed Act 72-2015 established, among other things, an increase in the current Sales & Use Tax (hereinafter "SUT") from a combined 7% to a combined 11.5% starting on July 1, 2015.

On June 24, 2015, the Puerto Rico Treasury Department (hereinafter "PRTD") issued Circular Letter 15-10 (hereinafter "CC 15-10") with the main purpose of establishing which construction contracts or awards will be eligible as "Construction Projects", and also to communicate the additional procedures required to request a written authorization from the PRTD to purchase all taxable items (or services) that are related to the construction project with the 6% SUT rate after June 30, 2015.

Section 4070.01(d) of the Puerto Rico Internal Revenue Code, as added by Act #72-2015, defines Eligible "Construction Projects" as a construction project, commercial, industrial or residential, that has presented the preliminary development or construction permit application before the respective Agencies on or before May 31, 2015, or that was awarded by the Government of PR or US to a merchant before July 1, 2015. Also, CC 15-10 defines "taxable items directly related with the construction project" as hired labor, materials, supplies, equipment, cost of permits, tools and designated professional services directly related with the project, except those services provided by a Certified Public Accountant, legal services, real estate professionals or any other cost related to the properties administration or sale.

Since the SUT exclusion is not automatically granted, the project owner must complete the application within a predetermined time frame. The first step is to request the "Registration Certificate" and, in order to do so; the "Construction Project" owner must submit on or before August 10, 2015 the following documents:

1. The project filing or approval before the Use Permit office, the Municipality or Planning Board, as applicable.
2. Deed or contract which establishes the ownership for the property where the project is being developed.
3. An affidavit with additional information.

Once the owner obtains the Registration Certificate, the principal contract and the project owner should submit on or before August 10, 2015 or the 10<sup>th</sup> day of the month following the date on which the contract with the other owner was signed, whichever occurs later, the following documents:

1. Form SC 2921: "Application of Qualified Contract subject to Sale Tax and Use Certificate"
2. List of secondary contractors with the estimated values pending to be paid.
3. Contract copy, including all annexes and amendments.

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## PREEXISTING CONTRACTS FOR CONSTRUCTION CONTRACTS (CONTINUED)

Once the application is evaluated and approved, the PRTD will issue the "Certificate". This certificate will constitute the waiver for exemption from the SUT for the principal contractor and the project owner.

Also, items that are imported will be subject to the 10.5% as of July 1, 2015. However, any importer with a valid Qualified Contract can request the excess 4.5% SUT paid as a refund. In order to request the refund, the contractor must submit a letter with the supporting evidence confirming that the property was bought under a valid Qualified Contract.

In addition to these changes, the new exclusion requires a supplementary record keeping, where the buyer must provide the seller a signed statement that certifies that the tangible property purchase is subject to a 6% SUT because it was purchased under a "Qualified Contract" classification. Such documentation shall be retained by both parties until it reaches the amount established in the application.

Here at RSM we are available to assist you with any inquiry that you may have regarding this process. If you have any questions or comments related to the content of this Tax Alert, please feel free to contact your Tax Advisor at RSM.



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