

THE POWER OF BEING UNDERSTOOD

SPECIAL 4% SALES & USE TAX ON SERVICES

Year 2015 Issue #16

The Puerto Rico Treasury Department (hereinafter "PRTD") has issued Administrative Determination 15-17 (hereinafter "AD 15-17") with the purpose of clarifying possible issues and to provide guidance related to the application of the 4% Sales Tax on services.

As you may recall from previous tax alerts, Act #72-2015 established a special 4% Sales Tax on certain services starting on **October 1, 2015**. This special 4% tax will apply to services that under our previous rules were exempt, such as Designated Professional Services and Business to Business Services ("B2B").

The following table summarizes the changes in sales tax rates for services with their corresponding dates:

SALES & USE TAX (SUT)			
	<i>Prior to July 1, 2015</i>	<i>From 7/1/2015 - to 9/30/2015</i>	<i>Starting October 1, 2015</i>
<u>Designated Professional Services</u> : Agronomists; Architects and landscape architects; CPA's; Brokers, sellers and real estate companies; Professional draftspersons; Professional real estate appraisers; Geologists; Engineers and surveyors; Tax returns, statements and refund claims specialists; and legal services.	Exempt	Exempt	4% state tax
<u>Business to Business Services</u> -	Exempt	Exempt	4% state tax
<u>Other Services not considered B2B</u> - Bank Charges, collection services, security services, cleaning services, laundry services, repairs and maintenance, waste disposal services, vehicle leases and telecommunications.	7%	11.5%	11.5%

Under these new set of rules, some services will remain exempt from sales tax, such as, among others:

- Services provided to the Government of Puerto Rico and the Government of the United States
- Lease of commercial real property
- Educational services
- Medical services
- Insurance commissions
- Service provided by taxpayers with an annual volume of business less than \$50,000

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SPECIAL 4% SALES & USE TAX ON SERVICES (CONTINUED)

AD 15-17 also discussed the applicability of the special 4% tax on some transactions, including the following:

Services Rendered By a Nonresident to a Person in Puerto Rico

Section 4020.04(C) of the Puerto Rico Internal Revenue Code of 2011, as amended, ("the Code") and AD 15-17 establish that if a person located in Puerto Rico receives services, including Taxable Services, Designated Professional Services and/or B2B Services, from a nonresident individual or a company not engaged in trade or business in PR, the person responsible to pay the sales and use tax related to such services will be the person receiving the services in PR. This disposition will apply:

- to all the taxable services received on or after October 1st 2015, but the applicable tax rate (10.5% or 4%) will vary depending on the type of services received;
- regardless to the place where the services were performed;
- regardless that the nonresident and/or the company not engaged in trade or business in PR is not registered on the Merchants Register of the PR Treasury Department;
- to the professional services received which are listed as Designated Professional Services, even though the "foreign" service provider is not licensed in PR;

It is important to highlight that the municipal portion of the sales and use tax will NOT apply to these transactions; and also the \$50,000 threshold amount for tax withholding exemption will NOT apply to the "foreign" service provider.

Services Rendered Between Related Companies

In the case of companies that are members of a controlled group or related entities, if both entities are engaged in trade or business in PR and duly registered, the services provided between them will be exempt from the sales and use tax. On the other hand, when a member or related entity doing business in PR receives services from a member or related entity not doing business in PR and, therefore, not registered in PR, such services will be subject to the 4% tax rate. The entity doing business in PR will be responsible for the payment of this tax.

Invoice Requirements/Reimbursed expenses

When the person providing the professional service subject to the sales and use tax issues an invoice, the different services rendered, as well as, the reimbursed expenses charged must be presented separately. The following reimbursed expenses will not be subject to the 4% sales tax:

- Expenses incurred to acquire personal tangible property (subject to SUT) to be used as part of the service rendered (i.e. the cost of equipment installed by the service provider).
- Expenses directly attributable to the service rendered that are paid by the service provider and claimed to the client as reimbursed expenses, for example, license fees charged by a government agency paid on behalf of the client, the cost of stamps, delivery services, etc.

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SPECIAL 4% SALES & USE TAX ON SERVICES (CONTINUED)

It is important to note that the AD 15–17 specifically mentions that administrative charges, out of pocket expenses, administrative recovery fees and other similar items will not be considered reimbursed expenses and therefore will be subject to the special SUT of 4%. Moreover, if a service provider purchases a computer program to be used as part of various engagements, the cost of such program, if included in the invoice to the client will be subject to the special sales and use tax of 4%.

Subcontracted services

The services subcontracted by a firm or another entity will be subject to the special tax, even though these services may be later invoiced by the firm or the entity to the end user. The special tax 4% tax will apply in both transactions. The only exemption to this rule will be if the service provider has an aggregate volume of business that amounts to less than \$50,000 in which case the special SUT will not apply to that transaction.

Accounting method used to report and pay the Special 4% SUT

As a general rule, for purposes of the SUT and Special 4% SUT, a merchant must use the same accounting method that is used for its income tax returns. Also, the responsibility of paying the SUT originates when a payment of an invoice is received, or the client promises to pay. However, in the case of merchants who use the accrual basis method of accounting, the responsibility of paying the SUT occurs when the invoice is sent to the client.

As an exception to the general rule, Section 4041.01(b) of the Code allows merchants who provide designated professional services to use cash accrual method of accounting for purposes of the SUT. The election should be made when filing the first Monthly Return – Special SUT. In cases where the merchant wishes to later change the accounting method used for SUT purposes, an authorization must be requested from the PRTD.

Reporting and Paying the Special 4% SUT

The PRTD has established a new return in order to inform and pay the Special SUT, Form SC2915F “Monthly Return – Special SUT”. The Form applies to the following:

- Merchants who provide Designated Professional Services
- Merchants who provide services to other merchants duly registered with the PRTD (B2B)
- Merchants or taxpayers who received services from other merchants outside of Puerto Rico

It is important to note that Form SC2915 F:

- Can only be electronically filed through the PRTD's PICO website.
- Can only be paid through electronic means.
- Must be filed on or before the 20th day of the month after the Special SUT was charged.
- Does not affect any other PICO filings that the merchant is required to complete.

Since House Bill #1433 is currently under evaluation in our legislature to amend some of these dispositions, here at RSM we will keep you posted on any future changes and/or amendments to the Code.

Please contact us here at RSM where we are prepared and committed to answer all your inquiries related to these new rules.

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