



SALES AND USE TAX (SUT) REPORTING REQUIREMENTS AND PENALTIES ON SALES DELIVERED BY MAIL TO BUYERS IN PUERTO RICO

By: Mariangely González-Tobaja, Esq.

“Non-withholding agents” for Sales and Use Tax Purposes

Act 25 of April 29th, 2017 (“Act 25-2017”) changed the definition of “merchant” for Puerto Rico sales and use tax (“SUT”) purposes to include “non-withholding agents” as a new category. “Non-withholding agents” are those merchants who make sales delivered by mail¹, and whose only contact with Puerto Rico is that the buyer is a Puerto Rico resident, or a person engaged in trade or business in Puerto Rico. A merchant will be deemed a “non-withholding agent” if:

1. it creates a substantial nexus with Puerto Rico by: (i) executing sales contracts in Puerto Rico; (ii) conducting direct marketing through any advertising means distributed in Puerto Rico such as: mail, radio, e-commerce, television, magazines, billboards, or social media; (iii) sales delivered by mail; or (iv) “other [undefined] activities;”² or
2. it sells via internet and sends tangible personal property from any state or foreign country to a person in Puerto Rico, for use, consumption, distribution, or storage (i.e., storage for further use or consumption in Puerto Rico).³

¹ A “sale delivered by mail” means the sale of tangible personal property that was ordered through any means, including but not limited to catalogs, Internet or mail, from a person outside of Puerto Rico who sends the property to a person in Puerto Rico (regardless if the recipient is the person who ordered the property or not).

² All these activities must be continuous, frequent and in the seller’s ordinary course of business to create a substantial nexus with Puerto Rico.

³ These activities must be continuous, frequent and in the seller’s ordinary course of business.



“Non-withholding agents” are not required to collect SUT on sales and deliveries of tangible personal property to persons in Puerto Rico. However, effective July 1st, 2017, “non-withholding agents” are subject to the reporting requirements listed below:

| Reporting Requirement | Recurrence | Additional Requirements | Penalty |
|--|---|--|--|
| Written notification to the buyer stating that such transaction may be subject to SUT in Puerto Rico and that buyer must file an Imports Declaration and a Tax on Imports Monthly Return | Per transaction | Notification shall appear on the invoice, receipt or any other sales document. | \$100 per failure to notify, unless failure is due to reasonable cause |
| Notification to the Secretary of the Puerto Rico Treasury Department (the “PR Treasury”) including information on the sales made to buyers in Puerto Rico during the quarter | <p>Quarterly</p> <p>The due dates for these notifications are as follows:</p> <p>For the first quarter- April 30th</p> <p>For the second quarter- July 31st</p> <p>For the third quarter- October 31st</p> <p>For the fourth quarter – January 31st</p> | <p>This notification must include the following:</p> <p>Seller’s name and address; Name and delivery address for each buyer in Puerto Rico; Date of each sale; Total sales amount; Description of each sale; Sales category, including if it is taxable or exempt (if such information is known by the seller); Any other information that may be required by the Secretary of the PR Treasury in the future.</p> <p>The notification shall specify that the seller informed buyers of their obligation to file an Imports Declaration and a Tax on Imports Monthly Return to report and pay the applicable SUT on the sale of tangible personal property.</p> | \$5,000 per failure to notify, unless failure is due to reasonable cause |



| Reporting Requirement | Recurrence | Additional Requirements | Penalty |
|---|--|---|--|
| Annual notification to all buyers in Puerto Rico who purchased items from the “non-withholding agent” | Annually No later than January 31 st each year | Notification shall be sent via first class mail and shall not include any additional items. Also, the notification shall specify the name of the “non-withholding agent” and the following statement: “important tax document enclosed”. “Non-withholding agents” should also send a copy of the annual notification to the Secretary of the PR Treasury within 30 days of sending the notification to buyers in Puerto Rico. | \$500 per failure to notify, unless failure is due to reasonable cause |

A “non-withholding agent” may voluntarily request to be treated as a “withholding agent” for SUT purposes, and enter into agreement with the PR Treasury to implement the SUT withholding and payments.

The real objective of Act 25-2017 seems to be to motivate or force internet and other non-local-physical-store vendors to start withholding the PR SUT on sales to Puerto Rico persons, as the reporting burdens on “non-withholding agents” could be much more onerous than simply withholding the SUT as they are more frequently doing on sales to residents of various other states.

Changes in Municipal Portion of SUT Affecting Local Importers

Effective August 1st, 2017, the 1% municipal portion of the SUT on tangible personal property that is imported to Puerto Rico (i.e., where the buyer as importer pays the tax) must be paid directly to the PR Treasury. As a result of this change, importers will pay the total 11.5% SUT (10.5% PR Treasury Portion and 1% Municipal Portion) on imported property to the PR Treasury.⁴

⁴ Prior to the effective date of said change, the 11.5% SUT on imported property is paid as follows: 10.5% to the PR Treasury and 1% to the Municipality.



ADSUAR MUÑIZ GOYCO SEDA & PÉREZ-OCHOA, PSC

PUERTO RICO BUSINESS LAW NOTES

2017-TAX-05

Newsletter Date: July 26, 2017

If you have any questions with respect to the above, or would like to consider the implications of these new reporting requirements and penalties of becoming a “withholding agent”, please contact Mariangely González-Tobaja or José E. Villamarzo-Santiago at AMG.

The above summary is intended for information purposes only. It cannot be considered a legal opinion, and it does not intend to consider all the tax and legal considerations that could be relevant to any particular person or entity.

The contents of PUERTO RICO BUSINESS LAW NOTES may not be reproduced, transmitted, or distributed without the expenses written consent of AMG. The material contained herein is intended for information purposes only and is not to be considered legal advice. Qualified counsel should be consulted based on individual circumstances.



AMG’S Tax Department

Mariangely González-Tobaja, Esq. & CPA
787-281-1804
mgonzalez@amgprlaw.com

José E. Villamarzo-Santiago, Esq. & CPA
787-281-1801
jvillamarzo@amgprlaw.com

Ricardo Muñiz, Esq.
(LLM in Taxation)
787-281-1818
muniz@amgprlaw.com

César R. Rosario, Esq.
(LLM in Taxation)
787-281-1820
rosario@amgprlaw.com

Caridad Muñiz-Padilla, Esq.
(LLM in Taxation)
787-281-1817
cmuniz@amgprlaw.com

Popular Center
208 Ponce de León Ave. Suite 1600
San Juan, PR 00918

PO Box 70294
San Juan, PR 00936-8294

Telephone: (787) 756-9000
Fax: (787) 756-9010