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TAX ALERT

Puerto Rico Treasury Department issues guidance and a temporary procedure for the filing and payment of the use tax on imported articles

On July 24, 2014, the Puerto Rico Department of the Treasury (“Treasury”) issued Internal Revenue Circular Letter No. 14-06 (“CL 14-06”), and on August 1, 2014, issued Administrative Determinations No. 14-12 (“AD 14-12”) and No. 14-13 (“AD 14-13”), providing further guidance with respect to the procedure for declaring, filing and paying the use tax on articles imported into Puerto Rico (“Use Tax”), including articles imported into Foreign Trade Zones (“FTZ”) and importers of alcoholic beverages (“Beverages”). The guidance issued by Treasury relates to the recent amendments to the Puerto Rico Internal Revenue Code of 2011 (“Code”), enacted under Act 80-2014 (“Act 80”).

On August 5, 2014 and due to problems related to the implementation of the new Merchant’s Integrated Portal (“PICO”, for its Spanish acronym) described below, Treasury issued Administrative Determination No. 14-15 (“AD 14-15”) to establish a temporary procedure to facilitate the introduction of tangible personal property subject to the Use Tax.

Below we summarize the procedures set forth in CL 14-06, AD 14-12, AD 14-13 and AD 14-15. Unless otherwise indicated below, these procedures are to be followed commencing on August 1, 2014.

CL 14-06

CL 14-06 provides the procedures to be followed to comply with the filing and payment of the Use Tax on the introduction of tangible personal property (“Property”) into Puerto Rico by importers that: (a) are not registered merchants (“Non-Merchants”); (b) are not bonded importers (“Non-Bonded Merchants”); (c) are bonded registered merchants (“Bonded Importers”); and (d) are manufacturers. The procedures established in CL 14-06 will apply regardless of whether the Property is exempt from the Use Tax and are to be undertaken through PICO.

With respect to Property that is subject to excise or other taxes, Non-Bonded Merchants and Bonded Importers must pay such taxes prior to filing the Declaration of Imports for Use (“Declaration”).

Following is a summary of the procedures established by Treasury in CL 14-06 with respect to the import of Property by category of importer.

--Non-Merchants

1. The carrier will electronically transmit the document that details the commercial data of the cargo ("Manifest") to Treasury's Tax Consumption Bureau ("Bureau") using SISCON (the Spanish Acronym for Treasury's Tax Systems). Once reviewed, Treasury will transfer the bill of lading related to the Manifest to PICO. Then, the carrier will notify the Non-Merchant that the Manifest has been transmitted.
2. If the Non-Merchant does not have a Merchant Registration Identification Number ("Merchant Number"), it must obtain it to register and be able to file the Declaration using PICO.
3. Once the Non-Merchant has the Merchant Number, it must complete the Declaration by selecting the bills of lading related to the Declaration, upload the commercial invoice in PICO, and pay electronically the Use Tax through an "ACH Debit." If the commercial invoice is not available, the importer may upload the purchase order and submit the commercial invoice later. The submission of the commercial invoice is a requirement for the importer to be able to claim the credit with respect to Property imported for resale. Generally, the information provided in the Declaration must be in accordance with the information in the commercial invoice and the bill of lading of the Property imported. The importer will be able to select from PICO all the bills of lading submitted under its employer identification number ("EIN") that have not been declared.
4. Upon filing the Declaration and paying the Use Tax, PICO will issue the Authorization for the Release of Imports for Use ("Release"), unless the cargo trailers are selected for inspection.
5. Upon paying the Use Tax, PICO will generate a Use Tax on Imports Return ("Use Return"). The importer will only have to confirm that the information is correct and accept it. At the end of the month, PICO will automatically file the Use Return with a summary of the information provided in the Declarations during the month.
6. Finally, the importer will notify the carrier that it has obtained the Release. The carrier will be able to confirm such information on Treasury's information system.

--Non-Bonded Merchants

Non-Bonded Merchants must also follow the steps described above, except for step No. 2. PICO will not automatically generate the Use Return to Non-Bonded Merchants. Thus, Non-Bonded Merchants will have to complete and submit the Use Return by the 10th day of the month following the import date. Non-Bonded Merchants can include in a Declaration the Property imported for all its commercial locations provided *all* the bills of lading have the same date and carrier.

--Bonded Importers

1. Bonded Importers must obtain a use tax bonded importer identification number from the Bureau ("Bonded Id Number") in order to defer the payment of the Use Tax. For more details on the procedure to obtain the Bonded Id Number, please refer to our [Tax Alert of July 3, 2014](#).
2. Bonded Merchants must follow the steps described for Non-Merchants, except for step No. 2. As a Bonded Importer it will not be required to pay the Use Tax with the Declaration in order to obtain the Release and take possession of the Property. Instead, the payment should be made with the Use Return, which is due on the 10th day of the month following the import date. Upon filing of the Declaration, Treasury will reduce the amount of the Bond available for the deferral of the Use Tax by the amounts of the Use Tax declared. If the amount of the Bond is not enough to cover the Use Tax declared, Bonded Importers will have to pay the Use Tax on the Property declared in order to obtain the Release and take possession of the Property.
3. Once the Bonded Importer pays the Use Tax due upon filing the Use Return, Treasury will release the Bond for the amount of the Use Tax paid.
4. Only Bonded Importers will be able to remit the Use Tax payment through an ACH Credit.

--Property Imported through Air Carriers, Electronic Transfer or the Internet

If the Property is imported through air carriers, electronic transfer or the Internet, the Non-Merchants, Non-Bonded Merchants and Bonded Importers must file the Declaration, upload the commercial invoice, make the Use Tax payment and file the Use Return on or before the 10th day of the month following the import date. In these cases, the Non-Merchants, Non-Bonded Merchants and Bonded Importers must describe the Property since a bill of lading will not be issued.

--Manufacturers

Manufacturers must ensure that their shipping documents are identified with their name, EIN, and their Manufacturer Identification Number assigned by the Bureau, in order to take possession of the raw materials or machinery used in the manufacturing process. Manufacturers must file a Declaration and the Use Return, regardless of whether the Property imported is exempt from the Use Tax. The procedure to be followed, as well as the timing of the payment of any Use Tax, to the extent applicable, will depend on whether the manufacturers are Non-Bonded Merchants or Bonded Importers.

--Returns and Forms

Act 80 changed the due date to file the Monthly Sales and Use Tax Return ("SUT Return") and to pay the sales tax and the Use Tax on inventory withdrawn for use by the merchant, or for resale (jointly referred to as the "SUT"), from the 10th to the 20th day of the month following the date of the taxable event. This new filing date is effective for the reporting period of July 2014, and subsequent

reporting periods. CL 14-06, however, postpones the effective date of this new filing due date to the reporting period of August 2014.

Thus, pursuant to CL 14-06, the SUT Return for the month of July 2014 is due on the 10th of August and not the 20th. To avoid the imposition of penalties by Treasury, merchants must file the SUT Return for the July reporting period by August 10, 2014. Furthermore, pursuant to the amendments enacted by Act 80, in the case of SUT Returns that must be filed electronically, the due date for filing such returns will not be extended to the next labor day if such due date falls on a Saturday, Sunday or a holiday.

CL 14-06 provides that, commencing with the SUT Return for the reporting period of August 2014, merchants with more than one commercial location will be able to file only one return to report the sales of all their commercial locations. PICO will generate a base account that will show the sales and the sales taxes collected on taxable sales from all the commercial locations of a merchant.

CL 14-06 further provides that merchants that are holders of a non-withholding agent Merchant Registration Certificate (i.e., a red certificate) will have to report their exempt sales in the SUT Returns if, at least for one of their commercial locations, such merchants are holders of a withholding agent Merchant Registration Certificate (i.e., a green certificate).

AD 14-12

In AD 14-12 Treasury delays the imposition of the Use Tax on the introduction of Property into a FTZ from August 1, 2014 until November 1, 2014.

In addition, in AD 14-12 Treasury establishes guidance on the specific procedures to be followed in connection with the declaration and payment of the Use Tax on Property imported into Puerto Rico from a FTZ, beginning August 1, 2014.

Effective August 1, 2014, the importer of the Property will be required to submit to the Bureau documentation that supports that the importer is a FTZ tenant and that the taxable items imported are intended to be stored in a FTZ. In addition, to obtain the Release with respect to tangible personal property withdrawn from a FTZ, the importer will be required to file a Declaration and the related Use Tax payment, as provided in CL 14-06 (described above).

AD 14-13

Section 4030.04(b) of the Code provides that a merchant that imports alcoholic beverages ("Beverages") and stores such beverages in a bonded warehouse, will not be subject to the Use Tax if the Beverages are:

1. Exported within 360 days from the date of import;
2. Are in transit in Puerto Rico because they are consigned to persons abroad, and are sent outside of Puerto Rico within 120 days from the date of import; or

3. Are kept in a bonded warehouse for a period not greater than 360 days from the date of import or until the date of their sale, if the sale is made at any time within said 360-day period.

Effective August 1, 2014, every importer of Beverages that are intended to be stored in a bonded warehouse, must file the Declaration in order to obtain the Release, although the importer will not be required to pay the Use Tax at said time. Nonetheless, when the importer withdraws the Beverages from the bonded warehouse, it will be required to file a Declaration and pay the Use Tax on the Beverages withdrawn from the bonded warehouse. The Bureau will not authorize the withdrawal of Beverages from a bonded warehouse without the Release for such beverages being withdrawn.

AD 14-15

Starting on August 5, 2014, Treasury will grant an automatic Release on any Property imported subject to the SUT as long as said Property is not subject to excise or other taxes upon its introduction.

Licensed carriers will continue submitting their Manifests electronically to the Bureau through SISCON, including the information required under Part A of Circular Letter 14-05 (Please refer to our Tax Alert issued on July 21, 2014). Once the Manifest and the required information are transmitted, SISCON will automatically authorize the release of the importer's Property. If the imported Property is subject to excise or other taxes upon introduction, the importer will be required to make the payment for such taxes prior obtaining the Release.

Every importer that obtains an automatic Release for SUT purposes pursuant to AD 14-15, is required to file and pay the SUT on the imported Property no later than the 10th day following the month in which the Property was introduced into Puerto Rico.

For updates on this matter, you may contact any of the attorneys of our Tax Practice Group listed below:

Roberto L. Cabañas	787-250-5611	rlc@mcvpr.com
Isis Carballo	787-250-5691	ici@mcvpr.com
Yamary González	787-250-5687	yg@mcvpr.com
Esteban R. Bengoa	787-250-5626	erb@mcvpr.com
Angel S. Ruiz	787-250-2602	asr@mcvpr.com
Rafael Fernandez Suarez	787-250-5696	rf@mcvpr.com
Antonio J. Rodríguez	787-250-5663	ajr@mcvpr.com
Leyla González	787-250-5696	lqi@mcvpr.com
Rubén Muñiz	787-250-2623	rm@mcvpr.com
Lillian Toro-Mojica	787-250-2608	ltm@mcvpr.com
Edwin O. Figueroa-Alvarez	787-250-5690	eof@mcvpr.com
Mayleen Santiago-Garcés	787-250-2616	msg@mcvpr.com
Dalina Sumner	787-250-5622	ds@mcvpr.com
Javier Bayón	787-250-2609	jjb@mcvpr.com

E-ALERT



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