

TAX NEWSLETTER

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PUERTO RICO TREASURY ROLLS OUT ITS NEW TAX REPORTING PLATFORM SURI

The first phase will take effect on October 31, 2016, will affect all registered and future merchants.

The Puerto Rico Department of Treasury (the “Treasury”) has published on its [website](#) more details on its new reporting platform known as the Unified Internal Revenue System (“SURI” by its Spanish acronym). SURI’s main objective is to streamline the Treasury’s reporting platforms under a single integrated system. With the implementation of SURI, the Treasury aims to reduce the compliance burden related to tax filings and to improve overall tax administration in Puerto Rico.

The consolidation process will be divided in three phases starting with the implementation of the Sales and Use Tax (“SUT”) component on October 31, 2016 (“Phase One”). The second and third phases will be rolled out on December 2017 and December 2018, respectively and will cover: corporate taxes; including, pass thru entities, tax incentives and excise taxes; and individual taxes;

including, estate and gift and related withholdings.

UPDATING YOUR MERCHANT REGISTRATION CERTIFICATE

The Treasury has announced that starting on October 15, 2016, registered merchants are required to update their Merchant Registration Certificates (the “Certificates”) by logging to SURI. Certificates will be issued immediately via SURI to be printed and displayed as their previous PICO counterparts. The previous PICO certificates should be saved.



Merchants are instructed to update their Certificates via SURI on or before November 20, 2016, which is the due date to file SUT Returns for October 2016. SURI will go live on October 31, 2016. Existing Merchants should use

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Administrative Determination 16-11 Issued following Wal-Mart’s AMT Aftermath

Federal District Court of Appeals for the First Circuit affirms ruling that strikes down provisions of the Alternative Minimum Tax Imposed by Puerto Rico Internal Revenue Code

On March 28, 2016 the U.S. Federal Court for the District of Puerto Rico ruled unconstitutional various provisions of the Alternative Minimum Tax (“AMT”) imposed by Section 1022.03 of the Puerto Rico Internal Revenue Code of 2011, as amended (the “Code”). The Court also enjoined Wal-Mart’s petition of

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this process to review the information in their Certificate(s) such as addresses, names, NAICS information, etc.

WHO HAS TO UPDATE ON PHASE ONE?

All registered Merchants are required to update their Certificates. Merchants who are applying for the first time for a Certificate between October 15 and October 28 are instructed to register via the SUT Section on the Treasury's webpage and, afterwards, proceed to update via SURI. After October 31, 2016, new Merchants will apply for a Certificate directly through SURI. Merchants can access SURI through the Treasury's website.

WHAT HAPPENS AFTER YOU UPDATE THE CERTIFICATE?

The Treasury will send out notices to Merchants who have updated their Certificates to confirm that the registration has been processed and that SURI is available. Remember that SURI will go live on October 31, 2016.

TRANSACTIONS COVERED BY SURI DURING PHASE ONE

During Phase One, SURI will cover the following transactions: (1) applying for a Certificate; (2) filing monthly SUT Returns and Importation Returns; and, (3) paying the SUT collected.

PICO SHUTDOWN

As we reported on our Issue 09, PICO will cease on and after October 28, 2016 at 3:45pm (AST). Therefore, it is highly recommended that copies of any records and the SURI update to the Certificate be made before this date.

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injunction prohibiting the Puerto Rico Secretary of Treasury (the "Secretary") from collecting the tax resulting of Section 1022.03(b)(2) of the Code. On August 24, 2016 the ruling was affirmed by the Federal Court of Appeals for the First Circuit (the "Wal-Mart Ruling"). The Secretary and Puerto Rico Secretary of Justice have announced that they would not appeal the ruling.

Section 1022.03(b)(2) of the Code was amended for taxable years commencing after December 31, 2014 adding two components to the computation of the AMT: (1) Expenses included in this computation: (a) expenses incurred or paid to a related party if such expenses were attributable to an exploitation of trade or business in Puerto Rico and such expenses were not subject to income tax or withholding under the Code; or, (b) the amount that represented the transfer of costs or allocation of expenses by a Home Office located outside of Puerto Rico to a Branch in Puerto Rico if said amount was not subject to income tax in Puerto Rico; and, (2) a percentage ranging from 2.5% to 6.5% depending on the value of the purchases made to a related person or the transfer of property by a Home Office to a Branch engaged in trade or business in Puerto Rico. These components were ruled unconstitutional (the "Wal-Mart Components").

At the time the Circuit Court had affirmed the ruling in the Wal-Mart case, numerous taxpayers had already paid their income taxes for 2015 taxable year and the estimated taxes for 2016 considering the AMT with the Wal-Mart Components.

SECRETARY ISSUES DETERMINATION

Consequently, on September 30, 2016, the Secretary issued [Administrative Determination No. 16-11](#) ("AD 16-11") establishing the rules for claiming credits for the excess AMT paid following the now unconstitutional Section 1022.03(b)(2) of the Code.

AMT for Taxable Years Commenced After December 31, 2015

As a consequence of the Wal-Mart Ruling, the Secretary determined that: (1) taxpayers subject to AMT will not have to include the Wal-Mart Components as part of the AMT computation; (2) AMT will be computed under the general AMT rules before the Wal-Mart Components or the amount by which the Tentative Minimum Tax exceeds the regular tax for the taxable year; and, (3) the Schedule for the computation of the AMT of the 2016 Income Tax Return will be modified accordingly.

The Tentative Minimum Tax is the 30% of the amount by which the Alternative Minimum Net Income exceeds the exempt amount reduced by minimum alternative credit for foreign taxes paid for that taxable year.

Estimated Income Tax for Taxable Year 2016

Taxpayers will not compute its AMT considering the Wal-Mart Components when computing the remaining estimated tax installments. Any portion of the estimated tax already paid corresponding to the AMT attributable to the Wal-Mart Components can be applied to the Taxpayer's income tax liability for the taxable year.

The estimated income tax is payable in four installments due on the 15th day of the fourth, sixth, ninth and twelfth month of the current taxable year. For example, in the case of a corporation with a taxable year ending on December 31, 2016, installments would be due on April 15, June 15, September 15 and the final installment on December 15, 2016.

Taxpayers should ascertain whether the estimated tax installments paid considering the AMT with the Wal-Mart Components cover their income tax liability for the taxable year 2016. In case that said installments cover the income tax liability, no additional payments will need to be disbursed.

AMT for Taxable Year 2015

Taxpayers have to recalculate their AMT. If a taxpayer overpaid its tax liability because of the Wal-Mart Components, then he has a right to claim a credit for the amount in paid excess for taxable year 2015. Taxpayers will have two options, claim the excess: (1) as a credit to the AMT for subsequent years (subject to certain limitations); or (2) as an excess payment creditable to the estimated tax for the taxable year 2016.

Claiming a Credit of Taxable Year 2015

Should a Taxpayer opt to claim the excess payment of taxable year 2015 as a credit to the estimated tax for the taxable year by preparing an amended Income Tax Return for taxable year 2015, attach Form 483.3 (*Formulario de Trámite Anejo A Corporación - Parte V Año Contributivo 2015*). Currently Form 483.3 is only available in Spanish.

Alternatively, if the income tax return for taxable year 2015 has not been filed, the Taxpayer should prepare and attach Form 483.3 to the income tax return for taxable year 2015. In said case, excess payments resulting of the AMT recalculation of taxable year 2015 cannot be claimed as a refund.

Disallowance of Expenses Incurred or Paid to a Related Person or Transfers to a Home Office

For purposes of the regular tax, Section 1033.17(a)(17) of the Code disallows 51% of the expenses incurred or paid to a related party or of the transfers to a Home Office when such payments were not subject to income tax or withholding under the Code. Section 1033.17(a)(17) provisions was not at issue in the Wal-Mart decision, thus, the disallowance continues to apply.

For more information do not hesitate to contact any of the following professionals:

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