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TAX ALERT

Puerto Rico Treasury Department Activates Merchandise Declaration Process at the Ports of Entry

Acts 46-2013 and 117-2013 amended various provisions of the Puerto Rico Internal Revenue Code of 2011 (the "2011 Code") to require importers to declare such imports and pay use tax on certain articles prior to taking possession of the same. On Friday, November 15, 2013, the Puerto Rico Treasury Department ("Treasury") issued [Circular Letter No. 13-22](#) ("CL 13-22") as the required guidance to activate the provisions of Act No. 46-2013 and implement a new reporting and logistics regime effective December 1, 2013 (July 1, 2014 with respect to inventory imported for resale).

Background

- Use tax from December 1, 2013 to June 30, 2014

With the enactment of Act 46-2013, effective June 30, 2013, use tax due on taxable items imported into Puerto Rico was supposed to be generally collected upon introduction of such property into Puerto Rico in a process similar to that previously used for the collection of excise taxes. Note that taxable items to be subsequently object of commerce in the ordinary course of business in Puerto Rico were not subjected to use tax by Act 46-2013.

Various excise tax provisions, including the provision requiring the filing of a detailed declaration of taxes imposed on imported taxable items, were amended to include the use tax within their scope. Via Informative Bulletin No. 13-14 ("IB 13-14"), Treasury postponed the application of these provisions until it issued further guidance on the matter.

- Use tax from July 1, 2014 and thereafter

Thereafter, Act No. 117-2013 further amended the 2011 Code to provide that, effective July 1, 2014, the term "use" shall include the introduction of taxable items with the purpose of being an object of commerce in the ordinary course of business in Puerto Rico. Thus, most resellers will have to pay either sales tax or use tax (effectively as an advance or pre-payment of their sales tax collections) on their purchases of taxable items for resale.

Upon the effectiveness of this provision, merchants that introduce taxable items into Puerto Rico that are subject to the use tax and paid the use tax prior to taking possession of such items, will report such purchases and the related use tax paid, in the monthly SUT return for the month in which the merchant took possession of such taxable items. A credit will be available, subject to the above-stated limitations.

Circular Letter No. 13-22

On Friday November 15, 2013, Treasury issued the guidance required by IB 13-14 in the form of CL 13-22 requiring all importers of items subject to use taxes to declare relevant information from the bills of lading, commercial invoices and packing lists as provided therein. As with the excise tax regime repealed in 2006, importers will not be allowed to take possession of merchandise until a declaration is filed and, following the procedures indicated in CL 13-22, either a bond is posted or the tax is paid.

CL 13-22 provides specific procedures to be followed by the following types of importers: (a) those that are not registered merchants; (b) those that are registered merchants, but not bonded importers; (c) those that are bonded importers; and (d) manufacturers. Careful analysis of these provisions is recommended for all types of importers, as on-line registrations may be required without which taking possession of merchandise imported after November 30, 2013 may be delayed.

Further, Treasury provides a listing of their "satellite offices" which are Consumption Tax Bureau offices located on-site at the facilities of Sea Star Lines, Horizon Lines, Inc. Crowley Maritime Corp., Trailer Bridge, Inc. and International Shipping Agency, Inc. where importers (clients of the listed companies) may also file the declarations.

If a merchant is a bonded importer, the use tax will be due on the 10th day of the month following the month in which the merchant took possession of the item, unless the time to pay such tax is extended by the Secretary upon consideration of the volume or frequency of the imports, as well as the merchant history or projection on the payment of the SUT.

CL 13-22 also provides detailed requirements for the bonds to be posted by merchants, which include full compliance with state and local taxing authorities, audited financial statements and the filing of a sworn statement. For these purposes, a bonded importer is a registered merchant that requests to be classified as such, complies with certain requirements and posts a bond to guarantee the payment of the use tax, including interest, surcharges or fines. The bond may be posted through a cash deposit, credit letter or a company authorized to issue bonds under the laws of Puerto Rico. The minimum amount of the bonds to be posted will be \$10,000.

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

Carlos E. Serrano	787-250-5698	ces@mcvpr.com
Roberto L. Cabañas	787-250-5611	rlc@mcvpr.com
Esteban R. Bengoa	787-250-5626	erb@mcvpr.com
Isis Carballo	787-250-5691	ici@mcvpr.com
Lourdes Fontanillas López	787-250-5655	ldf@mcvpr.com
Yamary González	787-250-5687	yg@mcvpr.com
Leyla González	787-250-5696	lgi@mcvpr.com
Angel S. Ruiz	787-250-2602	asr@mcvpr.com
Alba I. Joubert	787-250-5649	aj@mcvpr.com
Rubén Muñiz	787-250-5655	rm@mcvpr.com