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TAX ALERT

Sales and Use Tax Exemption Procedures for Exempt Businesses under Tourism Development Acts

On August 22, 2013, the Puerto Rico Department of the Treasury ("Treasury") issued Circular Letter No. 13-15 ("CL 13-15") to establish the procedures to claim the sales and use tax ("SUT") exemption on eligible articles acquired by exempt businesses holding a tax concession ("Concession") issued under Act 74-2010 ("Act 74"), also known as the Puerto Rico Tourism Development Act and other analogous predecessor tourism incentives acts ("Exempt Business").

Eligible articles are those that are not inventory articles or other articles to be sold in the ordinary course of business and that are acquired for (i) use in the Exempt Business' tourism activities or (ii) by contractors or subcontractors for use in the construction activities of the Exempt Business (hereinafter "Exempt Articles").

An Exempt Business will be unable to enjoy SUT exemption on the purchase of Exempt Articles ("Exemption"), unless the procedure set forth in CL 13-15 is followed and the Exempt Business provides the certifications listed in CL 13-15 when claiming the Exemption.

To request the Exemption, the Exempt Business must:

1. File an application with the Financial Incentives Division of the Puerto Rico Tourism Company ("Division") in the form of a sworn statement ("Application") expressing:
 - a. That the applicant is an Exempt Business holder of a Concession under Act 74 or any other analogous predecessor act;
 - b. A description of the tourism activity of the Exempt Business;
 - c. A detail of the total Exempt Articles (such as construction materials and personal property) estimated to be used by the Exempt Business with respect to the works to be undertaken and a description of such works. The Exempt Business will be responsible for updating the list of Exempt Articles for use and consumption and must justify any modification;
 - d. A certification that the Exempt Articles acquired for use and consumption by the Exempt Business will solely be used in the tourism activity of the Exempt Business, excluding casinos, and not for personal use or in other operations;
 - e. A certification the Exempt Articles do not form part of the Exempt Business' inventory;

- f. An admission by the Exempt Business that the unauthorized use of the Exemption may result in the imposition of penalties or the immediate revocation of the Concession;
2. Submit a list of contractors, subcontractors or other persons authorized to request the Exempt Articles, including their name, position/relationship with the Exempt Business and the original signature of each of the persons listed;
3. Submit copy of the agreement between the Exempt Business and the authorized contractor and between the contractor and the subcontractor, as applicable;
4. Submit a duly completed Certificate of Exempt Purchases, Form AS 2916.1; and
5. Submit the purchase order with respect to the Exempt Articles to be acquired, including the description, amount and price of the same.

Within 3 working days following the receipt of the Application, the Director of the Division will issue an endorsement letter certifying the Exemption ("Endorsement"), which letter is to be sent directly to the Director of Treasury's Tax on Consumption Bureau, who will issue a letter certifying the Exemption from the SUT with respect to the particular Exempt Articles for which it was requested ("Certification").

To claim the Exemption, an Exempt Business must provide the vendor of the Exempt Articles with a copy of: (i) the Certification; (ii) Form AS 2916.1; (iii) the Endorsement; and a copy of the purchase order submitted to the Division for the issuance of the Endorsement.

Finally, the Exempt Business must provide a copy of CL 13-15 to its personnel, including officials and agents that are in charge of preparing and processing purchases to its suppliers.

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

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