

Guidance on the Transition to the Value Added Tax Published

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PRACTICE AREAS

- Sales & Use Tax
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The Secretary of the Puerto Rico Department of the Treasury (“Treasury”) published Administrative Determination No. 16-01 (“AD 16-01”) on February 25, 2016 to provide guidance on the transition to the Value Added Tax (“VAT”), which will become effective on April 1, 2016. Specifically, AD 16-01 (1) informs about the new electronic application where the VAT transactions will be reported, (2) identifies the instances in which merchants will continue to use PICO, (3) provides instructions related to VAT registration and certification processes, and (4) establishes the general guidelines for the transition to the VAT.

Internal Revenue Unified System

Starting on April 1, 2016, Treasury’s new electronic system known as the Internal Revenue Unified System (“SURI” for its Spanish acronym) will be in operation. SURI is a new tool that will unify all of Treasury’s tax systems, including income, value added, and sales and use taxes.

SURI’s implementation will take place in several phases. During the first phase, SURI will complement PICO as part of the transition from the sales and use tax (“SUT”) to the VAT, and will allow merchants to do the following:

- File the new Value Added Tax Monthly Return (“VAT Return”)
- Make VAT payments related to such VAT Returns
- Request the new Merchant’s Registration Certificate and obtain the Registration Number and the Access Code to complete the application
- Request the new Small Merchant Registration Certificate
- Update a merchant’s profile and receive the new Merchant’s Registration Certificate for existing merchants

PICO user information will transfer automatically to SURI, including the information related to authorized representatives. Once this information has been transferred, PICO users will receive an e-mail notice to access SURI with the same information used to access PICO.

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PICO

PICO will remain in operation **solely** for the following:

- Filing the Declaration of Imports (Form AS 2970.1) to obtain authorization for the release of imported articles
- Filing the Tax on Imports Monthly Return (Form AS 2915.1 D)
- Filing the SUT Monthly Return (Form AS 2915.1) for reporting periods prior to April 1, 2016 or any amendment relating to previously filed returns
- Filing the SUT Monthly Return Applicable to Preexisting Contracts and Auctions (Form AS 2915.1 E) until the reporting period of June 2016
- Filing the SUT Monthly Return Applicable to Services Rendered to Other Merchants and Designated Professional Services (Form AS 2915.1 F) for:
 - reporting periods prior to April 1, 2016 or any amendment relating to previously filed returns; and
 - the 4% SUT on designated professional services rendered prior to April 1, 2016 and collected from April 2015 through September 2016 by merchants under the cash basis accounting method for SUT purposes.

New VAT Return

Every merchant other than Small Merchants will be required to file a VAT Return no later than by the 20th day of the month following the month in which the VAT is collected. VAT credits can be claimed in such return.

The first VAT Return to be filed will be for the month of April 2016 (“April 2016 VAT Return”), which is due on May 20, 2016, and will be available in SURI on May 1, 2016. Treasury will transfer the balance of SUT credits and overpayments carried-over until March 2016 to the April 2016 VAT Return. However, merchants must exhaust the SUT credits and overpayments carried-over before claiming any VAT credit.

The VAT Return will provide for the electronic computation of the VAT credit, which must be processed electronically through SURI.

Merchants’ Registry

Every person doing business or wishing to do business in Puerto Rico must submit a Merchant’s Registration Certificate Request for each commercial

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location, providing certain required information (“VAT Registration Certificate”). The VAT Registration Certificate must be processed through SURI.

All Merchant's Registration Certificates issued under the SUT (“SUT Registration Certificate”) will expire on March 31, 2016. Consequently, every merchant currently holding a SUT Registration Certificate must request a VAT Registration Certificate using SURI. To complete the merchant’s registration under the VAT, Treasury will e-mail merchants with an active SUT Registration Certificate and an active PICO account requesting the validation of the information registered in Treasury’s systems.

Merchants that do not have a PICO account must access SURI from April 1, 2016 until May 20, 2016, and provide the information requested to complete the VAT registration process. New merchants must also complete the VAT registration process through SURI, which will be available on April 1, 2016.

Failure to complete the VAT registration process will result in a \$500 penalty.

Once the VAT registration process is complete, SURI will issue a VAT Registration Certificate with a control number, and the merchant will be able to print this Certificate. Merchants with various commercial locations will have to separately identify each during their registration. The VAT Registration Certificate must be displayed to the public in a visible place.

New businesses that will be importing goods will have to register in PICO to file the corresponding Declarations of Imports and Tax on Imports Monthly Return through PICO, as previously indicated. More information regarding the PICO registration and filing processes is available [here](#) and [here](#).

VAT Exemption Certificates

All SUT waiver and exemption certificates generally will expire on March 31, 2016, but Treasury will extend the effectiveness of some certificates indicated below. Starting on March 1, 2016, Treasury will not accept applications for renewal of any of these certificates, so that they must be used under the VAT regime until Treasury issues guidelines establishing the procedures to apply for the corresponding certificates under the VAT.

- *Reseller Certificate and Municipal SUT Exemption Certificate*

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The Reseller Certificate and Municipal SUT Exemption Certificate will continue to be used to evidence a merchant's status as a reseller that can continue to enjoy the SUT municipal exemption on purchases of tangible personal property for resale. A merchant holding this certificate will pay only the 10.5% VAT on the purchase of taxable goods for resale.

Merchants holding a Reseller Certificate and Municipal SUT Exemption Certificate valid as of December 31, 2015 or a later date will continue to use said certificate under the VAT, regardless of its expiration date, until Treasury notifies its cancellation and the process to request the renewal through SURI. Renewal applications pending before Treasury for certificates that expired after December 31, 2015 will be cancelled. Certificates that expired on or before December 31, 2015 must be renewed following the SUT procedures. New merchants that qualify as resellers must apply for this certificate following the SUT procedures.

- *Exemption Certificate for Manufacturing Plants*

The Exemption Certificate for Manufacturing Plants will continue to be used by manufacturing plants to acquire raw material and machinery and equipment to be used in the manufacturing process without paying the VAT. Treasury will issue a new Manufacturing Plant Exemption and Zero Rate Certificate to manufacturing plants eligible for the VAT exemption/zero rate on the import and purchase of such goods. Merchants holding an Exemption Certificate for Manufacturing Plants valid as of December 31, 2015 or a later date will continue to use it under the VAT, regardless of its expiration date, until Treasury notifies its cancellation and the renewal process through SURI. Renewal applications pending before Treasury for certificates that expired after December 31, 2015 will be cancelled. Certificates that expired on or before December 31, 2015 must be renewed following SUT procedures. New merchants that qualify as manufacturing plants must apply for this certificate following the SUT procedures.

- *SUT Collection Waiver Certificate on Manufacturing Services Contracts*

The SUT Collection Waiver Certificate on Manufacturing Services Contracts will continue to be used to claim the VAT exemption on certain manufacturing services contracts. Until Treasury publishes the procedure under the VAT, merchants wishing to apply for this certificate under the VAT regime must do so following the SUT procedures.

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■ *Eligible Reseller Certificate*

Eligible Reseller Certificates issued under the SUT regime will be valid under the VAT until June 30, 2016, regardless of their expiration date. Accordingly, holders of an Eligible Reseller Certificate will be able to claim VAT exemption on the same purchases on which they claim a SUT exemption. Starting on July 1, 2016, merchants enjoying this exemption will be subject to the VAT on all their taxable transactions.

■ *Certificate for Exempt Purchases*

Until further notice, Treasury Form SC2916, the Certificate for Exempt Purchases, will continue to be used to document transactions exempt from the VAT, and will be considered as the Certificate for Exempt Purchases under the VAT regime.

Fiscal Voucher and Debit and Credit Notes

Notwithstanding the statutory provisions regarding the information required in a Fiscal Voucher, AD 16-01 provides that starting on April 1, 2016, merchants can use as Fiscal Vouchers the sale receipts and invoices that their systems and cash registers generate. These sale receipts and invoices, however, must separately state the description, the cost of the goods or services acquired, and the VAT paid in the referenced transaction.

These receipts or invoices temporarily will be considered as VAT Fiscal Vouchers, and will serve as evidence of the VAT paid by a merchant that can be claimed as a credit in the VAT Return. Merchants must retain the receipts or invoices, or a true and exact copy of the same, for a period of no less than six years to support the VAT credits claimed in the VAT Returns.

With the VAT Return, merchants with an annual volume of business of \$40,000,000 or more will have to submit a breakdown of the VAT paid on the goods and services acquired to operate their businesses. AD 16-01 provides an example of the worksheet that must be used to itemize the VAT paid that will be claimed as a credit in the VAT Return.

In the case of Credit and Debit Notes, the merchant buyer must keep for its records the corresponding evidence for the computation of the applicable adjustments to the sale price. It will not be necessary for the merchant seller to issue such Notes to the merchant buyer until Treasury establishes the

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procedure for this purpose.

Pre-Existing Contracts

Merchants with Pre-Existing Contracts or Auctions duly certified by Treasury will have to continue filing their SUT Monthly Returns Applicable to Preexisting Contracts and Auctions (Form SC 2915.1E) until June 30, 2016 using PICO.

The consumption tax paid on these pre-existing contracts is considered SUT and will not be part of the VAT Credit that the merchant will accrue starting on April 1, 2016, unless attributable to tangible personal property acquired for resale.

In the case of pre-existing contracts, the taxpayer will pay only a 6% SUT.

Treasury will publish additional guidelines regarding the rules applicable to Preexisting Contracts and Auctions for construction projects commenced as of May 31, 2015.

Reimbursement of VAT Overpaid

When a merchant has a VAT overpayment for any given month in excess of \$10,000, it can request a reimbursement of such excess if (i) the merchant is an eligible merchant in the month in which the overpayment was generated, or (ii) it is the third consecutive month that the merchant has shown an overpayment in its VAT Return.

■ *Eligible Merchant*

An eligible merchant must have an annual volume of business in excess of \$500,000 for the immediately prior three years (or for the applicable period), and 80% of its total sales must be subject to a 0% VAT rate. To claim the VAT reimbursement, the merchant must request and obtain an Eligible Merchant Certificate. The Secretary will establish through official document the process to request this certificate.

■ *Other Merchants*

Merchants that do not qualify as eligible merchants will have to comply with the requirement of an overpayment in excess of \$10,000 in any given month and the accumulation of overpayments for a period of three months to request the VAT reimbursement. For this purpose, the 3-month period will start to run on

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June 1, 2016. Thus, any VAT reimbursement request can be filed if at the end of August, 2016 the merchant has a VAT overpayment in excess of \$10,000 with respect to the months of June, July and August, 2016, and at the time of filing the VAT Return for the month of August, 2016, such overpayment has not been claimed against the VAT collected on the sale of goods and services of the merchant.

Treasury will provide additional guidelines regarding the procedure to request the reimbursement of overpaid VAT.

Designated Professional Service Providers

Designated professional service providers that elected to use the cash basis method for SUT purposes will continue to use this method under the VAT. The designated professional services rendered between September 30, 2015 and before April 1, 2016 will be subject to 4% SUT if the invoice for such services is issued and sent to the customer no later than by April 20, 2016. Otherwise, the services will be deemed rendered on the date when the invoice was issued and subject to a 10.5% VAT. Starting on April 1, 2016, designated professional services will be subject to a 10.5% VAT and will continue to be exempt from the 1% municipal SUT. Special rules are provided for cash basis designated professional service providers that have not received payments for services rendered before April 1, 2016 by the time they file the SUT Monthly Return for March of 2016.

Rulings and Closing Agreement issued under the SUT

Rulings or closing agreements issued under the SUT determining the tax treatment of taxable transactions or taxable events will continue to apply under the VAT regime for similar VAT provisions, but the merchant must obtain a ratification letter from Treasury (“Ratification Letter”). To obtain the Ratification Letter, the merchant must submit a request to Treasury including certain information and documents set forth in AD 16-01, together with a \$50 filing fee.

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