



Certified Public Accountants
& Business Consultants

LPG TAX ALERT- OCT 2015

ACT 159-2015

BACKGROUND

On September 30, 2015, the Governor of Puerto Rico, Hon. Alejandro García Padilla signed into law Act No. 159 (Act 159-2015) to modify certain tax provisions that were introduced under Act 72-2015 (discussed in our previous alert in June 2015). In general, Act 159-2015 was signed to provide relief to certain sectors or industries with respect to the new 4% imposition of the sales and use tax on designated professional services and services by a merchant to another merchant (commonly referred to as the business to business services). The following will summarize the relevant changes under Act 159-2015.

INCOME TAX

- **Special tax rate on Dividend and deemed distributions:** Similar to the window that ended on June 30, 2015, during the period of October 1, 2015 to December 31, 2015, dividend and deemed distributions will be subject to a special tax of 8%. This tax will be in lieu of any other tax imposed by the Puerto Rico Tax Code.
- **Deduction of net operating losses:** For the taxable year beginning **after** December 31, 2014, the amount of losses that can be used to offset taxable income **will be limited to 80% of such income.**
- **Non-deductible Items:** no deduction shall be allowed for services or goods that were subject to sales and use tax and the tax was not paid. This provision does not apply to services or goods which are exempt for sales and use tax imposition.
- **Net Capital losses:** Capital losses may be claimed up to the extent of the gains from the sale or exchange for the taxable year. The amount to be used to offset capital gains in a taxable year **will be limited to 80% of such gains.**
- **Methods of accounting for tax purposes:** Entities engaged in the development of land or structures will be considered that they are deriving income from long-term contracts, and as such may determine their income under the percentage of completion and any other method authorized by the Secretary of the Treasury except for the completed contracts method. Prior to this amendment, these entities could not determine their income under the long term contract provisions.
- **Tax credits:** a new tax credit of 15% of the expenses paid by a television channel for the transmission of Puerto Rico television programs can be used to offset the income tax imposed under Subtitle A.
- **Non for profit organizations:** Tax exempt status may be revoked for expenses not related to the organization's exempt purpose, extravagant expenses or for profit or personal expenses by the directors, officers or employees of the organization.
- **Financial Statements:** additional requirements are imposed for purposes of Act 163 schedules (Audited Financial Statements-Supplementary Information) to sustain the correctness of exempt sales claim in the sales and use tax monthly returns. Also, in the case of inventory that has been retired for internal consumption, it is necessary to confirm that the related use tax has been declared and paid pursuant to the provision of Subtitle D of the PR Tax Code.

“Commercial, residential or industrial building projects will pay the special 4% tax on 35% of the billing for the project”

SALES AND USE TAX

- The following terms or definitions were modified under Act 159-2015 for purposes of the Sales and Use Tax. Some of these modifications will provide exemptions from the imposition of the tax, mostly to the taxation of services that begins on October 1, 2015.
 1. **Machinery and equipment used in manufacturing:**
 - Includes all machinery and equipment used exclusively in the manufacturing process or construction or repairs of vessels inside a manufacturing plant, including those which must be acquired as part of federal or state law requirement. Also, includes all machinery and equipment, and also, parts, tools, and components used in the repairs, maintenance, and conditioning of aircrafts, under Act 73-2008.
 2. **Manufacturing plant**
 - Includes all plants engaged in the assembly or integration of personal tangible property or that is engaged in the transformation of raw materials into finished goods different from their original condition, together with those operating under tax incentive laws.
 - Includes all plant manufacturing engaged in the repairs, maintenance, and conditioning of aircrafts, under Act 73-2008.
 3. **Sales Price**
 - The sales price for services rendered to other merchants pursuant to a **commercial, residential, or industrial building** project that are directly related to said project will be 35% of the amount of the invoice.
 4. **Designated professional services**
 - Designated professional services will include tax return specialists as defined in Subtitle F of the Code for the preparation of PR and US returns.
 - Designated professional services will include services rendered by a non-resident to a person or entity located in Puerto Rico, regardless of where the service was rendered and only if such service is related to the operations conducted in Puerto Rico.
 5. **Services exempt from the sales and use tax imposition (Regular tax of 11.5% or Special tax of 4%)**
 - Services rendered by a person or entity with an annual volume of business not exceeding \$50,000.
 - Interest and other charges for the use of money.
 - Services rendered by lawyers authorized by the Supreme Court of Puerto Rico to practice the legal profession in Puerto Rico, but only with regards to fees for services attributable to the legal representation before the Puerto Rico courts, the Federal Court of the District of Puerto Rico, the U.S. Court of Appeals for the Circuit, the U.S. Supreme Court, or administrative agencies of the Puerto Rico Government, legal advice, and notary services. Services such as finance advisory, lobbying, and administrative processing are considered taxable.
 - Services provided by a person engaged in trade or business in Puerto Rico to a person engaged in trade or business in Puerto Rico who is also part of a controlled group.
 - Services provided by a person engaged in trade or business **outside** of Puerto Rico to a person who is a holder of a tax grant under Act 73-2008, Act 83-2010, and Act 20-2012, provided that both must be part of a controlled group.
 - Rights to use intangibles.

“Subcontracted services in the construction and telecommunication industries will not be subject to the sales and use tax.”

SALES AND USE TAX (...Continued)

5. **Services exempt from the sales and use tax imposition (Regular tax of 11.5% or Special tax of 4%) (...Continued)**
 - Services rendered to resident associations, condominium owner associations, owner associations, and housing cooperatives as such entities are described in Section 1101.01 of the PR Tax Code and only if 85% of the units of the associations/cooperatives are used for residential purposes.
 - Services rendered to social interest housing projects that receive federal or state subsidies. This applies only if its residents directly pay maintenance fees.
 - Services provided by a person or entity engaged in repair, maintenance, and conditioning of aircrafts under Act 73-2008, as amended.
 - Services rendered to a person engaged exclusively in the warehousing or processing of gasoline, aviation fuel and other fuels, provided the warehousing or handling is carried out in a foreign trade zone. This exemption does not apply if the person engages in the distribution or transportation of said products.
 - Services rendered to bona-fide farmers duly certified by the Department of Agriculture.
 - Services rendered to a union or labor organization established under Act 130-1945 and Act 45-1998, as amended.
 - Services rendered to any public or private entity that is exempt from all types of taxes under its Organic Act.
 - Production services rendered by a producer of radio and television programs or commercials produced in Puerto Rico.
 - Advertising and promotional services and advertising time in any medium.
 - Subcontracted services in a commercial, industrial, or residential construction project, including subcontracted telecommunication services.
 - Services rendered directly to a merchant by employees of an employment agency but only to the extent of the gross salary of said employee as duly identified in the invoice to the merchant that receives the service.
 - Toll manufacturing or contract manufacturing services, provided the service provider obtains a Collection Waiver Certificate.
 - Services rendered to an entity engaged in the business of repairing aircraft that holds a tax exemption grant issued under Act 73 or any predecessor or successor statutes.
 - Maritime, air, or land transportation services, including direct delivery charges.
6. **Exemption for printed books:** All printed books, including non-periodic printed publications of cultural, scientific, or artistic character, will be exempt from the sales and use tax. Printed books excludes publications via electronic means, journals, or newspapers.
7. **Exclusion of Pre-Existing Contracts and Bids:** Act 159-2015 clarifies certain aspects of this topic and provides additional procedures to obtain the required certification to maintain the applicable tax rate as of June 30, 2015. It also clarifies that the special tax rate will be applicable until June 30, 2016. Such period may be extended for 12 months. In case of works engaged in tourism or hospitals, the period could be extended until the end of the **construction work**.

“March 31, 2016 will no longer be the effective date for the implementation of the value added tax.”

For more information, please contact us at:

LPG CPA, P.S.C.
Tax Department

Ph: 787.793.1616
F: 787-793.1620
E: info@lpgpr.com
www.lpgpr.com

Physical Address:
624 Ave. Escorial
Urb. Caparra
Heights
San Juan, PR 00920

Postal Address:
PMB 516
1353 Ave. Luis
Vigoreaux
Guaynabo, PR 00966

Note: This is only an informative bulletin and does not constitute an opinion or advice of the matters herein presented, or a form to avoid to pay any type of tax.

SALES AND USE TAX (...Continued)

- 8. Revised Form 2916:** Form 2916 has been revised to document from October 1st, 2015 sales and use tax exempt transactions and transactions subject to the special 4% tax (B2B and designated professional services). It is important to review and update such forms beginning on October 2015.

VALUE ADDED TAX

- March 31, 2016 is no longer refer as the effective date for the implementation of the value added tax. The sales and use tax will remain in effect until the day prior to the effectiveness of the value added tax.

OTHER MATTERS

- Pursuant to Internal Bulletin 15-14, no more IVU Loto drawings will take place after the September 29, 2015 drawing. However, merchants must continue to register their transactions through fiscal terminals and provide sales receipts segregating the tax from the sales price.
- Effective October 30, 2015, merchants with a total annual sales in excess of \$125,000 will be required to install, hold and maintain a fiscal terminal in each point of sale in their commercial locations (“POS”). Merchants with more than \$1,000,000 gross annual sales will be required to have a fiscal terminal integrated to their POS or cash registers with capacity to transmit electronic data to Hacienda.
- Merchants owning Hacienda’s terminals will be responsible for acquiring and maintaining a new fiscal terminal by October 30, 2015, provided by a processor certified by such agency at their own cost and expense and will bear any cost related to transmitting the data to Treasury.
- Merchants currently exempt from having a fiscal terminal in place, will continue to be exempt from such requirement.
- Merchants that are not required to have a fiscal terminal in place, must continue with their SUT reporting and remittance obligations, to the extent applicable.
- A \$20,000 penalty for failing to install, modify, use, process or register transactions or sales through a fiscal terminal will continue to be in effect and will also apply to merchants that do not complies with these new requirement.