

Tax Alert: PRTD reduces certain penalties applicable to Sales and Use tax

On March 30, 2017, the Puerto Rico Treasury Department (“PRTD”) issued Administrative Determination 17-01 (“AD 17-01”) to modify the process by which it imposes penalties on merchants that fail to comply with the filing and/or remittance of the Sales & Use Tax (“SUT”).

Penalties for failure to file and/or pay Section 6043.04 of the Puerto Rico Internal Revenue Code of 2011, as amended (“PRIRC” or “Code”) states that any person that fails to remit the SUT in the form and time so established by the Code will be subject to a penalty of no less than 25%, nor more than 50%, of the determined insufficiency. In the case of repeat lawbreakers, the penalty will be 100% of the determined insufficiency amount.

On the other hand, Section 6043.05 imposes a penalty on taxpayers that fail to timely file (i) the monthly sales and use tax return, (ii) the monthly use tax return on imports or (iii) the use tax declaration for taking possession, which will be equal to \$100 or 10% of the tax liability, whichever is higher.

Interestingly, both Sections allow the Secretary of the Treasury (the “Secretary”) the chance to waive these penalties for reasonable causes.

Administrative Determination 17-01 [AD 17-01]

In light of the discretion afforded by the Code, through DA 17-01 the Secretary aims to lessen Sections 6043.04 and 6043.05 retributive nature and modify how the penalties provided

under the aforementioned Sections are handed imposed.

For purposes of Section 6043.05, along with the elimination of the \$100 minimum penalty in those cases where there is no tax due with the return, AD 17-01 establishes that any person that fails to file (or files after the established date) the applicable SUT return will be subject to a fixed 10% penalty of the tax due. For purposes of AD 17-01, “tax due” is equal to the determined tax liability, *less* any amount timely paid as well as any credit already claimed or that can be claimed.

Regarding Section 6043.04, as a general rule, AD 17-01 will allow the imposition of a 5% penalty on the determined tax deficiency if the delay in payment does not exceed 30 days. For every 30-day delay, or fraction thereof, an additional 5% penalty will be imposed, but the accumulation will not exceed 50%.

In the case of recidivist merchant, a 5% penalty on the determined tax deficiency will accrue for every 30 days, or fraction thereof, until it reaches 100% of the aforementioned deficiency. A “*recidivist merchant*” is one who, within a 12-month period, has failed to pay the applicable SUT on two or more occasions.

The Secretary reserves the right to waive the imposition of penalties in those cases where the delay or non-payment was attributable to reasonable causes or circumstances beyond the taxpayer’s control. These changes are effective starting with the returns/payments due for the March 2017 period.



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