



Tax



Merchants



SUT

New Sales and Use Tax provisions for Marketplace Facilitators and Marketplace Sellers in Puerto Rico

March 31, 2021

The year 2021 brought new developments related to the Sales and Use Tax, including new initiatives that will make it easier for the Puerto Rico Treasury Department to look after mail-order sales. The changes started with Act 40-2020 which introduced two new categories of merchants to the Sales and Use Tax parlance, the Marketplace Facilitator, and the Marketplace Seller.

Act 40-2020 also established the requirements regarding the collection and deposit of the Sales and Use Tax (“SUT”) on transactions involving these two new players. Nowadays, where sales dispatched by mail have increased due to the pandemic, the measures in place allow the Puerto Rico Treasury Department (“PRTD”) to bring in new sources of cash flow to the agency.

What is a Marketplace Facilitator and a Marketplace Seller?

Marketplace Facilitator – is defined as any person that facilitates the sale of tangible personal property, specific digital products, or taxable services through a market in a way that can include a store, counter, catalog, internet site, etc. Effective January 1, 2021, a Marketplace Facilitator is required to collect the SUT on all transactions made in its market, independently of whether the sale is a direct sale of the Marketplace Facilitator or is a sale made by another person (Marketplace Seller) through such Market Facilitator. Therefore, the Marketplace Facilitator will be considered a withholding agent for SUT purposes.

Marketplace Seller – is a seller that makes retail sales through any physical or electronic market, operated or controlled by a Marketplace Facilitator. A Marketplace Seller can be a registered merchant in Puerto Rico or a person that is not registered as a merchant in Puerto Rico.

Registration as a Marketplace Facilitator:

Section 4020.08 of the Puerto Rico Internal Revenue Code of 2011 provides that any transaction that constitutes a mail order sale will be subject to the collection of SUT as long as it is carried out by a Marketplace Facilitator. This new provision represents the elimination of the category of merchants previously known as “non-withholding agents” that was created for merchants who sell articles that are delivered by mail and whose only link to Puerto Rico was that the buyer is a Puerto Rico resident.

The PRTD issued Circular Letter of Internal Revenue 20-40 (“CL 20-40”) to establish the procedure to be followed for the registration of merchants as Marketplace Facilitators through the Unified System of Internal Revenue (“SURI”). Also, CL 20-40 establishes the process to request the Waiver from the Collection of SUT for a Marketplace Seller.

Any person that is a Marketplace Facilitator and that, based on its volume of business or total transactions made during the annual accounting period of such person, is considered a merchant, must register and obtain a Merchant Registration Certificate through SURI indicating that it is a Marketplace Facilitator. For this purpose, the thresholds established by the Puerto Rico Treasury Department in its latest SUT Regulation (#9237) are a volume of business over \$100,000 or if it carries out at least 200 transactions.

- a. Marketplace Facilitators that are already registered in SURI should add the account *Sales and Use of a Marketplace Facilitator*. Once the registration is completed, the Marketplace Facilitator will receive through SURI a Merchant Registration Certificate as a Marketplace Facilitator. In these cases, the Marketplace Facilitator will have two Sales and Use accounts in SURI, one to report its own sales and the other account as Marketplace Facilitator to report and deposit SUT collected on the sale of the products of the Marketplace Sellers.
- b. Marketplace Facilitators who do not have other types of operations in Puerto Rico must register in SURI as new merchants and obtain the Merchant Registration Certificate as Marketplace Facilitator.

Every Marketplace Facilitator must deliver a copy of the Merchant Registration Certificate as Marketplace Facilitator to each of its Marketplace Sellers that are registered in SURI as merchants.

SUT Collection Waiver

Marketplace Sellers who are merchants duly registered in SURI, will not be required to collect the SUT on the sales of tangible personal property that are made through Marketplace Facilitators. However, to be exempted from the collection of the tax, the Marketplace Seller must obtain the SUT Collection Waiver.

To be able to complete the request for the SUT Collection Waiver, the Marketplace Seller must obtain from each Marketplace Facilitator that it uses, a copy of the Merchant Registration Certificate as Market Facilitator and must include the information in the application for the waiver through SURI. The SUT Collection Waiver will include all sales made by the Marketplace Seller through Marketplace Facilitators.

Javier Oyola
Tax Director

Raúl Robles
Tax Manager

Collaborated in the preparation of this article.

For assistance with the registration process of a Marketplace Facilitator, the request of the SUT Collection Waiver of a Market Seller, or the reporting of the sales in the monthly SUT returns please do not hesitate to contact our Tax Department.



Lina Morales
Partner Head of Tax
E lina.morales@pr.gt.com



María de los A. Rivera
Tax Partner and IBC Director
E maria.rivera@pr.gt.com



Francisco Luis
Tax Partner
E francisco.luis@pr.gt.com



Isabel Hernández
Tax Partner
E isabel.hernandez@pr.gt.com



grantthornton.pr

DISCLAIMER: This update and its content do not constitute advice. Clients should not act solely on the basis of the material contained in this publication. It is intended for information purposes only and should not be regarded as specific advice. In addition, advice from proper consultant should be obtained prior to taking action on any issue dealt with this update. Information provided in this publication may change in the future and such change may be applied retroactively. Kevane Grant Thornton LLP does not assume the responsibility to update this communication if the applicable laws change.

© 2021 Kevane Grant Thornton LLP All rights reserved. Kevane Grant Thornton LLP is a member firm of Grant Thornton International Ltd (GTIL). GTIL and the member firms are not a worldwide partnership. Services are delivered by the member firms. GTIL and its member firms are not agents of, and do not obligate, one another and are not liable for one another's acts or omissions. Please visit www.grantthornton.pr for further details.