



# Are you ready for the next emergency?

Here are some insights that will help you save on Puerto Rico Sales and Use Taxes while you prepare.

Every year, the Caribbean region prepares for the hurricane season, which starts on June 1st and ends on November 30th. As the years go by, climate change is becoming more dramatic, and atmospheric events are stronger and more unpredictable.

In 2017, Puerto Rico experienced Hurricane Maria and its electricity grid and other utilities became increasingly unstable. Consequently, preparing for this season of the year is essential for the Puerto Rican residents.

The Puerto Rico Treasury Department (PRTD), recognized that proper preparation is important, but it can also be costly. As a result, the island's Internal Revenue Code, as amended ("the Code"), provides certain exemptions that serve as a relief to the financial burden of the taxpayer.

This article explains the tax exemption on solar equipment and the non-applicability of the Sales and Use Tax ("SUT") on donations.

## I. What is a solar power equipment?

The article 4030.17-1(b) of the Code Regulation 8747 ("Regulation") defines the term "solar power equipment" as every photovoltaic equipment or system capable of converting the energy from the sun into usable energy, directly or indirectly. The term includes any accessories and hardware that is necessary for the solar power equipment to comply with such purposes, whether acquired or manufactured by the person. In this regard, Section 4030.17 of the Regulation provides a SUT exemption for Solar Power Equipment.

## II. How to request the SUT Exemption for solar power equipment?

According to Article 4030.17-1 of the Regulation, the process for requesting this exemption is as follows:

1. The importer, distributor, or manufacturer must submit to the PRTD a certification declaring that the solar power equipment, its accessories, or parts meet the standards and specifications established by the Energy Affairs Administration ("EAA"),
2. The applicant must submit a second certification from the manufacturer or distributor declaring that the solar power equipment is guaranteed for five (5) years or more.

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3. Once the PRTD receives the certifications, the agency will issue an administrative determination exempting the solar power equipment for which the exemption was requested.

Once the administrative determination is issued, the distributor or manufacturer shall not collect the SUT on the referenced solar power equipment.

### III. Donations to Puerto Rico residents

After an atmospheric event occurs, the demand for certain personal property increases. We have witnessed how the Puerto Rican diaspora does everything possible to help those in need on the Island. Similarly, many employers make the necessary efforts to bring items from abroad to help their employees and their families. For this reason, in 2017 the PRTD issued Administrative Determination 17-19 (“AD 17-19”) as the guidance regarding the SUT treatment of donations of tangible personal items and services to support and assist the Puerto Rico residents.

### IV. What is a donation?

According to AD 17-19, a donation means a transaction carried out for non-commercial purposes where a natural or legal person freely disposes of tangible personal property located in Puerto Rico in favor of a donee who receives and accepts such property without giving any benefit in exchange. Likewise, any service provided by a natural or legal person free of charge and without any consideration for the benefit of a donee in Puerto Rico shall be considered a donation.

### V. Are they exempt from SUT?

As mentioned above, after the landfall of Hurricane María in 2017, the PRTD issued AD 17-19 to guide on the non-applicability of the SUT to donations. According to AD 17-19, the donations of tangible personal property and services from non-residents made to hospitals, non-profit entities, public instrumentalities, and municipalities of the Government of Puerto Rico and the United States of America, or individuals, will not be subject to the payment of the SUT because by their nature they do not contain a purchase or sale price.

Furthermore, the tangible personal property that a merchant introduces to Puerto Rico to be donated and that is not considered as the merchant's inventory for resale will not be subject to the payment of SUT to the extent that the merchant can provide evidence to the PRTD (if needed).

However, tangible personal property introduced by a merchant and removed from inventory for the purpose of being donated will be subject to the payment of Use Tax in accordance with the provisions of Article 4010.01(rr)-1(b) of Regulation. This includes the removals from inventory for:

- personal use;
- business use;
- distribution as samples or as promotional items; and
- distribution as donations.

The PRTD reserves the right to assess the nature and quantity of the property received, as well as who is the importer to ensure that there is no commercial purpose in such a transaction.

We are committed to keeping you up to date with all tax-related developments. Please contact our Tax Department should you need additional information regarding this or any other tax issue. We will gladly assist you.



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