**NEWSLETTER | ALERT**

To: ALL CUSTOMERS

From: CPA Fernando Rivera

Date : July 19, 2015

**SUBJECT: Increase in the Sales & Use Tax Rate and Further Income Tax Amendments**

House Bill 2482 was signed into law by the Governor of Puerto Rico converting it into Act 72-2015 (hereinafter, Act 72). Act 72 introduced further amendments to the Puerto Rico Internal Revenue Code of 2011, as amended, (hereinafter, the Code), mainly related to Income Tax and Sales and Use Tax matters, as described below:

I. **Sales and Use Tax (SUT)**

a. Commencing on July 1, 2015, the SUT rate that is collected by the Central Government will increase from a six percent (6%) to a ten point five percent (10.5%). The one percent (1%) SUT rate that corresponds to the Municipalities will continue in effect. Therefore, the aggregate SUT rate will increase to eleven point five percent (11.5%).

b. Act 72 enacted a four percent (4%) tax imposed to Designated Professional Services Rendered and Services Rendered to Other Merchants applicable to services rendered after September 30, 2015.

   i. Designated professional services include legal services and the following professional services regulated by the respective Board of Examiners: Agronomists, Architects, Landscape Architects, Certified Public Accountants, Brokers, Sellers and Real Estate Companies, Professional Drafters, Engineers, Geologists, Land Surveyors, and Professional Property Evaluators.

   ii. Notwithstanding the above, services rendered by a “Tax Return Specialist” covering the preparation and review of tax returns, declarations or refund claims with the PR Treasury Department and the US Internal Revenue Service will be excluded from taxation.

iii. In addition, those merchants that provide designated professional services may use the cash basis method of accounting for purposes of remitting the SUT.

c. Due date to remit the SUT for Small Businesses - Merchants with a volume of business not exceeding one million dollars ($1,000,000) for the prior year, will pay the SUT corresponding to the month of July, 2015, as follows:

i. Fifty five percent (55%) of the sales and use tax will be paid no later than August 20, 2015; and
ii. Forty five percent (45%) will be paid in three (3) equal installments no later than the twentieth (20) day of September, October and November, 2015.

d. Credit for Tax Paid by Reseller Merchants - For periods commenced after June 30, 2015, resellers will be entitled to claim a credit corresponding to the SUT paid of one hundred percent (100%) of the tax responsibility reflected in the Monthly Sales & Use Tax Return.

e. Pre-existing contracts as of July 1, 2015 will be exempt from the SUT increase during a twelve-month (12) period. Also, those construction projects that commenced before May 30, 2015 will be exempt from the SUT increase. In other words, these contracts will be subject to the previous SUT provisions. It is expected that the Puerto Rico Treasury Department will issue a publication establishing the proceedings that must be followed in order to enjoy the SUT exemption mentioned herein.

f. Act 72 added Subtitle DD to the Code in order to enact a Value Added Tax (VAT) effective on April 1, 2016. The Puerto Rico Treasury Department will eventually issue the necessary guidelines for the implementation of the VAT system.

## II. Income Tax

a. **Mayor Taxpayers** - Act 72 introduces the concept of “Mayor Taxpayers”. This term is defined as those taxpayers engaged in trade or business in Puerto Rico that meet at least one of the following six (6) requirements:

i. Commercial bank or trust company

ii. Private bank

iii. Brokerage or securities firm

iv. Insurance company

v. Entity engaged in the telecommunication business

vi. Entity with a volume of business of fifty millions ($50,000,000) or more for the previous taxable year

For taxable years commenced after December 31, 2014, these taxpayers will be required to file their income tax returns in a separate office to be designated by the Secretary of the Treasury or by electronic means, if finally determined by the Secretary. Non-compliance of this provision will trigger a late filing penalty.

b. **Individual Income Tax Rates** - For individual taxpayers, Act 72 amended Section 1021.01 of the Code in order to eliminate the proposed tax relieves, perpetuating the tax rates already established for taxable years commenced after December 31, 2012, as follows:

| **Taxable Income** | **Tax rate** |
|---|---|
| No more than $9,000 | 0% |
| More than $9,000 but no more than $25,000 | 7% of the excess of $9,000 |
| More than $25,000 but no more than $41,500 | $1,120 plus 14% of the excess of $25,000 |
| More than $41,500 but no more than $61,500 | $3,430 plus 25% of the excess of $41,500 |
| Over 61,500 | $8,430 plus 33% of the excess of $61,500 |

The gradual adjustment applicable to individuals with net taxable income in excess of $500,000 is maintained.

c. **Special tax to self-employed individuals** - Act 72 eliminates the special tax of 2% to self-employed individuals imposed over the gross income earned by an individual from professional services or from the conduct of a trade or business in excess of $200,000 effective for taxable year 2015.

d. **Changes affecting individual's NOL** - For individual taxpayers reflecting a net operating loss from its trade or business for three (3) consecutive years, the deduction for the third year commenced after December 31, 2014 and subsequent years is now limited to fifty percent (50%) of the loss incurred during that year. For this matter, rental income is not considered income from a trade or business.

e. **Changes affecting Net Operating Losses (NOL) of Corporate Taxpayers -** The NOL deduction of corporations for regular tax purposes is now limited to eighty percent (80%) of the current net taxable income (90% before Act 72). This provision is effective for taxable years commenced after December 31, 2014.

f. **Changes affecting Alternative Minimum Tax (AMT)'s NOL of Corporate Taxpayers** - The NOL deduction for AMT purposes is now limited to seventy percent (70%) of the current net taxable income (80% before Act 72). This provision is effective for taxable years ended after December 31, 2014.

g. **Changes affecting NOL of Flow-Through Entities:**

   i. **Loss of a Corporation of Individuals** - For taxable years commenced after December 31, 2014, a shareholder's pro-rata share in the losses of a corporation of individuals allowed as a deduction is limited to the 80% of the pro-rata share in the aggregated net income of the corporation of individuals, partnerships or special partnerships.

   ii. **Losses of a Partnership and Special Partnership** - For taxable years commenced after December 31, 2014, a partner's distributive share in the loss of a partnership or special partnership allowed as a deduction is limited to the 80% of the distributive share in the aggregated net income of the corporation of individuals, partnerships or special partnerships.

   In summary, the use of the NOL's generated by flow-through entities (corporation of individuals, special partnerships and partnerships) is now limited to 80% of the net income of the other flow-through entities.

h. **Capital Assets Gain and Losses** - The capital loss carryover deduction for tax purposes is now limited to eighty percent (80%) of the current net capital gains (90% before Act 72). This provision is effective for taxable years commenced after December 31, 2014.

i. **Changes affecting charitable contribution deductions** - Charitable contributions will now be limited to contributions made to not-for-profit entities that are duly qualified by the Secretary of the Treasury. This provision is effective for taxable years commenced after December 31, 2014.

j. **Moratorium of Tax Credits** - Act 72 further extended the period of the moratorium of certain tax credits from January 1, 2016 to January 1, 2018.

**Other changes in the AMT computation**- In general terms, the percentages applicable to the purchases of personal property from a related entity were increased. Also, there are new limitations in terms of the expenses that the Secretary is authorized to exclude from the twenty percent (20%) tentative minimum tax due upon payments made for services rendered by a related party not engaged in business in PR, including those services rendered by the home office to its PR Branch.