

## Treasury Extends the Validity Date of the Reseller Certificates of Exemption

As discussed in our previous newsletter, Act No. 40-2013, better known as the “Act for the Redistribution and Adjustment of the Tax Burden” (hereinafter the “Act”), which was signed on June 30, 2013, brought significant amendments to the Internal Revenue Code for a New Puerto Rico, as amended (hereinafter the “Code”). Among these amendments, the Act introduced several changes in connection to the Sales and Use Tax (hereinafter “SUT”) provisions contained on the Code. Moreover, the Puerto Rico Treasury Department (hereinafter the “PRTD”) recently issued various publications which expand on certain amendments introduced by the Act. Of particular importance, these communications provide for the extension of the validity of the Reseller Certificates up to August 15, 2013, and the permanence of the exemption from the SUT on purchases of property for resale at the municipal level after August 15, 2013. The following is a summary of the main provisions contained on Administrative Determination Letter 13-06 (hereinafter (“AD 13-06”) and Administrative Determination Letter 13-07 (hereinafter “AD 13-07”), both issued on July 23, 2013.

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### SUMMARY

Prior to the enactment of the Act, the Code established that a merchant was not required to collect the SUT on sales of tangible personal property to other merchants who acquired such property for resale and provided a valid Reseller Certificate issued by the PRTD. Accordingly, the SUT was collected on the sale to the final consumer.

However, the Act modified the purpose of the Reseller Certificate effective originally July 31, 2013 (later extended to August 15, 2013 by AD 13-06 and AD 13-07) and, at the same time, established a credit to be claimed by the reseller. Therefore, effective on August 16, 2013, a reseller merchant who acquires tangible personal property for resale from another merchant doing business in Puerto Rico will have to pay a 6% SUT on such purchases, and will also be entitled to claim a credit for the SUT paid on the purchases of tangible personal property for resale. The Reseller Certificate will serve two purposes: 1) to identify the merchants that will be allowed to claim a credit for the SUT paid on purchases for resale, and 2) to provide an exemption from the municipal SUT of 1% payable to the municipalities on the purchases of tangible personal property for resale. The credit allowed will be the lesser of the SUT paid during the month on purchases for resale or 70% of the total SUT liability for that month's sales, as reflected in the monthly SUT return. The credit will only be allowed at the state level

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SUT. Any unused excess credit can be carried forward indefinitely to subsequent months subject to the limitation of 70% of the monthly total SUT liability.

In order to address various concerns expressed by the business community and to facilitate the transition from the exemption provided by the Reseller Certificate to a SUT monthly credit system, the PRTD issued AD 13-06 and AD 13-07. The following summarizes the most important issues established by these communications:

**AD 13-06**

The purpose of AD 13-06 is to clarify the validity of the Reseller Certificates expiring between June 30, 2013 and July 31, 2013, as well as the validity of any other Reseller Certificates issued prior to the approval of Act 40, which expires after July 31, 2013.

In the case of the Reseller Certificates expiring between June 30, 2013 and July 31, 2013, AD 13-06 provides an extension of the validity for those certificates until August 15, 2013.

Furthermore, it provides that every other valid Reseller Certificate duly issued before the enactment of the Act will also expire on August 15, 2013, regardless of the expiration date printed on the certificate.

**AD 13-07**

The purpose of AD 13-07 is to clarify the cancellation date for the valid Reseller Certificates, to explain the process to be followed with regard to the issuance of new Reseller Certificates and to explain the use of

these certificates with respect to the municipal SUT.

The first thing that AD 13-07 does is to clarify that the cancellation date for all valid Reseller Certificates, including those for which the validity was extended under AD13-06, is August 15, 2013. This means that none of these certificates will be valid beginning on August 16, 2013.

Secondly, AD 13-07 provides that the Secretary of the Treasury (hereinafter the "Secretary") will perform an analysis of all the Reseller Certificates issued prior to the enactment of the Act to determine which of them have the right to possess it. While the Secretary completes this analysis to determine which merchants will be entitled to obtain the aforementioned Reseller Certificate, a Provisional Reseller Certificate with a validity of less than 1 year will be issued to reseller merchants. Prior to the expiration of the Provisional Reseller Certificate, each merchant must reapply to obtain the Reseller Certificate in order to secure its right to claim a credit for the SUT paid on purchases for resale.

Since the possession of a valid Reseller Certificate is what allows the right to claim the monthly SUT credit, it is imperative for resellers to secure obtaining such certificate by submitting the required documents on time, before the expiration of the Provisional Reseller Certificate. Please note that AD 13-07 establishes that a merchant whose record shows missing monthly SUT returns or SUT debts for 9 months or more during a 12 months period, will not receive the Provisional Reseller Certificate.

One of the most important issues clarified by this administrative determination is that both, the Provisional Reseller Certificate and the new Reseller Certificate to be issued will be serve to identify the merchants entitled to claim the monthly SUT credit and will also be considered as Exemption Certificates for purposes of the municipal level SUT of 1%. This means that every merchant who obtains a Provisional Reseller and Municipal SUT Exemption Certificate, or a Reseller and Municipal SUT Exemption Certificate will be authorized to acquire taxable items for resale exempt from the municipal SUT of 1%. As such, every merchant will be relieved from the responsibility to collect, withhold and remit the municipal level SUT of 1% on the sales of taxable items which are acquired exclusively for resale by merchants who present a Provisional Reseller and Municipal SUT Exemption Certificate, or a Reseller and Municipal SUT Exemption Certificate. This will be applicable to every merchant, regardless of the municipality where it is located, and whether the municipality is a participant or a non-participant municipality with respect to the filing of the monthly state SUT return.

Finally, AD 13-07 clarifies that the SUT credit can be claimed exclusively against the SUT directly payable to the PRTD, meaning the state level SUT of 5.5% and the municipal level SUT of .5, for a total of 6%.

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