



## Treasury Issues Rules for Payment of Use Tax on the Ports

By Felipe Mariani-Franco

In our last Flash Bulletin, we informed of several bills and administrative letters issued by the Puerto Rico Treasury Department. One of them was Circular Letter of Internal Revenue No. 13-22 (CL 13-22) which deals with reporting and payment of use tax on goods imported into Puerto Rico for use by the taxpayer. As promised, in this issue we provide further information on the details of CL 13-22.

### Background

Act 46-2013, subsequently amended by Act 117-2013, requires that all taxpayers that import tangible personal property into Puerto Rico for their own use pay the use tax before taking possession of the merchandise. It also provides an alternative method, which allows certain merchants to take possession of the merchandise before the payment of the use tax, in cases where those merchants have a bond issued in favor of the Puerto Rico Treasury Department to guarantee the payment of the use tax and any applicable interests, surcharges and penalties.

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After the approval of Act 46-2013, the Puerto Rico Treasury Department administratively postponed the commencement of these provisions in order for them to organize the collection process and establish the requirement and methodology for the reporting and payment of the use tax.

### CL 13-22 – Introduction of Merchandise

CL 13-22 establishes that the requirement to pay the use tax before taking possession of the merchandise subject to use tax will commence on December 1, 2013.

Therefore, all the merchandise currently entering into Puerto Rico, which is subject to use tax, will be held in the ports until the company makes the corresponding payment.

CL 13-22 provides that all importers will be required to file an Excise and Use Tax Declaration (Form SC 2005) (the “Declaration”) with the Tax Consumption Bureau for all the goods it receives from outside Puerto Rico. Such Declaration shall report all imported goods, excluding goods for resale, no matter if the goods are taxable or exempt from the sales and use tax. It also requires the importer to submit with the Declaration, specific and detailed information which matches that in the Commercial Invoice and the Bill of Lading. The Declaration shall include a list of the merchandise and its quantity included in each container (Packing List). The Commercial Invoice, the Bill of Lading and the Packing List shall be included with the Declaration.

In the particular case of a Bonded Importer, the use tax will be paid no later than the 10<sup>th</sup> day of the month following the date that the merchant took possession of the imported goods. The tax is paid by completing the Monthly Use Tax Return (this return has to be completed in the same web based program as the Monthly Sales and Use Tax Return is completed).

CL 13-22 establishes the procedure for the filing of the Return and payment of use tax for three different groups: (1) importers that are not Registered Merchants; (2) Importers that are Registered Merchants, but do not have a bond; and (3) Bonded

Importers (Registered Merchants who have a bond).

The procedure for the importers that are not Registered Merchants and for the importers that are Registered Merchants but do not have a bond is almost identical and consist of mainly five steps:

1. The shipping company will transmit electronically the Bill of Lading to the Tax Consumption Bureau. Once completed, the shipping company will inform the importer that the Bill of Lading has been transmitted.
2. The importer shall file the Declaration (together with the documents mentioned above) in the Tax Assessment Office of the Tax Consumption Bureau or any of its offices located in the facilities of the shipping companies. This shall be done on or before the introduction date provided in the Bill of Lading.
3. Once the Declaration is filed, an officer from the Tax Consumption Bureau will confirm that the Declaration agrees with the information in their computer system and allow the merchant to take possession of the merchandise. The Puerto Rico Treasury Department will reduce the amount of the bond for an amount equal to the use tax related to the property introduced. If the amount available in the bond is not enough to cover the totality of the use tax for all the goods introduced into Puerto Rico, then the Merchant will need to pay the totality of the use tax on all the goods introduced before obtaining possession of the merchandise. Please note that the reduction of the amount available in the bond is not a payment of use tax but merely an exercise by the Puerto Rico Treasury Department to ascertain that the bond covers the totality of the use tax to be paid on a later date.
4. The Bonded Importer shall file a Monthly Use Tax Return and pay the use tax electronically on or before the 10<sup>th</sup> day of the subsequent month. These returns shall be made for each location that imported merchandise subject to the use tax. The information provided on these returns shall be the same that was informed

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**Felipe** is a Partner at Zaragoza & Alvarado LLP. Before joining the Firm, he worked in several tax and audit positions for local and multinational accounting firms.

Felipe has extensive experience in corporate tax advisory for the oil, manufacturing, distribution and retail industries. Among his areas of expertise, Felipe works with corporate tax incentives, corporate reorganizations, closing agreements with governmental entities and tax accounting work. During 2008, Felipe was a member of the Puerto Rico Treasury Department Team in charge of the drafting of the regulations of the 2008 Act. In 2007, he participated in the preparation of the Sales and Use Tax (SUT) legislation for the Municipality of Dorado. During 2006 he was a member of the team that worked in the preparation of the first Sales Tax Legislation in Puerto Rico, either at the State or Municipal level, for the Autonomous Municipality of Caguas. The engagement included the preparation of the related regulations.

Felipe is member of the Puerto Rico Certified Public Accountants Society and the American Institute of Certified Public Accountants. He has a Master in Professional Accounting degree, major in Taxes, from the University of Texas at Austin and a Bachelor in Business Administration degree, major in Accounting, from the University of Puerto Rico.

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on the Declarations filed during the month. In the particular case of the Bonded Importer the use tax may be paid using either ACH Debit or ACH Credit. This Monthly Use Tax Return is different from the Monthly Sales and Use Tax Return that merchants have filed in the past. Merchants will still be required to file the Monthly Sales and Use Tax Returns. The information included in the Monthly Use Tax Return shall be excluded from the Monthly Sales and Use Tax Returns. Once the Puerto Rico Treasury Department receives the use tax payment for the previous month's importations, it will release the balance of the bond previously reduced, and will increase the amount available in the bond for future importations. This will allow the Bonded Importer to introduce additional merchandise without having to increase the bond amount.

### CL 13-22 – Manufacturers

CL 13-22 establishes that manufacturers entering raw material (also should be applicable to equipment and machinery to be used in the manufacturing process) to be used in the manufacturing process shall make sure that the shipping documents are identified with the manufacturer name and the manufacturer identification number provided by the Tax Consumption Bureau. All other products introduced into Puerto Rico will follow one of the procedures explained above.

### CL 13-22 – Procedure to Request Bond

CL 13-22 establishes that any Registered Merchant who wants to request a bond to guarantee the use tax payment applicable to the imported property has to submit a request to the Director of the Tax Consumption Bureau. The request shall include several statements regarding the business operations of the merchant, the shipments made throughout the year and the merchandise imported, among others. It also requires several negative debt certificates from various government agencies and Municipalities. Also, the merchant will need to file a Bond Document (Form SC 2058).

Based on the information provided, the Puerto Rico Treasury Department will establish the amount of the bond which shall cover the totality of the applicable use tax and any interest, surcharge or administrative fine to be imposed.

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The amount of the bond will never be smaller than \$10,000.

#### Z&A Comments

Merchants with frequent shipments into Puerto Rico may want to become Bonded Importers in order to avoid delays in their pick-up of merchandise at the ports, for having to pass through the process of paying the use tax before taking possession of the property. Nevertheless, all importers will be required to file a Declaration, it is important to establish a methodology to comply with these requirements and assign responsibilities internally to affect your operations the minimum possible. Establishing strong relationships between the shipping companies and the purchasing, receiving and tax departments will be a must. Please contact one of our consultants if you have any questions regarding this circular letter, or if you need assistance in becoming a Bonded Importer.

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