



October 22, 2013

**Tax Alert 2013-04**

**Governor Signs Act No. 117 of October 14, 2013**

On October 14 2013, the Governor of Puerto Rico signed into law Act No. 117 of October 14, 2013 (Act 117) to amend and clarify certain provisions of the Puerto Rico Internal Revenue Code of 2011, as amended (the "2011 Code"), that were recently enacted by Act 40 of June 30, 2013 (Act 40). The most important changes are the following:

**Income Tax Provisions**

- Clarifies that the Alternative Basic Tax (ABT), applicable to individuals, will be the tax based on the ABT tax tables plus the gross revenue additional tax on the sum of the individual's distributable share of the gross income from any pass-through entity such individual has a share in ownership.
- Clarifies that the 2% additional tax on individuals who are self-employed and earn gross income in excess of \$200,000 will not apply on rental income or partnership income.
- Amends the gross revenue additional tax provisions as follows: (1) the application requirement set forth by Act 40 for the partial exemption available to those businesses that will be negatively impacted by this tax must be filed by November 30, 2013 if it's to be applicable to tax years commenced during 2013; (2) entities with gross revenue below \$3 million will be exempt from the partial exemption filing fee of \$1,500; (3) if the partial exemption is granted, the PR Treasury will decrease the gross revenue additional tax rate to no less than .05%; (4) applications filed on or before November 30 will be answered on or before February 28, 2014; (5) Taxpayers that do not receive a response from the PR Treasury Department by February 28, 2014, will automatically be granted the partial exemption. In these cases, the reduced tax rate will be .1%.
- For those taxpayers with option 94 elections, Act 117 clarifies that the gross revenue additional tax must be calculated and paid separately from the tax calculated under the provisions of the 1994 Internal Revenue Code, as amended. **(VGMM Comments: This means that for option 94 taxpayers, this tax is in addition to the regular tax and not part of the alternative minimum tax calculation.)**
- Clarifies that all the members of a controlled group or group of related persons, as defined by the 2011 Code, are subject to the gross revenue tax if the aggregate gross revenue of the group exceed \$1million, even if a particular member is not subject to the tax individually.
- Adds a 5<sup>th</sup> estimated tax payment to individuals and corporations with a calendar year-end. This estimated tax payment is due on October 25, 2013 and is only applicable to the 2013 tax year. The payment will be 50% of the difference between the total estimated tax for the year less the estimated tax payments already made for 2013. The remaining 50% is due on the final estimated tax payment for the year (December 15, 2013 for corporations and January 15, 2014 for individuals).
- Clarifies that in the case of pass-through entities, the gross revenues tax is imposed on the pass-through entities' partner and not the entity itself. The tax must be calculated based on the partner's aggregate distributable share in all the pass through entities the partner has a stake in.

## Sales and Use Tax Provisions (SUT)

- Clarifies that home owners associations are exempt from the SUT on cleaning, repairs and maintenance, and waste collection services.
- Effective immediately businesses will be subject to the SUT on motor vehicles operating leases (also known as “Daily Rentals”).
- Effective November 1, 2013, merchants providing repair services will be required to withhold and remit to the PR Treasury the SUT. **(VGMM Comment: This eliminates the changes brought by Act No. 40, which required the taxpayer receiving the repair service to self impose the SUT.)**
- Effective July 1, 2014, all Manufacturing, Wholesalers and Voluntary Chain certificates/waivers will be eliminated.
- Amends the definition of “Use” to include merchandise imported for resale after July 1, 2014. This means that effective this date, all articles imported for resale will be subject to the SUT when entering Puerto Rico unless the importer is a bonded taxpayer, in which case the SUT will be paid in the following month’s SUT return.
- The PR Treasury Secretary will later issue regulations detailing the process to become a bonded taxpayer.
- Merchants with gross income in excess of \$50,000 will be required to remit the SUT electronically.

Act 117 also amended Act No. 48 of June 30, 2013, to exclude from the special 1.5% tax on professional services agreements entered into with the Government of Puerto Rico, if such service agreements are provided by individuals and do not exceed \$50,000 in the aggregate.

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