



Proposed New 1% Excise Tax on Purchase Of Tangible Personal Property

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The proposed Puerto Rico Internal Revenue Code of 2010 (“PR-IRC 2010”), currently being considered by the Puerto Rico Legislature, includes a new excise tax (the “New 1% Excise Tax”), payable by the buyer, on all purchases from “related persons¹” of tangible personal property used or to be used in a trade or business. The New 1% Excise Tax would be 1% of the total invoice price of the tangible personal property and applicable to purchases of tangible personal property, regardless of whether the property is imported or purchased locally.

Exemptions

The New 1% Excise Tax would not be applicable to buyers (i) with “gross receipts” of less than \$50,000,000 from their trade or businesses in Puerto Rico during any of the three (3) preceding taxable years, or (ii) covered by a tax exemption grant issued under Act No. 73 of May 28, 2008 or any preceding or subsequent similar law. The term gross receipts is defined as the total receipts from the sale, lease or rental of property held primarily for sale, lease, or rental in the ordinary course of trade or business, and gross income from all other sources.

Tangible Personal Property subject to the New 1% Excise Tax

All purchases of tangible personal property used in a trade or business would be subject to the New 1% Excise Tax, except for alcoholic beverages, raw materials and intermediate products to be used in a manufacturing process. The New 1% Excise Tax would be in addition to the current sales

¹ For purposes of Section 3080.01, the term “related person” includes: (i) a member of a controlled group of corporations with a common parent company; (ii) a corporation where buyer owns, directly or indirectly, at least 50% of the value of the shares of stock of such corporation; (iii) a corporation that owns directly or indirectly at least 50% of the value of buyer’s shares of stock; (iv) a corporation of which at least 50% of the value of its shares of stock is owned by a person who directly or indirectly owns at least 50% of the value of buyer’s shares of stock; and (v) buyer’s brothers and/or sisters, spouses, and ancestors and descendants.

and use tax (the “Sales and Use Tax”) and the excise taxes assessed upon the importation or manufacture of certain articles used, sold, consumed, conveyed or acquired in PR (the “Current Excise Taxes”). Thus, the purchases of articles subject to the Sales and Use Tax and Current Excise Taxes would also be subject to the New 1% Excise Tax, as long as (i) the articles are purchased from related persons to be used in buyer’s trade or business, (ii) buyer’s gross receipts meet the \$50,000,000 threshold, (iii) and buyer’s operations are not covered by a tax exemption grant.

Time of Payment and Penalties

The New 1% Excise Tax would be payable by the buyer on or before the 15th day of the month following the purchase of the personal property. Failure to pay the New 1% Excise Tax when due, entails the assessment of a special penalty equivalent to 2% of the amount due for every 30 day period or fraction thereof during which the omission prevails, up to a 24% maximum. This penalty would be assessed in addition to the regular 10% interest and any other penalty or surcharge authorized by the PR-IRC 2010.

Anti-abuse Rule

The Secretary of Treasury is authorized to invalidate any transaction or series of transactions or arrangements between corporations, partnerships and other affiliates, one of which principal purposes would be to circumvent the application of the tax. Thus, if a transaction or business structure is organized with a legitimate business purpose, but one of its principal purposes is the avoidance of the New 1% Excise Tax, the Secretary of Treasury is empowered to disregard the transaction or business structure and assess the New 1% Excise Tax with all applicable, interest, surcharges and penalties.

The above summary is intended for information purposes only. It cannot be considered a legal opinion, and it does not intend to consider all the tax and legal considerations that could be relevant to any particular person or entity. It should also be noted that the changes discussed herein were recently enacted, and that the PR Treasury has not yet issued regulations, tax forms or interpretative announcements on such changes.

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