



## New Requirements of Bi-weekly Deposits for Sales Tax

By: **Elisa Vélez-Pérez**

Certain merchants in Puerto Rico are now required to deposit sales taxes on a bi-weekly basis. In this Tax Advisor issue we summarize this new requirement and the applicable rules.

On July 19, 2017, the Governor of Puerto Rico signed into law Act No. 46-2017 (“Act 46-2017”) which, among other things, provides that certain merchants are now required to remit to the Secretary of Treasury on a bi-weekly basis sales taxes collected during the current month (the “Bi-Weekly Deposit Requirement”). As provided by Act 46-2017, the following merchants are subject to the Bi-Weekly Deposit Requirement:

- Large Taxpayers, which include banks, brokerage firms, insurance and telecommunication companies, and entities which volume of business exceeds \$50 million; and
- Merchants with average monthly sales tax deposits that exceed \$2,000 (the “\$2,000 Rule”).

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Applicability of the \$2,000 Rule

On July 28, 2017, the Department of Treasury ("Treasury") issued Administrative Determination No. 17-07 ("AD 17-07") to provide further guidance on the application of the Bi-Weekly Deposit Requirement. AD 17-07 provides a "Simple Method" to determine if a merchant is subject to the Bi-Weekly Deposit Requirement under the \$2,000 Rule. Under the "Simple Method" the merchant must first determine the total taxable sales for the previous calendar year as shown on its Monthly Sales and Use Tax Return. If such sales exceed \$228,600, in the case of merchants that sell tangible personal property or taxable services subject to the 10.5% sales tax rate<sup>1</sup>, or \$600,000, in the case of merchants that only sell services subject to the 4% sales tax rate, then such merchant will meet the \$2,000 Rule and be subject to the Bi-Weekly Deposit Requirement. If the merchant commenced operations during the previous calendar year, then it will be subject to the Bi-Weekly Deposit Requirement if its average monthly taxable sales for the months that such merchant operated in the prior taxable year exceed:

1. \$19,050, in the case of merchants that sell tangible personal property or taxable services subject to the 10.5% sales tax rate, or
2. \$50,000, in the case of merchants that only sell services subject to the 4% sales tax rate.

The following table summarizes the \$2,000 Rule mentioned above:

Example: Merchant ABC is engaged in the retail business since 2010 and sells inventory subject to the 11.5% tax rate. For the year 2016, its sales amounted to \$500,000. ABC will be subject to the Bi-Weekly Deposit Requirement under the \$2,000 Rule, since its annual sales exceeded the \$228,600 threshold.

If a merchant sells items subject to the 10.5% and the 4% tax rate, then such merchant will be subject to the \$228,600 and the \$19,050 sales thresholds as illustrated on the table above.

Merchants are required to determine on an annual basis if they are subject to the Bi-Weekly Deposit Requirement. Once they have determined that they are subject to such requirement, the merchant must comply with it during the whole taxable year.

Act 46-2017 provides that the bi-weekly payments are due on:

1. the fifteenth (15<sup>th</sup>) day, and
2. on the last calendar day of the calendar month.

If the payment date falls on a Saturday, Sunday or holiday, then the payment date is moved to the next working day.

When will the bi-weekly deposits start?

AD 17-07 states that in the case of merchants that qualify as **Large Taxpayers**, the Bi-Weekly Deposit Requirement will commence on August 1, 2017, and the first payment will be due on **August 15, 2017**. In the case of merchants that qualify under the **\$2,000**

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If the merchant sells...	The merchant will be subject to the Bi-Weekly Monthly Deposit Requirement if the merchant ...	
	Operated during the complete previous calendar year	Commenced operations during the previous calendar year
Personal Property and Taxable Services subject to 11.5%	and total taxable sales in the previous taxable year exceeds \$228,600.	and the average monthly taxable sales for the months that the merchant operated in the prior taxable year exceeds \$19,050.
Only Services subject to 4%	and total taxable sales in the previous taxable year exceeds \$600,000.	and the average monthly taxable sales for the months that the merchant operated in the prior taxable year exceeds \$50,000.

**ABOUT THE AUTHOR**

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Elisa is a Senior Manager at Alvarado Tax & Business Advisors LLC and has more than ten years of individual and corporate tax consulting experience. She recently completed a two-year license to work hand-in-hand with the Secretary of the Treasury of Puerto Rico, whom she assisted in drafting the 2015 tax reform bill. At the Treasury Department Elisa initially held the position of First Advisor to the Secretary and subsequently was appointed Deputy Secretary for Tax Policy from which she worked with the needs of several individual taxpayers and local and multinational entities. She also dealt with numerous tax consultations for the Department and for other agencies of the Commonwealth of Puerto Rico and the Federal Government. In addition, during her stay she drafted and reviewed the administrative documents issued by the Department of Treasury, and drafted several tax related bills and regulations.

Elisa has extensive experience in handling clients' tax issues including planning and fiscal structuring; dealing with government agencies, providing the tax valuation over proposed or completed transactions, tax compliance and handling requests to oversee agencies, such as petitions for resolutions, closing agreements, exemptions and tax credits, among others.

Elisa has a Bachelor Degree in Business Administration, a Master's in Business Administration and a Juris Doctor from the University of Puerto Rico. She is admitted to practice law in Puerto Rico and in the United States Court for the District of Puerto Rico. She is a member of the Puerto Rico Certified Public Accountants Society.

Note: <sup>1</sup> Treasury has determined that the by-weekly deposit will only be applicable to the sales tax deposited with Treasury. Therefore, these new deposit rules will not apply to the sales tax paid to the municipalities, hence the reference to the 10.5% sales tax rate instead of the 11.5%.

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**Rule**, the Bi-Weekly Deposit Requirement will commence on September 1, 2017, and the first payment will be due on **September 15, 2017**.

### How much must be paid with each bi-weekly deposit?

Once the merchant determines that it is subject to the Bi-Weekly Deposit Requirement, the merchant must determine the amount of the required payment, if any. Act 46-2017 and AD 17-07 provide that the Bi-Weekly Deposit Requirement is met if the sum of the bi-weekly deposits is, at least, **the lesser of:**

1. 80% of the sales tax determined for the month, **or**
2. 70% of the sales tax deposited in the same month of the previous calendar year.

Under both alternatives, the minimum payment considers the total sales tax determined less the reseller's credit, the credit for uncollectible accounts, and the credit for the sale of merchant's property, as shown in the corresponding Monthly Sales and Use Tax Return. Also, the minimum payment considers any prior period overpayment to be applied against the sales tax for the current month.

The minimum payment for the first deposit is calculated based on the lesser of: (1) 80% of the sales tax collected or invoiced (depending on the accounting method used for sales taxes) between the first and the fourteenth day of each month, net of the applicable credits; or (2) half of 70% of the sales tax determined, net of applicable credits, as shown in the Sales and Use Tax Return of the same calendar month of the previous calendar year.

For example, a merchant collects during the calendar month a total of \$3,000 in sales taxes, which \$1,000 were collected between the first and the fourteenth day of the month, and \$2,000 from the sixteenth day to the end of the month. The Sales and Use Tax Return for the same month of the previous year shows a sales tax determined of \$5,000. The minimum payment that this merchant would be required to remit to

Treasury as a first payment is \$800 ( $\$1,000 \times 80\%$ ), since this amount is lower than \$1,750 ( $\$5,000/2 \times 70\%$ ). The second payment should be \$1,600, considering that the merchant is required to make a monthly payment of \$2,400 ( $\$3,000 \times 80\%$ ), which is lower than \$3,500 ( $\$5,000 \times 70\%$ ). The remaining \$600 of the sales tax collected in the month will be payable when filing the return for the corresponding month, on or before the twentieth day of the following month.

### Are there penalties for non-compliance?

If the merchant does not comply with the Bi-Weekly Deposit Requirement, the merchant is exposed to a penalty of 10% of the amount underpaid of the required monthly deposit.

### How are these bi-weekly deposits done?

Bi-weekly deposit payments are required to be made electronically through the Unified System of Internal Revenue ("SURI" for its Spanish acronym) under the "Account Alerts" menu.

Merchants subject to the \$2,000 Rule will have the option available on September 1, 2017, and thereafter. It is important to note that the Bi-Weekly Deposit Requirement will not be applicable, for now, to municipal sales taxes, and is only applicable to state sales tax collected.

The Bi-Weekly Deposit Requirement is not applicable to use taxes. Therefore, use taxes are still due when filing the Imports Declaration, the Monthly Imports Return or the Sales and Use Tax Return, as the case may be.

### **ATBA comments:**

Merchants of all sizes, not only Large Taxpayers, should analyze first, if they are subject to the Bi-Weekly Deposit Requirement, and second, if any minimum sales tax deposit is required. With the \$2,000 Rule, many merchants will be subject to the Bi-Weekly Deposit Requirement, but the amount of the payment due, considering credits and overpayments, may be significantly reduced. Furthermore, if credits exceed the minimum payment, no deposit payment will be due.

It is important to note that the Simple Method established in AD 17-07 to

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determine if a merchant is subject to the Bi-Weekly Monthly Deposit considers only taxable sales. Merchants that have a combination of taxable and exempt sales, should only consider their taxable sales to determine if they meet the specified thresholds.

AD 17-07 does not address the particular situation of merchants that begin operations during the current calendar year. For example, for the year 2017, what rule would apply to merchants that commenced

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operations during 2017? If we apply the Simple Method established in AD 17-07, then the expected answer would be that merchants that commence operations during the current calendar year should not be subject to the Bi-Weekly Deposit Requirement.

Merchants subject to the Bi-Weekly Deposit Requirement should analyze the effect that such requirement will have on their cash flow, particularly merchants that sell under credit terms. Under these new rules, sales taxes are required to be paid to Treasury further in advance. Merchants under the accrual method that sell under credit terms should note that they will not recover from their clients the sales tax paid to Treasury until they receive the payment under the credit terms. This may have a high impact on these merchants' financing costs. Merchants should also consider modifying their credit terms to consider the Bi-Weekly Deposit Requirement rules, if the market allows. The \$2,000 rule does not apply to Large Taxpayers. Instead, if the merchant qualifies as a "Large Taxpayer", it will automatically be subject to the Bi-Weekly Deposit Requirement, even if it does not deposit \$2,000 on an average monthly basis.

To correctly calculate the minimum payment due under the Bi-Weekly Deposit Requirement, the merchant must be able to determine the amount of sales tax collected during the bi-weekly period before the payment due date. However, this information may not be readily available to the merchant in a timely manner to make the requirement payment when due. In such cases, the merchant should consider the 70% minimum deposit threshold, since it should provide a more accurate amount. However, this method may not be useful for merchants that do not have an annual cyclical sales behavior.

At ATBA we have extensive experience in dealing with sales and use tax issues. Contact us for an appointment to help you determine if and how the Bi-Weekly Deposit Requirement may affect your business.

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