

MACAO SPECIAL ADMINISTRATIVE REGION

Law No. 21/2019

Revision of “Complementary Tax Regulation”

(Unofficial English Translation)

Pursuant to Article 71, subparagraphs (1) and (3) of the “Basic Law of the Macao Special Administrative Region”, the Legislative Assembly enacts the present Law.

Article 1

Revision of “Complementary Tax Regulation”

As approved by Law No. 21/78/M of 9 September “Complementary Tax”, which is revised by Law No. 6/83/M of 2 July, Decree-Law No. 37/84/M of 28 April, Decree-Law No. 15/85/M of 2 March, Decree-Law No. 37/85/M of 11 May, Law No. 13/88/M of 20 June, Decree-Law No. 48/88/M of 20 June, Law No. 4/90/M of 4 June, Law No. 11/93/M of 27 December, Law No. 4/97/M of 21 April, Law No. 12/2003, Law No. 4/2005 and Law No. 4/2011, Articles 4, 9 and 66 of “Complementary Tax Regulation” are amended as follows:

«Article 4

(Actual income and estimated income)

1. [...]
2. [...]
 - a) Public companies and partnerships limited by shares;
 - b) Any types of companies whose capital is not less than MOP1,000,000 or the average taxable income in the last three consecutive years exceeds MOP1,000,000;
 - c) Any companies being the ultimate parent entity;
 - d) [original c)]
3. [...]
4. [...]

5. [...]
6. Taxpayers, described in the preceding paragraph and paragraph 2, subparagraph d), after three years since the date they are classified as group A, may file a personal application to opt to become group B upon approval by the director of Financial Services Bureau.
7. Where companies meet or cease to meet the provisions of paragraph 2, subparagraph c), a written notification shall be provided no later than 90 days from the occurrence of the fact.

Article 9
(Exemption)

1. [...]:
 - a) [...];
 - b) [...];
 - c) [...];
 - d) [...];
 - e) [...];
 - f) [...];
 - g) [...];
 - h) Income obtained through the operation of aircraft business and its other supplementary activities in Macao SAR by air transport companies whose residence or place of effective management is outside Macao SAR, if equivalent exemption is granted to companies of the same nature whose residence or place of effective management is in Macao SAR, and reciprocity is recognized in the Air Transport Agreement or the Chief Executive's resolution published in the "Official Gazette of the Macao SAR";
 - i) Interest gains derived from, and gains from trading, redemption, or other incomes on disposal of, the national bonds, local government bonds and central enterprise bonds, of the People's Republic of China issued in Macao SAR.
2. [...].

Article 66
(Other offences)

1. Where there is failure to comply with any one of the obligations stipulated in Article 18-A, paragraph 1, subparagraphs (1) to (3), a fine ranging from MOP100 to MOP10,000 shall be imposed.
2. Where the offence described in the preceding paragraph is committed on purpose, a fine ranging from MOP1,000 to MOP20,000 shall be imposed.
3. Offences not specified in this Regulation, a fine ranging from MOP100 to MOP2,000 shall be imposed.»

Article 2
Additional articles to Complementary Tax Regulation

Articles 1-A and 18-A, added to Complementary Tax Regulation, are as follows:

«Article 1-A
(Definitions)

For the purposes of this Law, the following terms have the following meanings:

- 1) The term «ultimate parent entity» means a constituent entity of an multinational enterprise group which meets the following criteria:
 - (1) it owns directly or indirectly a sufficient interest in one or more other constituent entities of such multinational enterprise group such that it is required to prepare consolidated financial statements under accounting principles generally applied in its jurisdiction of tax residence, or would be so required if its equity interests were traded on a public securities exchange in its jurisdiction of tax residence;
 - (2) there is no other constituent entity of such multinational enterprise group which owns directly or indirectly an interest described in the preceding subparagraph;
- 2) The term «fiscal year» means an annual accounting period with respect to which the ultimate parent entity of the multinational enterprise group prepares its financial statements;
- 3) The term «reporting fiscal year» means that fiscal year the financial and

operational results of which are reflected in the Country-by-Country Report;

- 4) The term “constituent entity” means any one of the following:
 - (1) any separate business unit of an multinational enterprise group which is included in the consolidated financial statements of the multinational enterprise group for financial reporting purposes, or would be so included if equity interests in such business unit of an multinational enterprise group were traded on a public securities exchange;
 - (2) any separate business unit which is excluded from the multinational enterprise group’s consolidated financial statements solely on size or materiality grounds;
 - (3) any permanent establishment of any separate business unit of the multinational enterprise group included in the preceding two subparagraphs provided the business unit prepares a separate financial statement for such permanent establishment for regulatory, financial reporting, tax reporting, or internal management control purposes;
- 5) The term «multinational enterprise group» means any group which includes two or more enterprises the tax residence for which is in different tax jurisdictions, or includes an enterprise which is resident for tax purposes in one tax jurisdiction and is subject to tax with respect to the business carried out through a permanent establishment in another tax jurisdiction;
- 6) The term «group» means a collection of enterprises related through ownership or control such that it is either required to prepare consolidated financial statements for financial reporting purposes under applicable accounting principles or would be so required if equity interests in any of the enterprises were traded on a public securities exchange;
- 7) The term «permanent establishment» means any fixed facility through which the industrial and commercial activities are carried on, especially those located in Macao SAR, includes a place of management, a branch, an office, a factory, a workshop, a mine, an oil well, a gas well, a quarry or any other place of extraction of natural resources. It also encompasses any facility of an entity which hosts an exhibition, a conference, a seminar, an industrial and commercial expo in Macao SAR;

- 8) The term «consolidated financial statements» means the financial statements of an multinational enterprise group in which the assets, liabilities, income, expenses and cash flows of the ultimate parent entity and the constituent entities are presented as those of a single economic entity;
- 9) The term «national bonds» mean bonds with the Central People's Government as the entity for issuance and redemption;
- 10) The term «local government bonds» mean bonds approved by the State Council and with the provincial governments, autonomous regional governments and municipal governments of the People's Republic of China as the entities for issuance and redemption;
- 11) The term «central enterprise bonds» mean bonds with the state-owned enterprises, which are supervised and managed by the State-owned Assets Supervision and Administration Commission of the State Council and are inscribed in the valid central enterprise directory published by the Commission, as the entities for issuance and redemption;

Article 18-A **(Supplementary Obligations)**

1. Where an ultimate parent entity whose total revenue as reflected in its consolidated financial statements for the fiscal year immediately preceding the reporting fiscal year of not less than the specified amount, shall comply with the following supplementary obligations:
 - 1) Obligation on documents preparation: Prepare the multinational enterprise group business activities record with respect to the reporting fiscal year, and notify the Financial Services Bureau of its fulfillment of such obligation no later than 3 months after the end of the reporting fiscal year;
 - 2) Obligation on documents reporting: File the Country-by-Country Report, conforming to the filing format with electronic encryption as specified by the Financial Services Bureau, no later than 12 months after the last day of the reporting fiscal year;
 - 3) Obligation on documents retention: Retain properly the documents and information integral to the multinational enterprise group business activities record for a period of 7 years after the end of the reporting fiscal year.

2. For the purposes of the provisions of the preceding paragraph, a supplementary administrative regulation shall be required to specify the following:
 - (1) The amount referred to in the preceding paragraph to be specified and adjusted, in accordance with the international implementation standard on tax information exchange adopted by the Organization for Economic Cooperation and Development for combating cross-border tax evasion and avoidance, and with the international obligation in this respect as endorsed by Macao SAR;
 - (2) The scope of the documents and information integral to the multinational enterprise group business activities record, including the Country-by-Country Report with respect to the reporting fiscal year.
3. The ultimate parent entities may designate a service provider to comply with the obligations as stipulated in paragraph 1.”

Article 3
Revision of Law No. 5/2017
(Legal regime for the exchange of tax information)

Articles 4, 5, 10 and 11 of Law No. 5/2017 are revised as follows:

«Article 4
Subjects of application

1. [...]
2. Automatic exchange of information is applicable to the following entities:
 - 1) Foreign tax residents of the other contracting parties of international agreements holding financial accounts in the Macao SAR;
 - 2) The ultimate parent entities which are required to comply with the supplementary obligations as stipulated in Article 18-A of the "Complementary Tax Regulation" approved by Law No. 21/78/M of 9 September “Complementary Tax”;
 - 3) Natural and legal persons involved in the tax information to be exchanged automatically in accordance to the applicable international agreements.
3. [...].

Article 5
Scope of exchange of information on request

1. [...].
2. [...].
3. The information to be exchanged on request is restricted to be the information with respect to the year, in which the request is received by the Macao SAR, and a period of five taxable years prior to that year.

Article 10
Scope and rules of automatic exchange of financial account information

1. The automatic exchange of financial account information shall be applicable to financial and offshore institutions (hereinafter “financial institutions”), which engage in financial activities and possess the information of the financial accounts held by foreign tax residents as described in Article 4, paragraph 2, subparagraph 1), with the exception of the non-reporting financial institutions as defined in the Chief Executive Resolution referred to in the subsequent paragraph.
2. For the purposes of automatic exchange of financial account information, the Chief Executive may, according to the proposal of Financial Services Bureau, approve “The Common Reporting Standard and Due Diligence Procedures for Financial Account Information” (hereinafter “Guidelines”) by Resolution published in the “Official Gazette of the Macao SAR”.
3. [...].
4. [...].
5. [...].
6. The information, collected pursuant to the provisions in paragraphs 3 and 5, shall be retained properly for a period of five years beginning from the end of the year in which the procedures as required in paragraph 2 of the subsequent Article occurred.

7. Automatic exchange of financial account information refers to related information as from 1 July 2017.

Article 11

Methods and procedures of automatic exchange of financial account information

1. Pursuant to the provisions of international agreements, automatic exchange of financial account information with the other contracting parties shall be made by Financial Services Bureau for information collected from financial institutions.
2. To enable Financial Services Bureau to conduct the automatic exchange of financial account information as required in the preceding paragraph, financial institutions shall, by no later than 30 June of each calendar year, provide Financial Services Bureau with information with respect to the preceding calendar year.
3. All procedures with respect to automatic exchange of financial account information shall be completed no later than 9 months from the beginning of each calendar year, providing information of reportable financial accounts with respect to the preceding calendar year to the other contracting parties of the international agreements.
4. [...].
5. [...].»

Article 4

Additional article to Law No. 5/2017

Article 11-A shall be added to Law No. 5/2017 and is stated as below:

«Article 11-A

Automatic exchange of other information

Automatic exchange of other information possessed by the entities specified in Article 4, paragraph 2, subparagraphs 2) and 3), shall be made according to the applicable scope, rules, methods and procedures as required in the specific laws. »

Article 5
Applicable period

1. The provision of Article 9, paragraph 1, subparagraph i) of Complementary Tax Regulation, as amended by this Law, shall be applicable to income starting from the year 2020.
2. The provision of Article 18-A of Complementary Tax Regulation, as added by this law, shall be applicable to the information with respect to the reporting fiscal years commencing on or after 1 January 2019.

Article 6
Entry into force

The present law shall enter into force after 30 days following its publication.

Enacted on 16 December 2019.

President of the Legislative Assembly, Kou Hoi In

Signed on 17 December 2019.

To be published by order of
Chief Executive, Chui Sai On