

MACAO SPECIAL ADMINISTRATIVE REGION

Law No. 5/2017

Legal Regime for the Exchange of Tax Information

(Unofficial English Translation)

The Legislative Assembly enacts the present law, in accordance with Article 71 (1) of the “Basic Law of the Macao Special Administrative Region”.

Chapter 1

General Provisions

Article 1

Objective

1. The present law establishes the rules applicable to the exchange of information performed within the scope of the tax conventions or agreements made between the Macao Special Administrative Region (hereinafter “Macao SAR”) and other tax jurisdictions.

2. The exchange of information as referred to in the preceding paragraph is performed in accordance with the conventions or agreements intended to prevent double taxation and to tax evasion, bilateral or multilateral agreements on the exchange of tax information or any standards related to conventions of the similar nature (hereinafter “International Agreements”).

Article 2

Methods of Exchange of Information

The exchange of information as referred to in the preceding article covers exchange of information on request, automatic exchange of information and spontaneous exchange of information.

Article 3

Definitions

1. For the purposes of the present law, the definitions of the terms as follows are:

(1) “Exchange of Information on Request”: refers to the exchange of information between the Macao SAR and other Contracting Parties to International Agreements, upon the proposal or receipt of a request;

(2) “Automatic Exchange of Information”: refers to the exchange of pre-defined information between the Macao SAR and other Contracting Parties to International Agreements at regular pre-established intervals through systematic communication, in the absence of a request previously proposed or received;

(3) “Spontaneous Exchange of Information”: refers to the provision of information on the initiative of the Macao SAR or other Contracting Parties to International Agreements, in the absence of a request previously proposed or received;

(4) “Beneficial Owner”: means a natural person who carries out a transaction or activity in his own interest or who has the ultimate ownership or control over the client or the transaction thereof. In addition, it also includes a natural person who exercises the ultimate ownership and control over the interests of a legal person, a legal agreement or a similar legal form. The ultimate ownership, ultimate control or ultimate effective control also cover the ownership held through chain of ownership, or ownership or control exercised through indirect control methods;

(5) “Foreign tax resident”: means a natural or legal person who is regarded as a resident for tax purposes according to the legal regulations of other tax jurisdictions.

2. For the application of the present law, legal persons also include those whose establishment does not comply with the standards, associations without legal personality and special commissions.

Article 4

Scope of Application

1. Exchange of information on request applies to natural and legal persons involved in the information which is requested by any of the contracting parties to International Agreements within the applicable tax framework of the respective agreements, and which is of foreseeable relevance for the application or enforcement of the internal laws of that Contracting Party.

2. Automatic exchange of information is applicable to residents for tax purposes of other Contracting Parties to International Agreements holding financial accounts in the Macao SAR.

3. Spontaneous exchange of information is applicable to natural and legal persons involved in the information that the Finance Services Bureau (hereinafter “DSF”) has obtained when exercising its duties to assess tax liabilities or other tax investigation duties, and the information provided by DSF on its own initiatives to contracting parties which helps such parties apply or reinforce their internal laws within the tax frameworks of the respective agreements with foreseeable relevance.

Chapter 2

Exchange of Information on Request

Article 5

Scope of Exchange of Information on Request

1. Exchange of information on request includes the following information regarding Scope of Application as referred to in Paragraph 1 of the preceding Article:

(1) Information that is available to DSF within the scope of its tax management duties, including information obtained from the evidence collected by tax investigation.

(2) Information that is available to other public sectors and entities, including:

1) Information about the identity of the holders and beneficial owners of entities which are legal persons;

2) Information from accounting records and documentation of legal persons;

3) Other information which is considered to be of foreseeable relevance to exchange of information on request.

(3) Information that is available to institutions and entities (hereinafter “financial and offshore institutions”) which are regulated by the following legal provisions:

1) Decree-Law No. 32/93/M of 5 July, which approves the Financial System Act;

2) Decree-Law No. 58/99/M of 18 October, which defines the Offshore Regime of Macau;

3) Decree-Law No. 27/97/M of 30 June, which regulates the Macau Insurance Ordinance;

4) Decree-Law No. 83/99/M of 22 November, which regulates the Investment Funds.

2. For the application of the provisions of the preceding paragraph, any document or record, attributed to financial and offshore institutions documenting, certifying or recording their business activities in which they engage within their scope of activities, is regarded as information, regardless of the forms of their vehicles.

3. The information used for exchange on request is limited to the information with respect to a period up to the year in which the request was received by the Macao SAR from five years prior to that year.

Article 6

Principle of Reciprocity

1. Exchange of information on request shall comply with the principle of reciprocity.

2. The Macao SAR shall provide requested information only in the circumstance where the internal order of the requesting party allows to accept the request made by the Macao SAR in similar conditions.

3. In the event that the information as requested by the requesting party is the information that shall not be obtained in its own region in accordance with its internal laws, the Macao SAR shall not provide such information.

Article 7

Decline of Requests

In any of the conditions as follows, the request for exchange of information shall be declined:

(1) The principle of reciprocity is not respected;

(2) The respective information will reveal the confidential information of the nation or the Macao SAR, and will endanger the security of the nation or the Macao SAR or will go against public order;

(3) The respective information will reveal commercial, industrial or professional confidential information or procedures.

(4) The information to be obtained is related to the confidential communication which involves legal advisories or legal proceedings that are in progress or planned between lawyers, solicitors or other recognised legal representatives, and their respective clients.

Article 8

Procedures of Exchange of Information on Request

1. The Macao SAR's decision to make a request for exchange of information, and the decision to accept or decline the request for exchange of information directed to the Macao SAR, are of the Chief Executive's competences.

2. The procedures of exchange of information on request are initiated with a request supported by substantiated justification proposed by the competent authority of the requesting party, accompanied with all the respective information and requirements which enable the appropriate identification of the respective natural or legal persons.

3. Upon the Chief Executive's decision to accept the request, DSF shall inform the respective financial and offshore institutions to forward the necessary information for the information exchange, within a stipulated period no shorter than five working days from the date of receipt of notice of information provision.

4. In the event that the respective financial and offshore institutions fail to submit the requested information within the period set by DSF, they may request an additional period of five working days, provided that they have offered legitimate justification.

5. The information to be obtained shall be listed in the notifications to be sent to financial and offshore institutions and inform them that it is involved that the exchange of information on request is accepted by the Chief Executive, while based on any of the exceptional circumstances set forth in Paragraph 1 of the following Article, may at the same time, prohibit the notification, which is that such request exists, directed to the natural or legal persons involved in the respective information.

Article 9

Notification and Defense

1. DSF shall inform the natural or legal persons as involved in the information of the purposes of collecting the information, its sources and content, except in any of the following circumstances:

(1) Other Contracting Parties to International Agreements declare that the information in question shall not be directed to the natural or legal persons as involved in the information;

(2) The exchange of information on request aims at protecting the public interest of significant importance.

2. The provisions of Decree-Law No. 16/84/M of 24 March shall apply with respect to notifications as referred to in the preceding paragraph.

3. In the circumstance provided in Paragraph 1, where the notification shall be made, the natural or legal persons involved in the information may file a judicial appeal with a suspension effect against the decision to perform exchange of information on request, based on the errors which exist in the information to be reported.

Chapter 3

Automatic Exchange of Information

Article 10

Scope and Rules of Automatic Exchange of Information

1. The automatic exchange of information is applicable to financial and offshore institutions (hereinafter “financial institutions”) which engage in financial activities and maintain the information about the financial accounts as referred to in Scope of Application as in Article 4 (2), with the exception of the non-reporting financial institutions defined by the Chief Executive Resolution referred to in the following paragraph.

2. For the application of the automatic exchange of information, the Chief Executive may, according to the suggestions of DSF, approve “The Common Reporting Standard and Due Diligence Procedures for Financial Account Information” (hereinafter “Instructions”) by Resolution published in the “Official Gazette of the Macao SAR”.

3. Financial institutions shall comply with Instructions, identifying the holders of financial accounts as foreign residents for tax purposes by wider approach, in order to determine the reportable financial accounts among the financial accounts maintained and to collect the relevant information. .

4. For the application of Paragraphs 2 and 3, financial institutions shall ensure that foreign tax residents identified are aware that information related to their accounts is subject to the rules set forth in this chapter and that they are provided for tax purposes to other Contracting Parties in accordance with International Agreements.

5. For the application of this Article, financial institutions shall require new clients who intend to open financial accounts to provide a self-certification or relevant documents which can prove that they are foreign residents for tax purposes, as an integral part of the required documents for opening new financial accounts.

6. The information collected according to Paragraphs 3 and 5 shall be properly kept for five years starting from the end of the year in which the procedures occurred.

7. Automatic exchange of information refers to the respective information from 1 July 2017 onwards.

Article 11

Methods and Procedures of Automatic Exchange of Information

1. Automatic exchange of information takes place in accordance with the provisions of

International Agreements, and DSF will exchange information collected from financial institutions with other Contracting Parties.

2. In order for DSF to perform automatic exchange of information provided in the preceding paragraph, financial institutions shall provide DSF with information about the preceding calendar year by the latest 30 June of each calendar year.

3. All procedures related to automatic exchange of information shall be completed in 9 months after the beginning of each calendar year, and provide other Contracting Parties to International Agreements with the information of reportable financial accounts.

4. For the application of Paragraph 1, financial institutions shall provide information to DSF by means of electronic encryption.

5. Financial institutions may employ service providers to carry out Instructions and the service providers are also subject to the provisions set forth in this Chapter and to the confidentiality obligations set forth in Article 19.

Chapter 4

Spontaneous Exchange of Information

Article 12

Scope of Spontaneous Exchange of Information

The Macao SAR may transmit the information related to Scope of Application as referred to in Article 4 (3) to other Contracting Parties, without prior request, in any of the following circumstances:

(1) There are reasons to believe that other Contracting Parties may suffer from the loss of tax revenue;

(2) Taxpayers have obtained a tax reduction or tax exemption in the Macao SAR, and their tax or tax liabilities in other Contracting Parties may be increased.

(3) There are commercial transactions between taxpayers of the Macao SAR and taxpayers of other Contracting Parties in one or multiple jurisdictions, and the methods of transactions may lead to a reduction in tax revenue in the Macao SAR, in other Contracting Parties or both;

(4) There are grounds for presuming artificial transfers of profits within groups of enterprises which may result in saving of tax;

(5) Information that is to be provided by the Macao SAR to other contracting parties may allow other contracting parties to acquire the information in relation to assessment for tax liabilities.

Article 13

Procedures of Spontaneous Exchange of Information

1. The decision to perform spontaneous exchange of information is of the Chief Executive's competences.

2. Upon the Chief Executive's decision, spontaneous exchange of information provided in the preceding paragraph shall be carried out between DSF and the competent authorities of other Contracting Parties in accordance with the applicable International Agreements.

3. In the situations as referred to in Article 7 (2), (3) or (4), spontaneous exchange of information shall not be carried out.

Chapter 5

System of Penalties

Article 14

Administrative Penalties

1. Those who meet any of the following conditions shall be imposed a fine from MOP 6,000 to MOP 60,000:

(1) In the circumstance where the additional period referred to in Article 8 (4) is not granted, fail to comply with the deadline specified in Paragraph 3 of the said Article;

(2) Fail to comply with the deadlines provided in Article 8 (4) or Article 11 (2);

(3) Fail to comply with the obligations provided in Article 10 (6) or Article 11 (4);

(4) The information provided or reported stipulated in the present law is made to be incorrect or incomplete on purpose.

2. The administrative violation of the same nature being re-committed within a period of two years after the day when the administrative decision to impose sanctions has become unappealable, is considered a case of recidivism.

3. In the case of recidivism, the minimum limit of the fine is raised by one quarter and the maximum limit remains unchanged.

4. The payment of a fine does not relieve the offenders from exercising the obligation to

provide information.

Article 15

Liabilities of Legal Persons

1. Legal persons shall be liable for the commission of administrative violations provided in the present law, which are committed by their entities or representatives in their name and in their collective interest.

2. The legal person is exempt from the liability referred to in the preceding paragraph, when the agent has acted against explicit orders or instructions by the individuals in control.

3. The liability assigned according to Paragraph 1 shall not exclude the liability of the respective agents.

Article 16

Liability for Payment of Fines

In the case that the offender is a legal person:

(1) The members of the administrative or management entities of the legal person, or the individuals who represent the legal person by other means shall bear joint and several liabilities with that legal person in respect to the payment of the fine, when it is judged that they shall be liable for the respective administrative violations.

(2) If a fine is imposed on an association or a special commission without legal personality, the fine should be paid by the equivalent amount from the common assets of the association or commission; in the event of the absence of, or insufficient common assets, all members of the association or commission shall pay the fine with the equivalent from their own assets based on the joint and several liabilities.

Article 17

Destination of Fines

The fines collected due the reinforcement of the present law against the administrative violations constitute part of the revenue of the Macao SAR.

Chapter 6

Final Provisions

Article 18

Personal Data

Without prejudice to the application of provisions as in Article 8 (5), Article 9 (1) and Article 10 (4), when implementing the exchange of tax information, the following obligations shall be exempted:

- (1) When collecting and handling personal data, the concerned party should be informed.
- (2) The notification to the public authority is required for transferring personal data to a place outside the Macao SAR.

Article 19

Confidentiality

1. All exchanges of information shall be subject to the rules of confidentiality and other safeguard measures provided in International Agreements, including provisions limiting the use of information being exchanged, so as to ensure the sufficient protection of personal data.

2. All public services and bodies, as well as financial and offshore institutions, are subject to the regulations of the duty of secrecy referred to in the preceding paragraph, without prejudice to the application of the provisions of the following Article.

3. The employees of DSF who collect data in accordance with the provisions of the present law shall fulfill the obligation of professional secrecy due to their competencies. Neither shall they reveal the information or use it for uses other than exchange of tax information, even after the termination of their competencies.

Article 20

Exemption from the Duty of Secrecy

If DSF requests other public services and bodies, as well as financial and offshore institutions to provide information according to the provisions of the present law, the duty of confidentiality is waived.

Article 21

Competencies

1. DSF is the competent authority to manage the exchange of tax information.
2. Financial institutions to which the provisions of Chapter III apply are subject to the supervision of DSF.
3. The director of DSF has the competencies to initiate the procedures of administrative sanctioning, conduct investigations and impose fines.

Article 22

Revocation

Law No. 20/2009, “Exchange of Tax Information”, was revoked.

Article 23

Entry into Force

The present law shall enter into force on the day following its publication.

Enacted on 31 May 2017

The president of the Legislative Assembly, Ho Iat Seng

Signed on 2 June 2017

To be published by order of

Chui Sai On, the Chief Executive