

## REGULATORY UPDATE

### Law on Exchange of Information on Tax Matters

To align with new standards and requirements established internationally concerning cross-border fraud and tax evasion, the Macau SAR Government approved, on the 31st of May 2017, Law no.15/2017, the Exchange of Information on Tax Matters Law (hereinafter the “Law”).

#### 1. What is the scope of the Law?

The Law institutes rules on the exchange of information under tax agreements concluded between the Macau Special Administrative Regions (hereinafter “Macau SAR”) and other jurisdictions. The exchange of information is executed under a bilateral or multilateral agreement to avoid double taxation and to prevent tax evasion.

Moreover, the exchange of information on tax matters is made under the principle of reciprocity, in which Macau SAR will only provide requested information on the condition that the requesting party would admit a request made by Macau SAR on similar terms.

Regarding data privacy, the execution of the exchange of information on tax matters will, in specific cases, waive the right of information of the holders of personal data as well as the required notification to the public authority when personal data is transferred to jurisdictions outside of Macau.

Furthermore, all exchange of information is subject to the principle of confidentiality.

#### 2. Forms of exchange of information

Firstly, in accordance to the Law, there are 3 types of exchange of information:

- (i) Exchange of information upon request;
- (ii) Automatic exchange of information;
- (iii) Spontaneous exchange of information.

The exchange of information upon request is applicable to individuals and legal entities, in which the requested information is expected to be relevant for the enforcement of domestic laws of the contracting parties.

In turn, the automatic exchange of information is applicable to fiscal residents of other contracting parties of international agreements, who have financial accounts in Macau SAR.

Finally, the spontaneous exchange of information is applicable to individuals and legal entities, in which the Macau Financial Services Bureau obtained during administration of their tax investigation and obligations, which it believes will be of interest to one of its treaty partners for tax purposes and passes on this information without the latter having asked for it.

#### 3. Procedure

##### 3.1 Request of information upon request

The procedure for exchange of information upon request begins with a duly justified request with all the identifying elements of the individuals or legal entities of the said pretension presented by the competent authority of the requesting party.

Further, the Chief Executive of Macau would decide in the acceptance of such request. Upon acceptance, the Macau Financial Services Bureau will duly notify the financial and offshore institutions to forward all the necessary information in 5 working days.

Moreover, the Macau Finance Department will directly notify the individuals and legal entities, with the exception when such information is related to public interest or when the contracting parties of the international agreement declares that such information must not be communicated to the individuals or legal entities.



20th of June 2017

## REGULATORY UPDATE

### 3.2 Automatic exchange of information

The automatic exchange of information pertained in the Law corresponds to the standards regarded in US Foreign Account Tax Compliance Act (FATCA) and other international agreements.

Financial institutions should comply with the instructions of the aforesaid standards and proceed with the identification of the holder of the account as a foreign fiscal resident by providing a self-certification, confirm reportable accounts and obtain relevant information regarding such account to the respective jurisdictions. It is in the competence of the Macau Financial Services Bureau to proceed with the exchange of such information's to the contracting parties.

Further, the report of said information should be executed in an electronic encryption format.

The automatic exchange of information will commence on the 1st of July 2017. Moreover, and according to the Law, financial institutions must retain the required information for a period of 5 years.

### 3.3 Spontaneous exchange of information

In like manner, the spontaneous exchange of information requires the previous authorization of the Chief Executive of Macau. The spontaneous exchange of information refers to the spontaneous report of fiscal information, without previous request, to the respective fiscal jurisdiction.

### 4. Sanctions

From an administrative perspective, the violation of the following situations, will entail in fines ranging from MOP\$6.000,00 to MOP\$60.000,00:

- (i) When financial and offshore institutions did not forward all the necessary information in 5 working days (and an additional 5 working days if there's a justified reason for the delay);
- (ii) When financial and offshore institutions did not provide the required information to the Macau Financial Services Bureau regarding the precedent year (until June 30th of each year);
- (iii) When financial institutions violated their duty to retain the obtained information for a period of 5 years and did not utilize an electronic encryption format in reporting such information;
- (iv) When the submitted information was inexact or incomplete and was caused by malice;

Furthermore, legal entities are liable for the commitment of the administrative infringements by their representative's bodies on their behalf and in their collective interest. Notwithstanding, the abovementioned liability will be excluded when the agent who committed the infraction has acted against orders or instructions.

Finally, if the offender is a legal entity, the administrators or other representatives of the legal entity will be jointly liable.

Should you have any queries, please do not hesitate to contact us at [mdme@mdme.com.mo](mailto:mdme@mdme.com.mo) or:



José Espírito Santo Leitão  
Partner  
Co-Head of Banking & Finance  
[jleitao@mdme.com.mo](mailto:jleitao@mdme.com.mo)

T: +853 2833 3332  
M: +853 6632 7935



Joana Coimbra de Almeida  
Associate  
Banking & Finance  
[jca@mdme.com.mo](mailto:jca@mdme.com.mo)

T: +853 2833 3332  
M: +853 6301 7659



MEMBER OF  
MLGTS LEGAL CIRCLE  
INTERNATIONAL TIES WITH THE PORTUGUESE-SPEAKING WORLD

Angola | Macau | Mozambique | Portugal

Member  
**LexMundi**  
World Ready