

LEGAL ALERT

SUBSTANTIAL CHANGES TO THE STAMP DUTY LAW

February 23, 2021



Changes to Stamp Duty Law

Law no. 24/2020 has approved significant changes to the Stamp Duty Law (Law no. 17/88/M) which will become effective on March 30, 2021. Whereas certain amendments will cause an expansion of the stamp duty tax base both in respect of the transactions which are already subject to stamp duty as well by submitting new transactions to stamp duty, there are also significant tax exclusions, reductions and tax benefits which will substantially reshape the current stamp duty landscape. The highlights of this stamp duty reform are as follows:

1. Expansion of the stamp duty scope: (i) Grant of Use Agreements, (ii) the new provisions in respect of auction sales and (iii) in respect of lease agreements.

Grant of use agreements have been so far excluded from stamp duty. The new law will create a stamp duty over these contracts which is payable by the owners and/or operators of shopping malls.

The amendments also include relevant provisions in relation to lease agreements, which fundamentally consist on: (i) imposing specific obligations for landlords to report rent increases and income resulting from variable rent, hence enabling, in practical terms, the liquidation of the corresponding stamp duty; (ii) allowing for the possibility of the stamp duty payable on fixed rent to be paid in installments; (iii) allowing for the landlords to apply for a tax refund in case of early contract termination or reduction of the rent agreement during the term of the agreement.

The new law will also provide a clear definition of the taxable event in relation to auction sales, thus taking the opposite route to the jurisprudence of the Court of Final Appeal in that respect.

2. Reduction of the stamp duty scope by eliminating certain transactions and documents from stamp duty and the addition of new tax reductions and tax benefits.

Several important transactions, such as the incorporation of companies, the increase of respective capital, the transfer of businesses as on-going concerns and private contracts will be eliminated from stamp duty. Some of these changes have the potential to reshape the current stamp duty landscape in Macau, providing significant incentives for certain transactions (or at least alleviating respective burden), including equity and intra-group restructuring.

Further tax incentives are added, the highlight of which is the tax reduction for lease and grant of use agreements in the event the parties agree to an arbitration clause submitting their disputes to an arbitration centre in Macau.

3. The improvement of the regulations regarding tax assessment, liquidation and payment and respective supervision.

Several amendments are introduced to provide further clarity and to improve the efficiency of the procedures to collect the stamp duty tax. Such amendments include the express specification of the taxpayer in certain transactions which are not clearly defined, as well as the definition of the obligations of other parties in relation to the collection, liquidation and payment of the stamp duty.

Fiscal stamps will be abolished. Existing stamps may still be used until March 30, 2022.

Other provisions include the obligation for notaries, government departments and other private entities who have the legal obligation to collect certain types of stamp duty to keep a record of all documents and transactions subject to stamp duty for a period of 5 years.

Financial institutions, lawyers, notaries, insurance companies, accountants and accounting firms and realtors are excluded from professional privilege when they are requested any information by the Tax Department in connection to stamp duty tax supervision procedures. Government departments will also be allowed to exchange personal data and information for such purposes.

4. Increase of the penalties applicable for infringement of the stamp duty obligations and simplification of the procedures to apply such penalties.

The fines applicable for infringing the several obligations under the stamp duty regulation are increased significantly. Furthermore, certain individuals, such as the directors of a company (both those who have been legally designated and the de facto directors), the members of the supervisory board or managers will become jointly and severally liable for the payment of the fines.

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