

MACAU

RECENT MAJOR TAX DEVELOPMENTS IN MACAU

Tax incentives for financial year 2009

The Legislative Assembly has approved certain tax incentives proposed by the Chief Executive of the Macau SAR in his Policy Address for financial year 2009, including the following key measures.

1. Similar to financial year 2007, the tax free income threshold for Macau Complementary Tax has been increased from MOP32,000 to MOP200,000 for income derived in financial year 2008. Taxable profits between MOP200,000 and MOP300,000 are taxed at 9%, and taxable profits over MOP300,000 are taxed at 12%.
2. Similar to financial year 2007, the tax free income threshold for Macau Professional Tax will continue to be increased from MOP95,000 to MOP120,000 for income derived in financial year 2009. Taxable income between MOP120,000 and MOP400,000 is taxed at the progressive rates scale ranging from 7% to 11%. Taxable income above MOP400,000 is taxed at 12%.
3. The 25% reduction in the Macau Professional Tax liabilities will continue to be available for income derived in financial year 2009. Together with the standard 25% deduction on the taxable income granted under the Macau Professional Tax Law, the effective tax rate for Macau Professional Tax is below 7%.
4. The standard MOP3,500 reduction in the Macau Property Tax liabilities will continue to be available for assessments in financial year 2009 for both self-use and rental properties.
5. Macau Tourism Tax will continue to be exempt for restaurants in financial year 2009.
6. Macau Stamp Duty for insurance policies written or renewed in financial year 2009 and for banking transactions in financial year 2009 will continue to be exempt.
7. An adult, who holds a Macau permanent resident identity card and who does not own any properties other than one car-parking space, is eligible to enjoy an exemption on Macau Stamp Duty levied on the purchase of a residential property for self-use purposes for the first MOP3,000,000 of the transfer consideration. The transfer consideration in excess of MOP3,000,000 will be subject to Macau Stamp Duty. The Macau Stamp Duty exemption has a three-year 'lock-in' period, such that unless the residential property so purchased is transferred as part of a deceased estate, the purchaser will have to pay the Macau Stamp Duty that was originally exempt on the purchased property if such residential property is sold within 3 years after the grant date of the Macau Stamp Duty exemption.
8. Macau Stamp Duty levied on purchase of residential properties is proposed to be reduced from 3% to 1% for financial year 2009 and onwards. At the time of writing, the draft legislation has not been passed into law and progressive rates of Stamp Duty could be introduced.
9. Licence fee for advertisements posted or placed in public areas and the Stamp Duty thereon, except for advertisement of tobacco products and advertisement placed on the Grand Prix racing track, will continue to be exempt in financial year 2009.
10. Macau Industrial Tax for financial year 2009 will continue to be fully exempt.
11. Land rentals with amount below MOP100 shall not be collected by the Macau Finance Bureau in financial year 2009. However, any such amount already collected shall not be refunded.

The overall aim of the tax incentives is to lessen the burden of small and medium sized enterprises and to improve the livelihood of the general public in Macau. Whilst it is generally believed that the direction of the Macau government policy would remain stable at least for several years, the extension of the above-listed tax incentives beyond financial year 2009 is subject to approval by the Legislative Assembly on an annual basis unless such amendments are written into the relevant tax laws.

Macau offshore companies (MOCs)

In addition to having very low corporate and individual tax rates, profits derived by approved offshore institutions from prescribed offshore activities are exempt from all forms of taxes, such as Macau Complementary Tax, Macau Industrial Tax (currently exempt for all taxpayers), and Macau Stamp Duty. The executives and/or staff at supervisory level of the offshore companies are exempt from Macau Professional Tax for three years by application.

At present, there are eight permissible offshore activities:

1. Hardware consultant;
2. Software consultant;
3. Data processing;
4. Database-related activities;
5. Back office activities;
6. Research and development activities;
7. Tests and technical analysis activities; and
8. Management and administration of ships and aircraft.

Hence, it might be worthwhile exploring the possibility of setting up a Macau offshore institution for companies in the relevant industries or, where it is commercially viable, relocating some of the above-listed back office and support functions to Macau. Although trading is no longer approved as a permissible offshore activity, consideration can be given as to whether a Macau offshore institution (which has been approved to provide back office activities) can provide all the requisite services, such as procurement, quality control, marketing, and liaison services pertaining to trading transactions, to support another trading entity within the group, such that an arm's length service fee can be charged to the trading entity to set off its trading profits.

Further, we understand that a Macau offshore institution which is approved to be engaged in research and development (R&D) activities may be allowed to trade in self-developed products, subject to the scale of the R&D activities undertaken in Macau and the approval of the Macao Investment and Trade Promotion Institute. The foregoing is to encourage the set-up of R&D MOC, without which the R&D MOC may not be able to achieve financial sustainability if it cannot earn sufficient service fee and/or share of any resulting royalty income.

Macau labour law

The new Macau Labour Relations Law — Decree-Law No. 7/2008 (New Labour Law) was passed by the Macau Legislative Assembly on 5 August 2008. The New Labour Law has been effective since 1 January 2009 whereas the old Macau Labour Relations Law — Decree-Law No. 24/1989 (Old Labour Law), which had been in place since 1989, has been simultaneously repealed.

An employer should note that the New Labour Law has increased the penalty level for an employer who violates the New Labour Law and imposed a minimum record keeping requirement.

The New Labour Law is applicable to all labour relationships established in Macau, except for and amongst others, labour relationships established:

1. under apprenticeship or vocational training system;
2. with non-resident workers with working visa (the foreign workers);
3. with seafarers; and
4. part time workers.

Civil services are also excluded from being subject to the New Labour Law.

As the employment relationship with the foreign workers will be governed by a special regulation and such special regulation has not been passed into law at the time of writing, the terms and conditions of the foreign workers' employment contracts should currently govern their employment. If their employment contracts are silent on certain terms, such as overtime pay, night shift pay, etc., the relevant provisions in the New Labour Law would apply. The Macau Human Resource Office will refer to the requirements under the New Labour Law when it assesses and approves foreign workers' employment contracts, starting from 1 January 2009.

Employment of domestic helpers was previously not covered by the Old Labour Law. However, effective from 1 January 2009, employment of domestic helpers (except for non-resident domestic helpers) is covered by the New Labour Law. Amongst others, the implication is that employers of domestic helpers are required to make quarterly contributions to the Macau Social Security Fund, starting from 1 January 2009.

In summary, the New Labour Law sets out new requirements in the following areas:

1. maintenance of employees' records;
2. protection of employees' privacy;
3. standard working hours;
4. additional compensation for overtime, night shift and work during statutory holidays;
5. weekly and annual leave, statutory holidays, maternity leave, and absences/no pay leave;
6. probation period; and
7. termination of employment.

Share options — employers' reporting and withholding obligations and employees' reporting obligations

The current Macau Professional Tax Law, which governs the taxation of employment income and income from self-employment, has been effective since 1978. The Law has not been significantly modified to cope with the rapid changes in the economic environment during the past decades. Since the opening of the Macau gaming industry a few years ago, the foreign-based gaming concessionaries have regularly offered share options to their Macau based employees for staff retention purposes. There has been a common misunderstanding that share option benefit is neither taxable nor reportable under the current Professional Tax Law as the current Professional Tax Law has not clearly stated that share option benefit is taxable and the Macau Finance Bureau (MFB) has not issued any guideline to stipulate the employers' reporting obligations regarding share options. Nevertheless, it has been our understanding that from the MFB's point of view, share option benefit is taxable as non-cash employment income under the current Professional Tax Law.

In order to eliminate the misunderstanding, the MFB issued Circular No. 02/Dir/2009 — Taxability of Employee Share Option Gain (the Circular), on 7 January 2009. The Circular outlines the MFB's position on taxability of share option benefit and specifies the reporting obligations of employers and employees with respect to the grant, exercise, sale and relinquishment of share options.

Employers' reporting and withholding obligations

An employer is required to report details of share options granted to an employee to the MFB within 30 days from the date of grant. An employer is also required to report details of share options exercised, sold, and relinquished by an employee to the MFB within 30 days from the date of exercise, sale, and relinquishment. In addition to these reporting requirements, an employer is required to withhold Professional Tax at an appropriate rate from the share option benefit if an employee exercises a share option. The amount of share option benefit received by the employee is also required to be included in the annual Professional Tax return — M3/M4.

Employees' reporting obligations

An employee is normally not required to file an annual Professional Tax return — M/5 if he/she has only one employment and he/she has not derived any other income which would be subject to Professional Tax from other sources. Pursuant to the new requirements stipulated in the Circular, an employee who exercises, sells, or relinquishes a share option is required to file an annual Professional Tax return to report the amount of share option benefit. If an employee terminates his/her employment or leaves Macau permanently such that his/her Macau employment contract has to be terminated, the employee is required to file the M/5 return with the MFB to report the amount of share option benefit derived in the year and the amount of share option benefit that could be derived from the outstanding share options that have not been exercised, sold, or relinquished. Effectively, the employee will be taxed based on a deemed exercise of the outstanding vested options upon termination of his/her current employment in Macau or upon permanent departure from Macau. The return will be due within 30 days before the date of termination of employment.

