TAX INFORMATION

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MACAU: PORTUGUESE-SPEAKING PLATFORM FOR ACCESS TO CHINA AND ASIA

A few months before 20 December 1999, when Macau became a special administrative region within the People's Republic of China, the governments of Portugal and Macau - which, for the purposes of the agreement, includes the peninsula of Macau and the islands of Taipa and Coloane - signed an agreement to avoid double taxation and to prevent tax evasion in the area of income tax. The agreement, which was signed in Macau on 28 September 1999 and came into force retroactively as from 1 January 1999, closely follows the Organisation for Economic Co-operation and Development's (OECD's) model.

The agreement specifically provides for the taxation of dividends, interest and royalties in the source country at the reduced rate of 10%.

Pensions (not resulting from public sector pay), as well as capital gains from personal property (as long as such gains do not relate to property that forms part of the assets of a permanent establishment or fixed installation that a company from one of the contracting states has in another contracting state) are taxed only in the state of residence.

The pay of members of the board of directors and of higher level professionals of companies from one of the contracting states may also be taxed in this state of source as well as in the state of residence.

The pay of salaried employees is taxed in the state of residence, but it may also be subject to taxation in the contracting state where the activity is exercised. This taxation arises when: the beneficiary remains there for a period or periods which exceed 183 days in total in any 12 month period beginning or ending in the financial year in question; the pay is from an employer or in the name of an employer that is resident in that state and the pay is funded from a permanent establishment or fixed installation that the employer has in that state.

The elimination of double taxation in Portugal should occur in the following way:

1. When a Portuguese resident receives income which, under the terms of the agreement, may be taxed in Macau, Portugal will deduct from the income tax an amount equal to the income tax paid in Macau. This amount is limited to the fraction of the income tax, calculated before the deduction, corresponding to the income that may be taxed in Macau.
2. When a company resident in Portugal receives dividends from a company in Macau in which the former has a direct capital share of not less than 25%, and the Macau company fulfils either of the following conditions:

   (a) its main activity is air transport; or,

"Portuguese Law Firm of the Year"
Chambers Europe Excellence 2009, IFLR Awards 2006 & Who's Who legal Awards 2006, 2008. 2009

"Corporate Law Firm of the Year - Southern Europe"
ACQ Finance Magazine, 2009

"Best Portuguese Law Firm for Client Service"
Clients Choice Award - International Law Office, 2008

"Best Portuguese Tax Firm of the Year"
International Tax Review - Tax Awards 2006, 2008

Mind Leaders Awards ™
Human Resources Suppliers 2007

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So the agreement made between Portugal and Macau, apart from being groundbreaking in achieving the aims of the Special Administrative Region of Macau, is also an increasingly important factor to be taken into consideration by businessmen and women, Portuguese investors in particular and Portuguese speakers in general, when making decisions related to their wish to expand their activity to the continent of Asia.

(b) it is an industry in the sector of the transformation, production and distribution of electricity, gas and water, or in construction, accommodation or catering and is located predominantly in Macau;

Portugal will allow a deduction of 95% of these dividends included in the tax assessment base, as long as the said share of 25% has been held continuously for the two preceding years or, or since the date of incorporation of the Portuguese company (when more recent).

Finally, when the income received by a Portuguese resident is exempt from tax under the agreement, Portugal may, nevertheless, take the exempt income into account in the calculation of the amount of the tax on other income (exemption with progression).

In turn, in the elimination of double taxation in Macau, it should be considered that, when a Macau resident receives income that under the agreement may be taxed in Portugal, this income is exempt from tax in Macau (therefore by the exemption method).

If the 1999 agreement was made in the light of the need to regulate the relationship between the two tax authorities, shortly afterwards the Special Administrative Region of Macau began to manifest its intention to widen its network of agreements in order to avoid double taxation in all Portuguese-speaking countries as a way of attracting investment from them. This intention was made clear by the government of the Special Administrative Region of Macau when it introduced a bill entitled "Tax system in the case of regional or international double taxation". The bill was justified by the fact that economic development on both a regional and international level has boosted both transnational economic relationships and the phenomenon of the movement of people between a number of tax jurisdictions and these two circumstances have inevitably given rise to double taxation situations.

With the same issue in mind, Macau has already presented proposals to the other Portuguese-speaking countries and has widened the application of the agreements to be made to mainland China. All the countries involved have shown their willingness to open negotiations on this proposal and, in the meantime, an agreement was signed with Mozambique in 2007 and negotiations are taking place with the rest of the countries.

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