

# **MACAO SPECIAL ADMINISTRATIVE REGION**

## **Law no. 1/2022**

### **Amendment to Law no. 5/2017**

### **Legal Regime for the Exchange of Tax Information**

#### **(Unofficial English Translation)**

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

#### **Article 1**

##### **Amendment to Law no. 5/2017**

Articles 5, 8 to 11, 14, 19 and 20 of Law no. 5/2017, amended by Law no. 21/2019, shall be revised as follows:

##### *«Article 5*

##### *Scope of Exchange of Information on Request*

*1. [...]:*

*(1) [...];*

*(2) [...];*

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

*1) Law no. 7/2017 “Non-Mandatory Central Provident Fund System”;*

*2) [Revoke.]*

*3) Decree-Law no. 32/93/M of 5 July, which approves “Financial System Act”;*

*4) Decree-Law no. 27/97/M of 30 June “Macau Insurance Ordinance”;*

*5) Decree-Law no. 6/99/M of 8 February;*

6) Decree-Law no. 83/99/M of 22 November.

2. For the application of the provisions of the preceding paragraph, any document or record, attributed to financial 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. [Revoke.]

## **Article 8**

### ***Procedures of Exchange of Information on Request***

1. [...].

2. [...].

3. Upon the Chief Executive's decision to accept the request, DSF shall inform the respective financial 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 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 offer a legitimate justification.

5. The information to be obtained shall be listed in the notifications to be sent to financial 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) [...];

(2) [...].

2. [...].

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 the exchange of information on request, based on the errors which exist in the information to be reported.

## **Article 10**

### **Scope and Rules of Automatic Exchange of Financial Account Information**

1. The automatic exchange of financial account information shall be applicable to financial institutions, which engage in financial activities and maintain the information of the financial accounts of foreign tax residents as described in Article 4, paragraph 2, subparagraph (1), with the exception of the non-reporting financial institutions as defined in the Chief Executive Resolution referred to in the subsequent paragraph.

2. [...].

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 clients who intend to open new 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 pursuant to the provisions in Paragraphs 3 and 5, any evidence relied upon and any records of the steps undertaken by financial institutions during the information collection procedures shall be retained for a period of five years beginning from the end of the year in which the procedures as required in Paragraph 2 of the subsequent Article have occurred.

7. [...].

8. Where financial institutions, their agents and staff, or any other persons engage in a transaction or arrangement where the intention, or one of the intentions, is to circumvent an obligation under the Instructions, such transactions or arrangements are considered null and void for the purpose of information exchange and Instructions' implementation, and do not hinder the implementation of Instructions.

## ***Article 11***

### ***Methods and Procedures of Automatic Exchange of Financial Account Information***

1. [...].

2. *In order for DSF to perform automatic exchange of financial accounts information as provided in the preceding paragraph, financial institutions shall provide DSF with information with respect to the preceding calendar year no later than 30 June of each calendar year.*

3. [...].

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

5. [...].

## ***Article 14***

### ***Administrative Penalties***

1. [...]:

(1) [...];

(2) [...];

(3) *Fail to comply with the obligations provided in Article 10 (5), (6) or Article 11 (4);*

(4) *Carry out transactions or arrangements referred to in Article 10 (8);*

(5) *(Text of original subparagraph 4).*

2. *Failure to comply with the provisions of Instructions shall be imposed a fine from MOP4,000 to MOP40,000.*

3. *When the same fact constitutes simultaneously an administrative violation of the provisions provided in the two preceding paragraphs, the offender is only imposed with the heavier penalty.*

4. *It is considered as recidivism whenever the same administrative violation is repeated within a period of two years after the day when the administrative decision to impose sanctions has become unappealable and provided that less than five years have elapsed since the date of the last administrative violation.*

5. *[Text of original Paragraph 3].*

6. *[Text of original Paragraph 4].*

## ***Article 19***

### ***Confidentiality***

1. [...].

2. *All financial institutions, as well as public services and bodies, 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. [...].

## ***Article 20***

### ***Exemption from the Duty of Secrecy***

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

## **Article 2**

### **Change of Reference**

The term “科處澳門幣” in the Chinese version of Article 14(1) of Law No. 5/2017 is changed to “科澳門元”.

## **Article 3**

### **Information Available to Offshore Institutions**

Apart from those of Chapter 3, the provisions in Law No. 5/2017 amended by the present law apply to the information available to offshore institutions whose authorizations to carry out offshore activities have expired or have been revoked.

## **Article 4**

### **Revocation**

Paragraph 1, subparagraph (3), point (2) and Paragraph 3 of Article 5 of Law no. 5/2017 are revoked.

## **Article 5**

### **Entry into Force**

The present law shall enter into force on 1 April 2022.

Approved on 24 January 2022.

The president of the Legislative Assembly, Kou Hoi In

Signed on 26 January 2022.

To be published by order of

Ho Iat Seng, the Chief Executive