

¶1-195 The Public Prosecutions Office

The Public Prosecutions Office of the SAR is independent in performing its powers and functions as defined by law.

All public prosecutors are employed under the Public Prosecutor-General, the head of the Public Prosecutions Office, who is nominated by the Chief Executive and appointed by the PRC Central Government.

¶1-200 Economic status

In more recent years, Macao has shifted from an industrial-based economy, which placed emphasis on the manufacturing sector, to a service economy that now focuses on the gaming and tourism sectors. In 2009, gaming activities contributed to over 50% of Macao's Gross Domestic Product (GDP) and gaming taxes accounted for around 60% of the government's revenue.

The GDP of Macao for the last five years is shown in the table below.

Year	GDP (MOP billion)	Real Growth % (at constant (2002) price)	Per-capita GDP (MOP '000)
2005	92.19	6.9	193.6
2006	113.71	16.5	222.7
2007	150.21	26.0	285.7
2008	173.55	12.9	316.1
2009	169.34	1.3	311.1

Since the liberalisation of the gaming industry, Macao has achieved steady economic growth and its international status has been enhanced. The concessions for the operation of casinos were expanded from initially one sole licence holder to three. Since then, the three licence holders have succeeded, with government approval, in issuing sub-concessions to other operators. In this regard, there are currently six operators in the gaming business. The expansion commitments from such operations, though bringing prosperity, have created heavy demands on infrastructure, management and human resources which are creating challenges for Macao.

With the boom in the gaming industry and the Individual Visit Scheme introduced by the PRC in 2003, the tourism sector is also undergoing rapid growth. According to the Macao Statistics and Census Bureau, the total number of visitors to Macao in 2009 amounted to 21.8 million. With several historical features successfully being recognised as World Cultural Heritage sites, Macao now attracts an increasing number of tourists and has become more diversified. The tourism industry is developing in parallel with the gaming industry.

The government's development policies seek to promote diversification in an effort to place greater emphasis on the manufacturing and export, finance, and real estate sectors in the future.

¶1-300 Financial status

With stable financial laws and regulations, Macao offers ample financial services and trading facilities to investors and enterprises. As there are no exchange control regulations, funds can move freely in and out of the SAR for ordinary business.

The local currency is the Macao Pataca (MOP) which is pegged to the Hong Kong dollar (HK\$) at the rate of HK\$1.00: MOP 1.03. The MOP is thereby indirectly pegged to the US dollar (US\$) due to the linkage of the HK\$ and US\$. Fluctuations in exchange rates between the MOP and other foreign currencies basically mirror those of the HK\$.

The Monetary Authority of Macao (AMCM) supervises and regulates all financial institutions such as banks, insurance companies and pension fund management companies. The AMCM, which operates at the Bureau level of government, also functions as a quasi-central bank and has authority over the management of foreign currency reserves of Macao.

The *Financial System Act of Macao* was promulgated in 1993. This Act combines the advice or suggestions of the Basle Committee on Banking Supervision and the objectives of the European Union to maintain harmony in banking legislation.

¶1-400 Relationship with China and international linkages

Macao is empowered to continue to maintain all relationships developed with the international community before implementation of the *Basic Law*. It is, therefore, able to conclude and implement agreements with foreign countries and international organisations in different fields, such as trading, finance, shipping, communications, tourism, culture, science, technology, export, etc.

Currently, Macao is a member of the World Trade Organisation (WTO), United Nations Educational, Scientific and Cultural Organisation (UNESCO), the World Tourism Organisation as well as the Economic and Social Committee. Over 160 international covenants and multilateral treaties are in force in Macao.

Under the principle of "One Country, Two Systems", Macao is a close trading partner with Mainland China. In order to promote joint economic prosperity and the development of Mainland China and Macao, the Closer Economic Partnership Arrangement (CEPA) was signed in October 2003 with further supplements — I, II, III, IV, V, VI and VII — being signed in 2004, 2005, 2006,

prescribed systems of accounting which included uniform formats for financial reports, specified codes of accounts and guidelines for bookkeeping entries.

Phase III

The third phase of the current Macao Taxation System started on 20 December 1999 after the handover of Macao to China.

Under the *Basic Law*, which is the constitutional document for the Macao SAR, Macao was given a high degree of autonomy and thereby now enjoys executive, legislative and independent judicial powers, including that of final adjudication. The Legislative Council of the SAR is the legislature of the SAR. The Chief Executive signs bills passed by the Legislative Assembly as well as setting government policies and issuing Executive Orders which cover all taxation areas.

In recent years, with the objective of stimulating the economy and promoting investment, some categories of tax such as inheritance and gift taxes were abolished. Other taxes were reduced, for example the complementary tax rate from 15% to 12%, the professional tax rate from 15% to 12% with an additional allowance of 25%, and stamp duty on property transfers to 3%. Also, temporary exemptions on industrial tax were given to all enterprises and more incentives were given to foreign investors to set up Macao offshore companies. With respect to incentives given to foreign investors, full exemption on major taxes was granted to such companies provided they carried out their approved business activities under the Macao offshore company laws.

¶3-200 Tax law in Macao

The *Basic Law* is the constitutional document for the Macao SAR whereby the previous capitalist system and way of life will be maintained for 50 years. Under the *Basic Law*, the laws, decrees, administrative regulations and other acts previously in force in Macao are maintained, except for those that conflict with the *Basic Law* or are amended by legislature or other relevant government authorities in accordance with legal procedures.

The following Articles from the *Basic Law* are highlighted as relating to taxation areas:

- Article 71 The Legislative Council of the Macao SAR shall exercise the powers and functions to enact, amend, suspend or repeal laws in accordance with the provisions of the *Basic Law* and legal procedures, and to decide on taxation according to government motions.
- Article 86 An administrative court shall be established in the Macao SAR which shall have jurisdiction over administrative and tax cases. If a party refuses to accept a judgment by the administrative court, he/she shall have the right to file an appeal with an intermediate court.
- Article 104 The Macao SAR shall have independent finances. All the financial revenues of the Region shall be managed and controlled by the Region itself and shall not be handed over to the Central People's Government. The Central People's Government shall not levy taxes in the Macao SAR.
- Article 106 The Macao SAR shall practise an independent taxation system. The Region shall, taking the low tax policy previously pursued in Macao as reference, enact laws on its own concerning types of taxes, tax rates, tax reductions, allowances and expenditures, and other matters of taxation. The taxation system for franchised businesses shall be otherwise prescribed by law.
- Article 110 The Macao SAR shall maintain the status of a free port and shall not impose any tariffs unless otherwise prescribed by law.

¶3-250 Tax policy and administration

The Finance Services Bureau of Macao, under the Secretariat for Economy and Finance which acts as the Ministry of Finance of the SAR, is also the tax authority for the Region. The Bureau manages the tax administration including collection, implementation of tax policies and inspection activities, and assists in the negotiation of international treaties concerning tax affairs.

In practice, the Finance Services Bureau handles all taxation related activities imposed by legislation, including registration procedures. Under the Bureau, there are several departments and divisions, each responsible for certain tax matters or operational duties. Taxpayers who disagree with assessments of tax may initially appeal to the Finance Services Bureau.

law, the Portuguese Republic has its jurisdiction or sovereign rights with respect to the exploration and exploitation of the natural resources of the seabed and sub-soil, and of the adjacent waters;

- (b) the term "Macao" means Macao Peninsula, Taipa Island and Coloane Island;
 - (c) the terms "a Contracting State" and "the other Contracting State" mean Portugal or Macao, as the context requires;
 - (d) the term "tax" means Portuguese tax or Macao tax, as the context requires;
 - (e) the term "person" includes an individual, a company and any other body of persons;
 - (f) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
 - (g) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean, respectively, an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
 - (h) the term "Portuguese national" means:
 - (i) all individuals possessing the nationality of a Contracting State;
 - (ii) all legal persons, partnerships and associations deriving their status as such from the laws in force in a Contracting State;
 - (i) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
 - (j) the term "competent authority" means:
 - (i) in the case of Portugal, the Minister of Finance, the Director-General of Taxation or their authorised representative;
 - (ii) in the case of Macao, the Governor of Macao, Secretary of Finance Services or its representative, and their succeeding bodies.
2. As regards to the application of the Agreement by a Contracting State any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that Contracting State concerning the taxes to which the Agreement applies. Additionally, interpretation from the tax law of the Contracting State should overwhelm those interpretations from other legislation of the Contracting State.

Article 4

Resident

1. For the purposes of this Agreement, the term "resident of a Contracting State" means:
 - (a) in the case of Portugal, any person who, under the laws of Portugal, is liable to tax therein by reason of his domicile, residence, place of head office, place of effective management or any other criterion of a similar nature. This term also applies to the Contracting State or of its administrative subdivisions or autonomous public entities. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State;
 - (b) in the case of Macao, any person who, under the law of Macao, is liable to tax therein by reason of his domicile, residence, place of head office, place of effective management or any other criterion of a similar nature. This term also applies to all taxpayers in person or in body corporate, domiciled company or self-disciplined body corporate under the Macao tax regulations.
2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:
 - (a) he shall be deemed to be a resident of the Contracting State in which he has a permanent home available to him; if he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closer (centre of vital interests);
 - (b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either Contracting State, he shall be deemed to be a resident of the State in which he has a habitual abode;
 - (c) if he has a habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident of the Contracting State of which he is a national;
 - (d) if he is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.
3. Where by reason of the provisions of paragraph 1, a person other than an individual is a resident of both Contracting States, then the person shall be deemed to be a resident of the State in which the place of effective management of the person's business is situated.

Article 19
Government Service

1.
 - (a) Salaries, wages and other similar remuneration, other than a pension, paid by the Government of a Contracting State or an administrative subdivision or autonomous public entities thereof to an individual in respect of services rendered to that Contracting State or subdivision or authority thereof shall be taxable only in that Contracting State.
 - (b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that other Contracting State and the individual is a resident of that other Contracting State who:
 - (i) is resident of Portugal and exercises activities in Portugal; or
 - (ii) did not become a resident of that Contracting State solely for the purpose of rendering the services.
2.
 - (a) any pension paid by, or out of funds created by the Government of a Contracting State or an administrative subdivision or autonomous public entities thereof to an individual in respect of services rendered to that Contracting State or subdivision or authority thereof shall be taxable only in that Contracting State;
 - (b) however, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that other Contracting State.
3. The provisions of Articles 15, 16, 17 and 18 shall apply to salaries, wages and other similar remuneration, and to pensions, in respect of services rendered in connection with a business carried on by the Government of a Contracting State or an administrative subdivision or a local authority thereof.

Article 20
Teachers and Researchers

1. An individual who is, or immediately before visiting a Contracting State, was a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of teaching, giving lectures or conducting research at a university, college, school or other similar educational institution or scientific research institution accredited by the Government of the first-mentioned Contracting State and is recognized as non-profitable by that Government of the first-mentioned Contracting State or under an official program of cultural exchange shall be exempt from tax in the first-mentioned Contracting State, for a period of two

years from the date of his first arrival in the first-mentioned Contracting State, in respect of remuneration for such teaching, lectures or research.

2. The exemption granted under paragraph 1 shall not apply to income from research if such research is undertaken not in the public interest but primarily for the private benefit of a specific person or persons.

Article 21
Students and Trainees

1. A student, business apprentice or trainee who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training shall be exempt from tax in that first-mentioned State on the following payments or income received or derived by him for the purpose of his maintenance, education or training:
 - (a) payments derived from sources outside that Contracting State;
 - (b) grants, scholarships or awards supplied by the Contracting State, or a scientific, educational, cultural or other tax-exempt organisation.

Article 22
Other Income

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that Contracting State.
2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.
3. Notwithstanding the provision of paragraphs above, items of income of a resident of a Contracting State not dealt with in the foregoing articles of this Agreement and arising in the other Contracting State may also be taxed in that other State.

Complementary tax payable for 2006 is MOP 42,740 but if the corporate taxpayer were to make the same annual profit of MOP 500,000 for each of the years 2007, 2008 and 2009, the complementary tax payable are compared as follows:

Taxable Profits	Year 2006		Years 2007, 2008 and 2009	
	MOP	Tax Rate	Tax Payable MOP	Tax Payable MOP
First	32,000	—	—	—
Next	33,000	3%	990	—
Next	35,000	5%	1,750	—
Next	100,000	7%	7,000	—
Next	100,000	9%	9,000	9,000
Balance	<u>200,000</u>	12%	<u>24,000</u>	<u>24,000</u>
Total	<u>500,000</u>		<u>42,740</u>	<u>33,000</u>

¶4-150 Exemptions from complementary tax

As stipulated in Article 9 of the Regulations, certain organisations are exempt from complementary tax such as government departments and their associated organisations, incorporated religious organisations, etc.

Under certain tax incentive schemes introduced by the government, some industrial organisations may apply for special relief from complementary tax. Also, offshore institutions are granted full exemption under Macao offshore laws.

Specifically in the Regulations, the following income categories are exempted:

- income generated from the capital of cooperative bodies;
- income of recognised religious organisations;
- income of individuals or entities taxed under other special taxation regulations and have, thereby, been expressly exempted from complementary tax in the related contracts;
- income specified in double taxation relief arrangements with Portugal and Mainland China;
- rental income from properties owned by commercial or industrial enterprises which are subject to property tax but any expenses incurred in generating such rental income are not deductible for complementary tax purposes;
- primary and subsidiary air transportation income derived in Macao by international air transportation businesses of foreign enterprises with residence or management offices outside Macao, in accordance with

official mutual exemption recognition agreements with the respective contracting states; and

- individual income derived solely from employment or services that is subject to Professional Tax.

¶4-200 Tax incentives

Subject to pre-approval by the government, the following incentives are available under the Complementary Tax Regulations:

- Certain industrial businesses which expand, restructure or transform their operations and meet specific prerequisites to enhance their industry sector or benefit the economy of Macao, may apply for exemption or reduction of complementary tax for up to 50% for periods of one to three years.
- Offshore institutions or companies may apply for full exemption of complementary tax for operations in Macao. Applications must be made before establishment of business and approvals will only be given after all steps and procedures are completed.
- Contracting companies participating in building government public housing construction projects may apply for a 50% reduction in complementary tax on profits generated from such projects.
- In special cases, the government may grant certain businesses a tax holiday of a defined number of years upon commencement of operations. Such specific exemptions will be published in the Government Gazette or other official notification to the individual taxpayer.
- The government, since 2004, has granted temporary special exemptions on certain types of taxes to all taxpayers. Such specific exemptions are usually announced at the time of the government annual budget before the beginning of every fiscal year, eg Law No 7/2007, Law No 15/2008 and Law No 24/2009 whereby all complementary taxpayers were exempted on the first MOP 200,000 of assessable profit.

TAXABLE INCOME AND DEDUCTIONS

¶4-250 Taxable income

In accordance with the tax regulations, all individuals and/or corporations are required to apply for a tax registration status with the Industrial Tax Department prior to the commencement of business in Macao. Businesses are to be registered in accordance with the industry classifications listed in the tables of the Industrial Tax Regulations. As a general rule, all income derived in Macao from business activities undertaken by individuals and corporations,

Example 4.13

A trading company commenced business in Macao in 2007 and it is the company's accounting policy to make a provision for bad debts with balance calculated at 5% of the ending balance of trade receivables as at each year end.

As at the years ended 31 December 2007, 2008 and 2009, the company's ending balances of trade receivables and the respective balances of provision for bad debts were as follows:

	As at 31 December		
	2007	2008	2009
Ending balance of trade receivables	12,000,000	10,000,000	15,000,000
Provision for bad debts (calculated @5% of the ending balance of trade receivables)	600,000	500,000	750,000

According to the Complementary Tax Regulations, the provision for bad debts should not exceed 2% of the ending balance of trade receivables. As such, the prescribed limits for the provision for bad debts are calculated as follows:

	As at 31 December		
	2007	2008	2009
Prescribed limit for the provision for bad debts (calculated @2% of the ending balance of account receivables)	240,000	200,000	300,000

The provision for bad debts that is deductible for taxation purposes are therefore calculated as below:

Opening Balance		Charge for the year		Written back		Closing Balance	
Deductible	Non-deductible	Deductible	Non-deductible	Taxable	Non-taxable	Deductible	Non-deductible
For the year 2007:							
-	-	240,000	360,000	-	-	240,000	360,000
Total: -		Total: 600,000		Total: -		Total: 600,000	
For the year 2008:							
240,000	360,000	-	-	40,000	60,000	200,000	300,000
Total: 600,000		Total: -		Total: 100,000		Total: 500,000	
For the year 2009:							
200,000	300,000	100,000	150,000	-	-	300,000	450,000
Total: 500,000		Total: 250,000		Total: -		Total: 750,000	

Example 4.14

If the trading company in Example 4.13 also incurred bad debts written off of MOP 300,000 for a specific debtor in the year 2009 which has gone bankrupt, the amount written off is deductible for taxation purposes.

4-359 Other provisions and reserves

With the exception of provisions for bad debts, provisions for stock losses and other statutory required provisions where guidance rules dictate deductibility, other general provisions for liabilities such as impairment on investment property, revaluation loss on financial assets, are non-deductible for complementary tax purposes.

On the other hand, specific provisions for other liabilities such as obligations arising from lawsuits, where costs or losses are identified in judicial proceedings, are deductible for complementary tax purposes.

Past provisions that are reversed because the presumed events no longer exist are treated as gains or profits of the current tax period. Any provisions which have been added back or disallowed in previous years, if and when they are reversed, are non-taxable.

Example 4.15

A company commenced its trading business in Macao in 2009 and other relevant information is as follows:

	MOP
Profit before tax for the year 2009	3,000,000
Trade receivables as at 31 December 2009	8,000,000
Stocks as at 31 December 2009	5,000,000
Expenses incurred:	
- Provision for bad debts	450,000
- Provision for stock losses	100,000
- Impairment on investment property	200,000

According to the Complementary Tax Regulations, the provision for bad debts and the provision for stock losses should not exceed 2% and 3% of the ending balance of trade receivables and the ending balance of stocks respectively. As such, the provision for bad debts is allowed up to MOP 160,000 (MOP 8,000,000 × 2%) and the provision for stock losses is allowed up to MOP 150,000 (MOP 5,000,000 × 3%) for deduction for complementary tax purposes for the year 2009. In addition, the provision for securities investments is a non-deductible item for taxation purposes.

Therefore, tax depreciation deductible will be MOP 8,250 (MOP 33,000 / 4 years). The excess depreciation will therefore need to be added back in calculating the assessable profits for taxation purposes.

Example 4.19

An entity leased a business premises for a lease term of five years in 2009 and incurred MOP 500,000 in decorating the office. The lease requires the entity to restore the premises to its original status when the lease expires. The entity estimates that the cost of restoration will be MOP 60,000 at the time the lease expires.

Given the above, the total cost of the office decoration is:

Cost of decoration	MOP 500,000
Initial estimate to restore the site is MOP 60,000 and assuming the discount rate is 6% thereon, the present value amounts to	<u>44,835</u>
Total initial cost of the decoration	<u>MOP 544,835</u>

For accounting purposes, depreciation will be charged annually at 20% (ie five years):

- MOP 108,967 (MOP 544,835 / 5 years)

The tax depreciation charge which can be claimed for each year will only be:

- MOP 100,000 (MOP 500,000 / 5 years)

Excess depreciation of MOP 8,967 will need to be added back in calculating the assessable profits for taxation purposes.

Example 4.20

An international entity has recently set up a branch department store in the shopping mall of a casino resort in Macao. Accordingly, the owner of the casino resort has required the retailer to refurbish the department store to a standard in keeping with that of the shopping mall every three years, ie to include refurbishment costs covering new finishes to internal walls, floor coverings, signs and lighting, shop fixtures and fittings, etc.

The department store opened in 2009 after incurring decoration costs of MOP 3,000,000. In order to comply with the refurbishment agreement, the entity has made a provision of 12% to cover the commitments for estimated future costs of MOP 360,000.

For accounting purposes, depreciation and amortisation calculated on the initial cost will be MOP 1,120,000 each year (MOP 3,360,000 / 3 years).

However, the depreciation claim on the provision for future refurbishing work will not be accepted by the tax authorities, and the excess depreciation of MOP

120,000 (MOP 360,000 / 3 years) will need to be added back to the assessable profit for taxation purposes each year.

Depreciation of capitalised service fees paid to non-registered entities

As mentioned above, taxpayers in Macao who pay services fees to non-Macao entities for the certain services must ensure that such entities have tax registrations in Macao before paying any service/subcontract fees according to Article 9 of the Industrial Tax Regulations. The services are:

- Civil engineering work or related investigation and research activities; and
- Services of scientific or technical nature, including general consultancy and support.

Otherwise, the Macao taxpayers would not be able to claim tax deductions on the depreciation of the service fee payments to the non-Macao entities which had been capitalised.

Example 4.21

An international hotel company established a hotel in Macao in 2008. The hotel company hired an engineering consultant from Mainland China, and a local contractor for the construction work of the Macao hotel. The total costs of the hotel building was MOP 180,000,000, of which MOP 60,000,000 and MOP 100,000,000 were paid to the engineering consultant from Mainland China and the local contractor respectively.

Since the engineering consultant from Mainland China did not make any tax registration in Macao, depreciation on the engineering consultancy work ie MOP 60,000,000 would not be allowed as deductible expenses for tax purposes.

Depreciation claimed by the hotel company for the hotel building was as follows:

Year	
2008	MOP 120,000,000 (180,000,000 – 60,000,000) × 20% = MOP 24,000,000
2009 and subsequent years	MOP 120,000,000 (180,000,000 – 60,000,000) × 4% = MOP 4,800,000

4-362 Operating lease expenses

According to the Financial Reporting Standards for operating leases, lease payments are recognised as an expense on a straight-line basis unless another systematic basis is more representative of the time pattern of the user's benefit. Therefore, any free rentals are to be spread over the total contract period when rent-free periods are offered in the contract terms. However, the Macao

¶4-820 Common non-deductible items

The following items are generally non-deductible against a taxpayer's business profits:

- Any excess portion of booked depreciation over allowable depreciation for taxation purposes;
- Any excess provisions for bad debts exceeding the allowable maximum of 2% of the outstanding balance of accounts receivable at the end of the year;
- Any excess provisions for losses on stock exceeding the limit of 3% of the inventory balance at year-end;
- Any donations in excess of the maximum deduction allowable for approved donations of 0.2% of the total revenue for the year;
- Any employee welfare expenses incurred in excess of the maximum deduction acceptable of 15% of employee remuneration;
- Any tax fines;
- Entertainment and travelling expenses directly incurred in connection with production or business operations are deductible only to the extent the tax authorities consider appropriate and any amounts considered excessive may be disallowed;
- Losses arising or compensation paid for incidents which are insurable but no insurance have been bought to cover such incidents;
- Provisions for complementary tax for the year;
- Bad debt losses with insufficient supporting documentation;
- Personnel expenses that are not reported by the employer for Professional Tax purposes; and
- Rental expenses without supporting documentation.

¶4-825 Distribution of dividends before tax

Distributions of dividends to shareholders may be arranged in the books/financial statements in either of the following two ways:

- Deduct distributions of dividends before the calculation of taxable profits for the year, in which case complementary tax thereon will not be paid for the year. The complementary tax liability on the dividends received will be the responsibility of shareholders individually as recipients of such income; or
- Arrange distributions of dividends to shareholders after the payment of complementary tax in which case the amounts will be tax-free in the hands of shareholders.

Example 4.24

For the year 2007, the taxable profit of a company is reconciled as follows:

	MOP
Business profit for 2007 per financial statements	3,330,000
Add-back:	
Non-deductible expenses	40,000
Expenses related to non-taxable income	30,000
	<u>3,400,000</u>
Deduct:	
Non-taxable income	(150,000)
Taxable profit for the year	3,250,000
Less:	
Dividends paid/payable	*(3,000,000)
Taxable profit for the year	<u>250,000</u>

Given a taxable profit for the year of MOP 250,000, the calculation of complementary tax is as follows:

	<u>Taxable Profits</u>	<u>Tax Rate</u>	<u>Tax Payable</u>
	MOP		MOP
First	200,000	-	Exempt
Next	50,000	9%	4,500
Total	<u>250,000</u>		<u>4,500</u>

* In the above case, shareholders will be taxed on the dividend income of MOP 3,000,000 by reporting the same in their tax returns.

Note — If the above taxpayer were to have an annual profit of MOP 150,000 in 2007, 2008 and 2009, it will be fully exempted from complementary tax according to Law No 7/2007, Law No 15/2008 and Law No 24/2009.

Examples 5.2

A Macao company has appointed three directors and their remuneration packages for 2009 are as follows:

		Remuneration MOP
Director A	Macao resident	300,000
Director B	Hong Kong resident	300,000
Director C	US resident	1,000,000

Professional taxes payable for the three directors are to be calculated as follows:

Director A

- (1) The professional tax calculation will be based on the ordinary tax rates for local resident employees; and
- (2) He/she is entitled to:
- a basic allowance of 25% of remuneration;
 - MOP 120,000 minimum personal allowance; and
 - 25% special tax rebate for 2009.

Director's remuneration		MOP	
		300,000	
Less: 25% basic allowance (MOP 300,000 × 25%)		<u>(75,000)</u>	
Assessable income		<u>225,000</u>	
	Assessable income MOP	Tax rate	Taxes MOP
Minimum personal allowance	120,000	-	Exempt
Next	20,000	7%	1,400
Next	20,000	8%	1,600
Next	40,000	9%	3,600
Next	<u>25,000</u>	10%	<u>2,500</u>
Total	<u>225,000</u>		9,100
Less: 25% special rebate for 2009 (MOP 9,100 × 25%)			<u>(2,275)</u>
Professional tax payable			<u>6,825</u>

Director B

- (1) The professional tax calculation will be based on the tax rate of 5% applicable for non-residents. If the tax payable is less than the tax amount calculated

according to rates for Macao residents, then the rates for Macao residents will apply.

- (2) He/she is entitled to:
- a basic allowance of 25% of remuneration; and
 - 25% special tax rebate for 2009.

	MOP
Director's remuneration	300,000
Less: 25% basic allowance (25% × MOP 300,000)	<u>(75,000)</u>
Assessable income	<u>225,000</u>
Tax thereon based on applicable tax rate of 5% for non-resident income (MOP 225,000 × 5%)	11,250
Less: 25% special rebate for 2009 (MOP 11,250 × 25%)	<u>(2,812)</u>
Professional tax payable	<u>8,438</u>

Since the tax amount of MOP 8,438 is higher than that of Director A (being a Macao resident with the same amount of income), the tax payable for Director B will remain at MOP 8,438.

Director C

- (1) The professional tax calculation will be based on the tax rate of 5% applicable for non-resident. If the tax payable is less than the tax amount calculated according to rates for Macao residents, then the rates for Macao residents will apply.
- (2) He/she is entitled to:
- a basic allowance of 25% of remuneration; and
 - 25% special tax rate for 2009.

	MOP
Director's remuneration	1,000,000
Less: 25% basic allowance (MOP 1,000,000 × 25%)	<u>(250,000)</u>
Assessable income	<u>750,000</u>
Tax thereon based on applicable tax rate of 5% for non-resident's income (MOP 750,000 × 5%)	37,500
Less: 25% special rebate for 2009 (MOP 37,500 × 25%)	<u>(9,375)</u>
Professional tax payable	<u>28,125</u>

Severance payments are made to employees as compensation calculated on the basis set out below.

Duration of service	Severance payments(*)
3 months to 1 year	7 days
1 to 3 years	10 days per year
3 to 5 years	13 days per year
5 to 7 years	15 days per year
7 to 8 years	16 days per year
8 to 9 years	17 days per year
9 to 10 years	18 days per year
10 years or above	20 days per year

* Maximum severance payment is MOP 14,000 × 12 months or MOP 168,000

Set out below is an example showing the severance payment calculation to an employee and the related tax calculation.

Example 5.9

An individual has been employed in a factory as a production manager for five years and his present salary is MOP 13,800 per month. Owing to a merger of production lines, the company decided to dismiss the individual at the end of 2008. The individual was given 15 days' advance notice and is entitled by law to be compensated with a severance payment of MOP 29,900 (MOP 13,800 × 13/30 months × 5 years) which is to be treated as non-taxable income.

Based on the above information, total income for 2008 will be:

Total employment income (MOP 13,800 × 12 months)	MOP 165,600
Severance payment (MOP 13,800 × 13/30 months × 5 years)	29,900
Total income earned	<u>195,500</u>

Calculation of assessable income:

Total income earned	MOP 195,500
Less: Non-taxable income — Severance payment	<u>(29,900)</u>
Net income	<u>165,600</u>

Example 5.10

If, in the above example, the employer offers extra compensation of MOP 20,000 to the individual upon termination, this extra amount is subject to professional tax and the revised calculation of assessable income will be:

Total employment income	MOP 165,600
Severance payment	29,900
Extra compensation	<u>20,000</u>
Total income earned	215,500
Less: Non-taxable income — Severance payment	<u>(29,900)</u>
Net income	<u>185,600</u>

¶5-600 Non-resident employees

According to Article 36 of the Regulations, professional tax is also payable by non-resident employees contracted in Macao such as artists, speakers, scientists, technicians, specialised workers, etc. Employers are obliged to withhold tax from the non-resident employees' remuneration for professional tax purposes. The applicable tax rate for this category is the same as for ordinary residents with the exception of a base rate of 5% even if the remuneration does not reach the minimum exemption level of MOP 120,000.

An example of the above is a professional singer from Hong Kong entering into a contract to perform at a concert to be held in Macao. If the remuneration in 2009 is MOP 50,000, the employer is required to deduct 5% from the remuneration after the 25% allowance and the 25% tax incentive in 2009 (ie MOP 50,000 × 75% × 5% × 75% = MOP 1,406) as the singer does not qualify for the temporary exemption of MOP 120,000. Therefore, the net amount to be received by the singer will be MOP 48,594 (ie MOP 50,000 – MOP 1,406).

Table 6.1

Property tax rates

Tax is chargeable on properties located in Macao and is usually payable by the owner on:

- Leased properties — 16% of rental income
- Non-leased properties — 10% of rental value that is determined by the authorities

Example 6.1

An individual owns two property units and leases out unit A to a tenant for a monthly rental of MOP 10,000. Unit B is maintained for self-use.

In the past, property tax was calculated as follows:

Unit A — Leased	MOP	Unit B — Non-leased (self-use)	MOP
16% of rental income (MOP 10,000 × 12 months × 16%)	19,200	10% on deemed rental value determined by the tax authorities (say MOP 10,000 × 12 months × 10%)	12,000
5% surcharge for stamp duty (MOP 19,200 × 5%)	960	5% surcharge for stamp duty (MOP 12,000 × 5%)	600
Property tax payable	20,160	Property tax payable	12,600

Total tax payable: MOP 32,760

As a result of the temporary exemption on property tax for 2009 (payable in 2010), property tax payable will currently be calculated as follows:

Unit A — Leased	MOP	Unit B — Non-leased (self-use)	MOP
16% of rental income (MOP 10,000 × 12 months × 16%)	19,200	10% on deemed rental value determined by the tax authorities (say MOP 10,000 × 12 months × 10%)	12,000
Special tax incentive for 2008	(3,500)	Special tax incentive for 2008	(3,500)
Property tax payable	15,700	Property tax payable	8,500
5% stamp duty (MOP 15,700 × 5%)	785	5% stamp duty (MOP 8,500 × 5%)	425

Unit A — Leased	MOP	Unit B — Non-leased (self-use)	MOP
Total tax payable	16,485	Total tax payable	8,925

Aggregate tax payable: MOP 25,410

¶6-300 Property taxpayer considerations**Lease contracts**

Where a property is rented by a lessor to a lessee, the lessor should submit a declaration (Form M/4) to the tax authorities within 15 days from the date of signing the lease contract. The following income are also subject to property tax:

- Income from renting out machines and/or furniture placed in a leased property;
- Income from renting out a property wall for advertising signboard purposes.

Rental income below property market values

The taxable value of leased properties is usually calculated according to the rental charges declared by the property owner. However, where rental charges on leased properties are deemed to be below the property market values, the authorities may deem the property to be a non-leased property and levy property tax on the assessable taxable value to be determined by them.

For example, a property owner is allowing a relative to stay in her property unit. Even though the owner has not received any rental income from the unit, she is liable to pay property tax annually. The tax authorities will deem it as a non-leased property and an assessable value will be estimated by the authorities and will be taxed at 10%.

Example 6.2

A resort owner had entered into a non-cancellable rental contract with a boutique owner for a term of three years commencing on 1 October 2009. In order to promote the mall section of the resort, a three months' rent-free period was granted to the boutique owner.

The details as stipulated in the contract were as follows:

Rental period:	1 October 2009 to 30 September 2012
Monthly rental charge:	MOP 30,000/month
Free rental:	1 October 2009 to 31 December 2009
Total contract value:	MOP 990,000

Business Sector	Activities	Government Authority
Telecommunications & IT	Telecommunications operators	Bureau of Telecommunications and Information Technology Regulation
	Operator of Internet services	Bureau of Telecommunications and Information Technology Regulation
	Operator of satellite and cable TV	Bureau of Telecommunications and Information Technology Regulation
Professional Services	Medical	Health Bureau
	Accountancy	Finance Services Bureau
	Legal	Lawyers' Association
	Architectural and engineering	Lands, Public Works and Transport Bureau
Financial Services	Banking	Monetary Authority
	Insurance	Monetary Authority
Transportation	Cargo transportation	Economic Services Bureau
	Re-exporting	Economic Services Bureau
Public Transportation	Airline services	Civil Aviation Authority
	Public vehicles including taxis, buses and inter-urban transportation	Transport Bureau
	Passengers vessels	Maritime Administration

¶7-300 General procedure for industrial tax registration

According to Article 7 of the Regulations, there are seven steps in the registration process as set out below.

(i) Declaration by taxpayer

The taxpayer should submit an application (M/1 Form) to the Finance Services Bureau 30 days before the commencement of business. The name of the applicant, intended commencement date and operating address of the business, initial capital, line(s) of business following the code of the Industrial Tax General Table of Activities etc, should be stated in the application.

(ii) Initial classification

Upon receipt of the declaration form from the taxpayer, the Finance Services Bureau will proceed to process the initial classification

according to the codes of the General Table of Activities as applied for by the taxpayer.

(iii) Provisional calculation and collection

The taxpayer will receive a payment notice specifying the total amount of industrial tax to be paid according to the number of codes applicable from the General Table of Activities.

(iv) Payment of tax and commencement of operations

The taxpayer can then pay the industrial tax and commence operations.

(v) Report from inspectors

Once the taxpayer has commenced operation, an inspector from the industrial tax department will undertake a physical inspection of the taxpayer's business to verify that the nature of the business is the same as that declared. An inspection report will then be prepared.

(vi) Final classification

After the report of the inspection has been processed, the taxpayer's declaration will be confirmed or amended by the authorities.

(vii) Confirmation of provisional calculation, cancellation or additional calculation

If the report from the inspector is positive, provisional payment/collection will be confirmed. Otherwise, the application will be rejected or additional industrial tax will be levied to cover the insufficient initial collection amount.

¶7-400 Concept of business establishments

According to Article 17, the term "establishment" means a tax registration unit or business where the code-specified activities are intended to take place. An entity or a taxpayer may have several establishments in different locations and each establishment may consist of several code-specified activities. Tax is calculated based on each activity and a collective tax notice is issued for each establishment.

Code number	Activities	Annual Tax MOP
PRODUCTION OF METAL PRODUCTS, MACHINES, EQUIPMENT & TRANSPORTATION VEHICLES		
38.11.10 to 38.53.00	<i>Metal Products:</i> Construction materials such as hardware, locks, metallic furniture, gates, window frames, etc	300
	<i>Machines:</i> Factory motors and turbines, agricultural machines, metal and wood-making machines, textile machines, food processing machines, other industrial machines, etc	
	<i>Equipment:</i> Non-electric equipment, office equipment, media equipment, electrical devices and appliances, computers, batteries, light bulbs, etc	
	<i>Transportation Vehicles:</i> Manufacture and maintenance of ships made of metal, wood and other materials, ship motors, locomotives, vehicles, motorcycles/bicycles, aircraft, etc	
	<i>Others:</i> Scientific devices, weighting and testing equipment, photographic and spectrum devices, clocks and watches, etc	
OTHER TRANSFORMATION INDUSTRIES		
39.01.00 to 39.09.99	Include: Manufacture of jewellery, musical instruments, sporting equipment, umbrellas, toys, accessories, etc Manufacture of ivory, horn and bone products, artificial flowers, Chinese incenses, metallic key rings, pens, wigs, signboards and other advertising products, etc	300

Code number	Activities	Annual Tax MOP
ELECTRICITY, GAS & WATER		
41.01.00 to 42.00.00	Include electricity generation, water supply, production and distribution of fuel gas, steam, hot water, etc	300
CONSTRUCTION & PUBLIC FACILITY PROJECTS		
50.00.10 to 50.00.90	<i>Construction work</i> , including geological inspections, work on foundations, piling, building construction and maintenance, public facilities projects, etc	500
	<i>Installation of building facilities</i>	300
WHOLESALE		
61.01.10 to 61.09.90	<i>Food:</i> Fish, seafood, meats, fruits and vegetables, etc	300
	<i>Drinks:</i> Juices, non-alcoholic drinks, etc	
	<i>Liquor & Tobacco:</i> Spirits, tobacco, etc	
	<i>Fuel:</i> Coal, petroleum, etc	
	<i>Metals:</i> Iron, aluminium, gold, etc	
	<i>Clothing:</i> Garments, shoes, gloves, etc	
	<i>Construction Materials:</i> Cement, clay, etc	
	<i>Others:</i> Wood products, electrical devices, medicines, furniture, equipment, paints, paper, etc	
	<i>Wholesale Agencies</i>	1,500
	<i>Importers & Exporters</i>	1,500

Table 11.1

Taxable Items	Activities	Tax Rate
Entertainment	Karaoke establishments, bars and nightclubs	5%
Labour services	Hotels, restaurants, fitness centres, massage parlours, etc	5%

¶11-400 Exemptions

According to Article 4 of the Regulations, exemptions from tourism tax are given to the following:

- (i) tenements, inns, etc;
- (ii) beverage service providers, such as drink stands, tea houses, cafes, etc;
- (iii) food service providers, such as fast food courts, noodle shops and similar outlets.

The exemptions are intended to target the relatively lower cost service areas.

The following items are also not subject to tourism tax:

- Any subsidiary charges such as laundry or communications in the case of hotel accommodation; and
- Any subsidiary service charge up to 10%.

Since 2002, the Macao Government has granted temporary exemption from tourism tax for all restaurants in Macao, and the exemption is still effective for 2010 according to Law No 24/2009 of December 2009.

Example 11.1

A tourist from Japan stayed in a hotel in Macao for two nights. A full invoice from the hotel is presented on check-out with the following details:

	MOP
Room accommodation — 2 nights @ MOP 1,500	3,000*
Service charge @ 10%	300
	3,300
Laundry charges	250
Long distance calls	200
	3,750
Tourism tax @ 5% on MOP 3,000	150*
Total charge	3,900

* The tourism tax of MOP 150 is only charged on the room accommodation and such tax is collected by the hotel operator for remittance to the Finance Services Bureau.

Example 11.2

Hotel M in Macao earned the following operating income in July 2009.

	MOP
(a) Room revenue	9,000,000
(b) 10% service charge on room revenue	900,000
(c) IDD telecom income	60,000
(d) Laundry income	50,000
(e) Sauna service income	1,000,000
(f) 10% service charge on sauna service income	100,000
(g) Karaoke income	500,000
(h) 10% service charge on karaoke income	50,000
(i) Restaurant income	1,200,000
(j) 10% service charge on restaurant income	120,000

Tourism tax payable for the month is calculated as follows:

	Income MOP	Tax rate	Tax MOP
(a) Room revenue	9,000,000	5%	450,000
(b) Sauna service income	1,000,000	5%	50,000
(c) Karaoke income	500,000	5%	25,000
Total tourism tax payable			<u>625,000</u>

¶11-500 Obligations of taxpayers

Taxpayers who provide taxable services are required to issue appropriate pre-numbered receipts or equivalent documents to customers. All such receipts should clearly indicate the name of the service provider or entity, the type of service rendered, the cost of service being charged, the withholding tax calculated, etc. All these receipts together with appropriate books of account should be properly retained for five years as evidence and/or for verification purposes.

Example 13.7

A famous international chain-store company started its business in Macao in 2007. The company signed a three-year lease agreement in a resort hotel facility with the condition that the lease can be terminated with two months' prior notice.

The chain-store company started the business after expending MOP 3,000,000 in electronic machinery. Depreciation claims were made as follows:

Year	
2007	MOP 3,000,000 × 20% = MOP 600,000
2008	MOP 3,000,000 × 20% = MOP 600,000

At the end of year 2008, the company decided to close the store and start another store in another resort hotel. Accordingly, the electronic machinery costs net of depreciation of MOP 1,800,000 (MOP 3,000,000 – MOP 600,000 – MOP 600,000) are to be written off.

The loss of MOP 1,800,000, according to the Depreciation Regulations, will not be tax-deductible since it did not arise through usual wear and tear.

¶13-800 Depreciable property

Properties, such as factories or commercial buildings, are classified under Group I fixed assets in the Depreciation and Amortisation Rate Tables. For taxation purposes, purchasing property with land will not be accepted as being fully depreciable and it is the responsibility of the taxpayer to clarify what portion of the consideration represents the cost of land which is deemed to be non-depreciable. According to Article 6 of the Regulations, in the absence of details provided regarding the cost of land, a deduction of 20% of the total price of the purchased property will be considered as non-depreciable, ie depreciation charges are only calculated on the remaining 80% plus any direct costs of the purchase.

The first year of depreciation (after stamp duty has been paid) is deemed to be exceptional and could be deductible at 20% of the depreciable value. No depreciation is allowable on unstamped property.

Although there are no capital gains taxes in Macao, profits on disposals of properties by a Macao entity are taxable for complementary tax purposes.

¶13-900 Renovations and deferred maintenance expenses

Costs incurred on technical transformation, renovation, repairs and maintenance of fixed assets exceeding 10% of their original cost are considered to be depreciated over the useful lives of the assets for taxation purposes. Such costs should not be fully charged to the profit and loss account in one year and

can only be amortised over the useful life of the fixed assets on the straight-line basis.

¶13-930 Filing of complementary tax and professional tax returns

Depreciation allowances for taxpayers are tax deductible in the Complementary Tax and Professional Tax Regulations. Taxpayers can declare their depreciation expenses and disposal gain/loss on fixed assets by filing a M/3 form and a M/3A form respectively. While details of assets are not required for all asset groupings, in the case of property assets under Group 1, details should be listed stating clearly the location, the cost of land and buildings and other relevant information.

¶13-950 Appendix**Depreciation rate tables**

		Rate (%)	Years
Group 1 — Buildings and Other Structures			
1.1	Residential, commercial and administrative buildings	2	50
1.2	Industrial buildings (including garages, gas stations, commercial car parks, hotels and similar buildings and warehouses)	4	25
1.3	Light buildings (fibre, wood, etc)	20	5
1.4	Metallic storerooms for liquids or combustibles	10	10
1.5	Metallic and concrete docks	14.29	7
1.6	Other buildings and structures	8.33	12
Group 2 — Installations			
2.1	Central air conditioning and heating systems (including freezers)	14.29	7
2.2	Electricity and gas production and distribution systems	10	10
2.3	Water collection and distribution systems	10	10
2.4	Sprinkler and security systems	10	10
2.5	Radio and television systems	14.29	7
2.6	Central telecommunications, radio phone and radio telegraphic systems	10	10