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LEGAL WISE BY MDME | AUTOMATIC EXCHANGE OF INFORMATION IN THE AGE OF GLOBAL TAX TRANSPARENCY

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The growing concerns across multiple jurisdictions with the promotion of tax transparency and fighting cross-border tax evasion have led to a global commitment towards implementing international tax information exchange. The movement started in 2010 with the Foreign Account Tax Compliance Act in which the United States of America proceeded with the unilateral implementation of the fiscal law for foreign accounts requiring all international financial institutions to provide information regarding nationals or residents of the United States. This was followed in July 2014 by a standard system of multi-lateral automatic exchange of information introduced by the United Nations Organization for Economic Cooperation and Development, designated as the "Common Standard on Reporting and Due Diligence for Financial Account Information" (the "CRS").

The Macau Government was very responsive with their intent to become involved in such a movement, firstly by implementing the CRS through the Macao Monetary Authority guidelines and recently, on the 11th of April 2017, by reinforcing the same with the introduction of a legislative proposal amending the existing Law no.20/2009. The legislative proposal entitled "The Tax Information Exchange Law" sets out the different methods to exchange information and also a regime of administrative penalties for non-compliance with the provisions.

The CRS regulates the general requirements and due diligence procedures to be applied by every reporting financial institution in respect to the exchange of financial information pertaining to more than 100 participant jurisdictions. The local legislative proposal, on the other hand, will contribute by aligning the Macau jurisdiction with the international standards and methods for automatic exchange of information.

According to the CRS regulations, financial institutions will be required to collect certain personal data from their customers, including their names, addresses, jurisdictions of residency, tax payer identification numbers and the date of birth of each account holder. In addition, and more importantly, the required financial information will also cover data related to investment income, account numbers, balances and sales proceeds from financial assets for each reporting period in order to determine the reportable accounts and entities.

Under the automatic exchange of information, if customers are identified to be tax residents of jurisdictions with which Macau has entered into international agreements, the collected information will be shared with local tax authorities and with other relevant overseas tax authorities.

In respect of the banking sector, upon the opening of new accounts, banks will firstly need to determine if the account holder is a reportable person by requiring a self-certification form from their customers/account holders. If the self-certification form establishes that the account holder is a resident for tax purposes in a reportable jurisdiction, the bank account will be automatically treated as a reportable account.

Another crucial aspect to bear in mind in relation to reportable accounts, is the criteria based on the existing balance of an account. For instance, with respect to preexisting accounts, if the balance of an account exceeds a certain amount, enhanced due diligence and review procedures will be required regarding such accounts. On the other hand, a different and simpler set of procedures will be adequate to handle accounts with a balance lower or equal to MOP2,000,000.

The implementation of the automatic exchange of information together with the new legislative proposal, is another step in the right direction for Macau, and it will certainly contribute to the establishment of the

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