

Stamp Duty for Grants of Use

The Macau Last Instance Court (TUI) has concluded in a judgment issued recently against the Macau Finance Bureau (DSF) that a grant of use a shop (GOU) is not subject to stamp duty for lease agreements and, hence, is not subject to stamp duty at a 0.5% tax rate on the value of such agreements for the whole duration of the contract.

The GOU is an atypical contract, where the provisions of the Macau Civil Code ruling (commercial) lease agreements have no applicability whatsoever and tax law does not allow application by analogy or extension of the stamp duty provisions for lease agreements, as imposed by DSF.

MdME's retail sector expert Tiago Vilhena commented on this judgment on yesterday's edition of Macau Daily Times:

(...) a recent development made the retail industry smile again: the Macau Last Instance Court (TUI) has concluded in a judgment issued two weeks ago that GOUs are not subject to stamp duty for lease agreements, as tax law does not allow application by analogy or extension, as imposed by DSF. In addition, according to TUI, "there was no evidence that the desire of the legislator was to include, in the concept of leasing, the contracts of the shops in the shopping centers," as he could have done so when the said Ordinance came up for revision in 2001, 2011 and 2012, and these type of agreements had already been widely spread across Macau integrated resorts since the COTAI inception. As a result, the tax paid by the applicant (roughly MOP4million) shall be reimbursed by DSF.

The decisions of TUI are final and without appeal and although the rule of precedence is not an established rule in Macau's legal system, the lower courts tend to follow the interpretations of TUI. Hence, the present ruling is of particular relevance, and DSF is expected to abide by it.(...)

To read the full article please follow the link:

<http://macaudailytimes.com.mo/legal-wise-mdme-retail-industry-versus-finance-bureau.html>



Tiago Vilhena
Senior Associate
Head of Corporate Services
tv@mdme.com.mo
T: +853 2833 3332
M: +853 6696 6133



MLGTS LEGAL CIRCLE
INTERNATIONAL TIES WITH THE PORTUGUESE-SPEAKING WORLD

Angola | Macau | Mozambique | Portugal

Member

LexMundi
World Ready