

## Tax

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# Tax Analysis

## Enactment of Macao's New Tax Code and Interpretation of Key Points

On 16 December, 2024, the Legislative Assembly of Macao passed the bill for approval of the Tax Code (hereinafter referred to as the "Bill") after detailed discussions and voting. The Bill was officially promulgated as Law No. 24/2024 on 30 December, 2024. Structurally, the Bill is divided into two parts:

- I. The Approval Law of the Tax Code (twenty-nine articles); and*
- II. The main body of the Tax Code (three hundred and twelve articles).*

The Approval Law of the Tax Code (Part I) primarily focuses on revising and adapting the existing tax regulations in Macao, which includes modifications and updates to specific articles of the legislation such as the Industrial Tax Regulation, Professional Tax Regulation, and Complementary Tax Regulation. These revisions aim to align with the new regulations outlined in the main body of the Tax Code while incorporating mechanisms that align with international tax standards. For example, this part introduces important concepts such as transfer pricing and elimination of double taxation in the Complementary Tax Regulation. For details of transfer pricing introduced in Macao, please refer to our tax newsletter "Macao officially introduces the new concept and rules for transfer pricing" published on 31 December, 2024.

The main body of the Tax Code (Part II) establishes a unified foundation of tax concepts, taxing principles, and regulations that govern the tax legislative framework and integrated with the legal framework of Macao. It introduces several key new taxation concepts, including definitions of tax resident, permanent establishment, territorial applicability (territorial principle), tax domicile, and tax agent, thereby consolidating and clarifying the foundational structure of Macao tax system.

According to Article 29 of the Approval Law of the Tax Code (Part I), the law and its approved Tax Code will officially come into effect on January 1, 2026<sup>1</sup>.

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<sup>1</sup> The amendments to Article 58 of the Stamp Duty Regulation (as revised by Article 14 of the law) and the Stamp Duty Tax Payment Schedule (as revised by Article 15 of the law) shall take effect on the day following the publication of the law. Articles 24 and 76 of the Tax Code approved by the law shall enter into force on 1 January, 2025.

In this tax analysis, we will highlight and interpret the key points of the Tax Code that have garnered attention from the industry. Drawing insights from recent seminars organized by the Macao Financial Services Bureau (the "FSB"), we will provide an analysis on the new regulations and their implications.

Tax Resident

Article 24 of the main body of the Tax Code introduces the conditions of constituting tax resident in Macao for both individuals and legal entities (including legal equivalents under the law), aligning with international standards for tax resident. The conditions are summarized in the table below:

Individuals	Legal Entities
(1) Individuals who stay in the Macao Special Administrative Region for <u>183 days or more</u> (continuously or intermittently) during the relevant tax year; or (2) Individuals who stay less than 183 days but have a domicile in Macao on or before December 31 of the tax year and meet the criteria from which it can be inferred that the individual intends to maintain and occupy such domicile as the <u>habitual residence</u> .	Legal entities (and legal equivalents under the law) that have their domicile or effective management and control in the Macao Special Administrative Region.

For individuals, the criteria for qualifying as tax resident is based on the commonly adopted 183-day rule and domicile standard. Regarding the domicile standard, based on the interpretation delivered by the FSB during a recent seminar, the determination of habitual residence typically involves an analysis under Article 30 and 83 of the Civil Code. Specifically, individuals may submit documents or evidence to the FSB demonstrating a close and actual connection to a domicile which has been used as fixed and actual centre of living. Examples include proof of employment in Macao by a spouse or parent, or enrolment of children in Macao schools, etc.

For legal entities (and legally equivalent entities), the criteria for qualifying as tax resident has also adopted the commonly used domicile standard and standards for the effective management. Generally, the domicile standard refers to the place of registration. With respect to the standards for the effective management, Macao has not yet specified the criteria for determining an effective management. With reference to neighbouring tax jurisdiction such as Mainland China, the determination of where the effective management is located typically involves a comprehensive analysis of factors including the location of decision-making board, the residence or workplace of senior management, and the storage of key financial records and meeting minutes. The specific criteria for determining effective management and control in Macao remain to be clarified through future implementation rules (if any) or observations from actual tax practice.

It’s worthwhile to note that Article 24, pertaining to tax residency concepts, has already come into effect since January 1, 2025. In the meantime, taxpayers who meet the aforementioned definitions of Macao tax residents may, at their needs and discretion, apply to the FSB for a Certificate of Macao Tax Resident, irrespective of whether any applicable Double Taxation Agreements (“DTA”) in place.

Permanent Establishment ("PE")

In the absence of applicable DTA, Article 4 of the main body of the Tax Code introduces definition of PE in Macao, including three common types:

1. **Fixed PE** (Paragraph 1): Any fixed place of business used for carrying out commercial or industrial activities, especially a place of management, a branch, an office, a factory, a workshop, a mine, an oil wells, gas well, quarry, or any other place of extraction of natural resources, as well as facilities established by non-local entities for holding exhibitions, conferences, seminars, or trade fairs in Macao, shall be considered as a permanent establishment.

2. **Construction PE** (Paragraphs 2, 3, and 4): Construction, installation, or assembly sites or workplaces, along with coordination, supervision, or monitoring activities related to such sites or workplaces, or facilities used for detecting or exploring natural resources, such as platforms or drilling ships, shall only be regarded as a permanent establishment if their duration exceeds six months.
3. **Agency PE** (Paragraphs 6 and 7): If a person acting on behalf of an enterprise in Macao is not an independent agent and either habitually concludes contracts or plays a principal role leading to the conclusion of contracts that are routinely concluded without material modification by the enterprise, provided such contracts meet certain conditions<sup>2</sup>, they shall also be considered as constituting a permanent establishment. However, this does not apply to activities that are solely of a preparatory or auxiliary nature.

Additionally, Article 4 of the main body of the Tax Code introduces certain commonly adopted preparatory or auxiliary activities (Paragraph 5) that do not constitute as PE, including:

1. The use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
2. The maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
3. The maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
4. The maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
5. The maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity not specified above;
6. The maintenance of a fixed place of business solely for any combination of activities mentioned above.

Notably, Macao has introduced a distinctive provision for fixed PE, which includes facilities established by non-local entities for holding exhibitions, conferences, seminars, or trade fairs in Macao. This provision aligns closely with Macao's strategic focus on developing its exhibition and conference industry. On the other hand, the threshold for constituting a construction PE is set to be six months.

Based on the commentary document of the Bill, the provisions regarding PE in Macao closely resemble those of the Organisation for Economic Co-operation and Development (OECD) Model Tax Convention on Income and Capital, rather than those of the United Nations (UN) Model<sup>3</sup>. Consequently, Macao's provisions on PE do not include service PE commonly found in DTAs, which typically involve situations where an enterprise from one jurisdiction provides services in another through an individual (or a team) who remains in the other jurisdiction for a continuous or cumulative period exceeding 183 days or six months.

However, this does not imply that foreign companies providing services in Macao are exempt from Macao tax obligations. According to Article 9 of the prevailing Industrial Tax Regulation (engaging enterprises or companies without a stationed establishment in Macao):

*"1. Any individual or entity with a stationed establishment located in this region, when engaging enterprises or companies without a stationed establishment in this region to provide services or conduct activities in accordance with the provisions of paragraph 3 of this article, must certify that the beneficiary entity has complied with the provisions of Article 8<sup>4</sup> before making each payment."*

Simultaneously, according to Article 24, paragraph 3, item 4 of the Approval Law of the Tax Code:

*"Paragraph 3. Amendments to the terms of the Industrial Tax Regulation as follows:*

*Item 4. Replacement of the term 'Stationed Establishment' with 'Permanent Establishment'."*

The following is the revised Article 9 of the Industrial Tax Regulation (engaging enterprises or companies without a permanent establishment in Macao):

<sup>2</sup> I. Contracts concluded in the name of the enterprise;

II. Contracts for the transfer of the ownership of, or for the granting of the right to use, property owned by that enterprise or that the enterprise has the right to use, or

III. Contracts for services provided by the enterprise.

<sup>3</sup> Service PE is only stipulated in the main body of UN Model Double Taxation Convention, whereas the main body of OECD Model Tax Convention on Income and on Capital do not include provisions related to service PE.

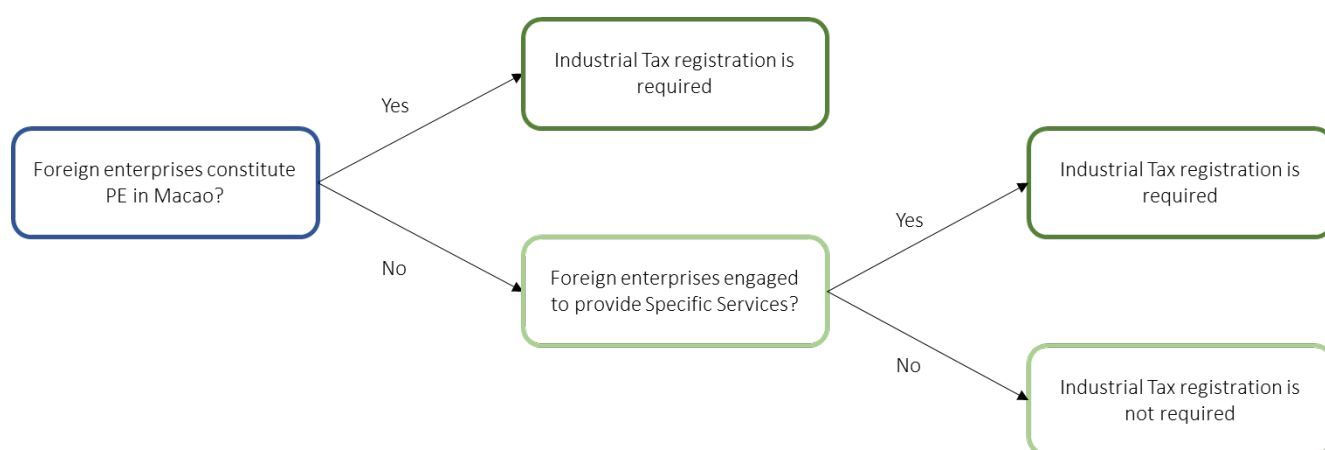
<sup>4</sup> The Article 8 refers to Industrial Tax registration.

*"I. Any individual or entity with a permanent establishment located in this region, when engaging enterprises or companies without a permanent establishment in this region to provide services or conduct activities in accordance with the provisions of paragraph 3 of this article, must certify that the beneficiary entity has complied with the provisions of Article 8 before making each payment."*

The services referred to in the current Article 9 of the Industrial Tax Regulation include any civil engineering or related survey and research activities, provision of any scientific or technical services, including general consulting or supportive services (hereinafter referred to as "Specific Services"). It is evident that the scope of these services are extensive, adequately covering scenarios of traditional service PE.

Moreover, according to the interpretation delivered by the FSB during the recent seminar, when foreign enterprises constitute a PE in Macao and carry out commercial or industrial activities, they are also required to perform Industrial Tax registration, and Complementary Tax and Professional Tax filing (if applicable) in accordance with relevant tax regulations.

Based on the analysis above, we have summarized a simplified analytical approach regarding PE and Article 9 of the Industrial Tax Regulation after the implementation of the Tax Code, as illustrated in the diagram below:



This tax analysis approach is for reference only. Practical views remain open and subject to observations after the Tax Code comes into effect, including considerations on such as whether the services fall under the category of Specific Services, whether the services are rendered in Macao, and the duration of the service period, etc.

## Territorial Principle

Article 14 of the main body of the Tax Code has clarified tax regulations applying to taxable events occurring within the Macao Special Administrative Region, indicating that Macao's tax system will adhere to the territorial principle. Under this principle, please note the exception clauses specified in the newly added Article 2, Paragraph 2 of the Complementary Tax Regulation:

*"II. Complementary tax is also levied on dividends, interests, royalties, and proceeds from property disposal obtained or derived from outside the Macao Special Administrative Region by entities specified in Article 1-A(4) who are tax residents of the Macao Special Administrative Region."*

The major components of exception clauses under the territorial principle are as follows:

1. The entity is a member of a multinational corporation;
2. The entity is a Macao tax resident; and
3. The entity derives passive income — specifically only limited to dividends, interests, royalties, and proceeds from property disposal — from outside Macao.

The primary consideration for establishing such exception clauses was intending to prevent base erosion and align with European Union (EU) requirements. With reference to the neighbouring tax jurisdictions, such as Hong Kong

which also adopts territorial principle, Hong Kong introduced Foreign Source Income Exemption (FSIE) in 2023 with a view of circumventing its tax systems to be regarded as not complying with international standards, particularly concerning the exemption of foreign income from taxation being labelled as "harmful tax competition". Consequently, Hong Kong's FSIE regime requires companies to meet specific economic substance criteria (such as adequate employees, operating expenses, and actual business activities) to qualify for tax exemptions on passive income derived from outside Hong Kong.

In comparison, due to different policy positioning between Hong Kong and Macao, Macao has adopted a relatively straightforward and simplified approach towards foreign-sourced passive incomes. It does not require considerations of economic substance in Macao. Instead, foreign-sourced passive incomes derived by Macao tax-resident entities that are members of multinational corporation would directly be deemed as taxable. Notwithstanding this, Macao at the same time provides mechanisms to eliminate double taxation on such income, as detailed below. In other situations where the Macao tax-resident entity is not a member of a multinational corporation, the relevant passive income derived from outside Macao would generally be not subject to taxation under Macao's territorial principle.

Additionally, when a foreign enterprise only constitutes a PE in Macao, it will not be considered a Macao tax resident solely based on having a PE. Nevertheless, it should be noted that if a member entity of a multinational corporation becomes a Macao tax resident due to its effective management being located in Macao, the foreign-sourced passive income of that member entity may trigger tax liabilities in Macao.

Currently, specific implementation rules for Macao's territorial principle have not yet been released. We anticipate that the FSB may make reference to neighbouring tax jurisdictions, such as Hong Kong, which has issued detailed guidelines for various types of transactions, including trading profits and service income, to enhance certainty for taxpayers and strengthen Macao's competitiveness as a business hub.

## Double Taxation Relief

Article 51-A of the Approval Law of the Tax Code provides a tax credit mechanism to alleviate double taxation for the exceptional cases introduced in Article 2, Paragraph 2 of the Complementary Tax Regulation. Specifically, when a Macao tax-resident member of a multinational corporation derives dividends, interests, royalties, or proceeds from property disposal outside Macao, any taxes paid with nature equivalent to Complementary Tax (i.e., corporate income tax) can be credited against the corresponding year's Macao Complementary Tax liability. Notably, this relief mechanism is not dependent on whether the income source jurisdiction has a DTA in place with Macao or not.

Furthermore, Paragraph 3 of the same article establishes a mechanism similar to the indirect tax credit system applied by Mainland China for dividends. With an ownership threshold requirement of 10% or above (as compared to the Mainland China's requirement of 20% or above) and no restrictions on the maximum tiers of subsidiary holdings (whereas Mainland China's indirect credits generally apply up to only five tiers of foreign subsidiaries), it is evident that Macao aims to effectively mitigate the impact of any potential double taxation through these reliefs. This approach seeks to reduce the tax burden on Macao tax residents deriving passive incomes and enhance Macao's attraction as a preferred location for setting up investment holding platforms and/or financing arrangements.

## Tax Agent

Article 22 of the main body of the Tax Code introduces the concept of tax agent and outlines situations where individuals and legal entities (and legal equivalents under the law) are obligated to appoint a tax agent, summarized in the table below:

Individuals	Legal Entities
(1) Individual taxpayers residing outside the Macao Special Administrative Region; and (2) Individual taxpayers residing in the Macao Special Administrative Region but leave the region continuously or intermittently for a total exceeding 183 days in the same fiscal year.	(1) Legal entities or their legal equivalents that have ceased operations; and (2) Legal entities or their legal equivalents without a domicile, effective management, or permanent establishment in the Macao Special Administrative Region but deriving income there.

According to interpretations from the FSB during the seminar, a tax agent must be an individual whose duties primarily involve representing taxpayers on communications with tax administrative authority and ensuring that the taxpayers fulfil their ancillary obligations and exercises their rights. Based on Article 36 of the main body of the Tax Code, the payment of taxes is the principal obligation of the taxpayer, rather than an ancillary obligation. Therefore, tax payment does not fall under the responsibilities of a tax agent.

For legal entities that have ceased operations, once they submit their closure registration form to the FSB following the enforcement of the Tax Code, they must appoint a tax agent and maintain this appointment until the end of the limitation period for settling the relevant taxable events.

It is anticipated that the FSB will issue specialized forms in the future, allowing taxpayers to designate their tax agent through these forms.

## Deloitte Insights

The enactment of Macao Tax Code has brought a unified framework of tax regulations for both Macao tax authority and taxpayers, while also introducing several new taxation concepts to the region. For multinational corporations, given the integrated and complex nature of their global operations, the implementation of the Tax Code will bring conceivable challenges for their upcoming tax compliance in Macao. To get better prepared for the upcoming effective date, multinational corporations can consider the following key aspects ahead of time:

- The provisions on tax resident have already come into effect since 1 January, 2025. Foreign companies may be classified as Macao tax residents if their effective management bodies are located in Macao. Multinational corporations should reassess their decision-making board and senior executives' arrangements within and outside Macao to clarify the operational management structure among different companies and jurisdictions within the group, aiming to avoid situations that could lead to dual tax residents or double taxation. Additionally, qualified taxpayers may consider applying to the FSB for a Certificate of Macao Tax Resident when necessary, so as to maintain proper documentation in clearly substantiating their tax resident status.
- With the introduction of PE provisions, multinational corporations should re-evaluate their existing business operations in Macao to identify any risks of triggering any type of PE, including fixed PE, construction PE, and agency PE. Business models should be optimized in a timely manner to avoid any potential establishment of PE. In cases where a PE is constituted, attention should be paid to subsequent compliance obligations such as Industrial Tax registration. Furthermore, multinational corporations should closely monitor and track further guidelines that may be issued by the FSB regarding the definition and taxation rules of profits attributable to PE.
- Regarding the newly introduced obligation to appoint a tax agent in Macao, both individual and legal entities should promptly review and verify whether they meet the criteria for exemption from such requirement. If not, taxpayers may consider adjusting their business operations in Macao by the end of 2025 with a view of meeting the exemption criteria. Otherwise, taxpayers should plan ahead on complying the obligations of a designated tax agent after the provision comes into effect on 1 January, 2026.

- In response to Macao's adoption of territorial principle, taxpayers should closely observe the FSB's further detailed territorial principle guidelines issuance in the future (if any) and timely explore rooms for tax optimization through lodgement of offshore non-taxable claims, where appropriate.
- Close attention should be paid to the issuance of implementation rules and guidelines yet to be published by the FSB. Key documents still pending release include a set of implementation rules on transfer pricing, new Complementary Tax forms, related forms of tax agent, and territorial principle guidelines (if applicable). These documents will significantly impact tax compliance for taxpayers.

Since the detailed implementation rules for the Tax Code have not yet been released, further details will need to be observed during future practice. Therefore, the opinions presented in this article are provided for reference only.

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