



Taxation of casino gaming operators in Macau

This article aims to provide a brief overview of the main current taxation obligations of casino gaming concessionaires (construed herein as including sub-concessionaires) and promoters in Macau.



André Santos Raquel*

In Macau, all businesses are required to declare their annual profit and such profit is subject to taxation, thus the first category we will analyse is the Income Complementary Tax.

Income Complementary Tax is generally levied on the income received in Macau, irrespective of the beneficiary being an individual or a corporation, its particular line of business, its nationality or domiciliation, without prejudice to the particular deductions and allowances each taxpayer may be entitled to.

Whilst subject to a specific taxation regime under Law No. 16/2001, regarding the income generated from gaming and gaming promotion activities — addressed below —, concessionaires and promoters are nonetheless required to declare their annual taxable income. The declaration is supported by organized accounting in case of group A taxpayers (as is the case of gaming concessionaires), but not in case of group B taxpayers (as is generally the case of gaming promoters), who declare their profit on the relevant fiscal year and are taxed for the average profits for their industry during such year.

Law No. 9/2014, as amended by Law No. 5/2015 (the “2015 Budget Law”), determines that a portion of all companies’ taxable income, of up to MOP600,000, is exempted from Income Complementary Tax, and that the excess of taxable income be taxed at the rate of 12 percent. The original exemption was set at the amount of MOP300,000, but the budget was revised in June and the amount subject to such exemption increased.

This measure implemented through the 2015 Budget Law is extraordinary and the Government is not bound to maintain or increase the amount that will be subject to

such exemption in the near future. In fact, although there have been similar exemption cases since the 2008 Budget Law, for different amounts, it is uncertain whether or not the austerity stance of the Government will impact this measure for the following years.

These rates apply to the declared taxable profit (gross income less expenses and, in case of group A taxpayers, allowable deductions) from all income generating sources, except when taxed separately under different regulations, as is the case of professional tax and property income, for example.

Accordingly, dividends received by individual or corporate shareholders are considered income for the purposes of Income Complementary Tax and, likewise, will be subject to the above described tax rates.

Non-Macau residents and companies not incorporated in Macau will usually not be registered with the Macau Financial Services Bureau as taxpayers, although there is this obligation. This event has led to a common practice where Macau companies, when paying services or dividends to non-Macau residents or companies not incorporated in Macau, usually withhold the sum that would otherwise be payable as income tax on dividends paid to such shareholders or fees paid to such service providers. If such amounts are paid and the otherwise payable tax is not withheld, the Macau company will be required to subtract such amounts from its taxable profit and disclose further details, namely of the dividends distributed and the shareholders receiving such dividends in its tax form, otherwise the Macau Financial Services Bureau would consider that no dividends or services were paid and tax the Macau company for its full taxable



profit (before dividends were paid, or with no consideration to such fees as a cost).

The accuracy of any annual income statements may be challenged by the Macau taxation authorities, which will then compute the amounts due on the basis of prior results or estimations. In such event, appeals are available for unsatisfied parties.

All concessionaires are currently exempted from Income Complementary Tax, under specific exemptions that have been granted by the Chief Executive, on a temporary and exceptional basis, for 5-year periods, which have been successively renewed and are currently in force.

Law No. 16/2001, as amended by Law No. 10/2012 (the "Gaming Law") created and ruled on the Special Gaming Tax, levied on gaming concessionaires, as well as the taxation of the commissions paid to gaming promoters.

Special Gaming Tax is calculated on the gross gaming revenue (all revenue derived from casino or gaming areas), at the rate of 35 percent and is paid monthly, within the 10th day of each following calendar month. Each concessionaire may be asked to provide a bank guarantee to secure the punctual payment of Special Gaming Tax due to the Government. Also, the Macau Chief Executive may exempt a concessionaire from the payment of this tax on an exceptional and temporary basis, when it is in the public interest. Special Gaming Tax is due by the concessionaires in addition to any concession premiums payable to the Government.

The special gaming tax accounted for approximately 70 percent of the Government's total public revenue, in average, during recent fiscal years, making it the biggest contributor to the Macau Government's public revenue.

Gaming law further stipulates that concessionaires should also be required to pay a percentage of 2 percent of the gaming gross revenue as special levy to a public foundation named by the Government (funding educational programs and other events), and of 3 percent to the Government, for urban development, tourism development and social security. Under the concession contracts, these rates have been set at 1.6 percent and 2.4 percent, respectively (with the exception that one of the gaming concessionaires is only required to pay 1.4 percent for urban development, tourism development and social security, which is usually explained as being due to the fact that this gaming concessionaire has the obligation to make certain other contributions in kind to the Government).

Special Gaming Tax is also levied on the gross commissions paid to gaming promoters, at the rate of 5 percent. This rate discharges the tax liability — the amounts due are withheld by the concessionaires and paid directly to the government each month, therefore the gaming promoters don't have any further obligations to declare incomes or pay taxes regarding such commissions. However, gaming promoters are not exempted to declare any incomes that they receive from other sources, which is possible, although the gaming promoters' scope of business, as defined by Administrative Regulation, is restricted.

Gaming promoters' commissions benefited from an exemption of 40 percent of this special gaming tax rate between 2002 and 2007, but the 5 percent rate is now fully applicable and is being enforced as such.

In view of the above, the fact is that taxation of casino gaming revenues in Macau is higher than taxation of other businesses, and the imposed tax rates are higher than those of other jurisdictions, including neighboring gaming regions in Asia. This may constitute a challenge to the local Government in the coming years: lowering taxation to maintain the casino industry as being competitive and attractive to new investments (both from new operators and from current gaming concessionaires and gaming promoters), if necessary, requires that the Macau Government takes decisive steps to ensure the long sought diversification of the local economy, rendering the Macau budget less dependent from the income generated through the Special Gaming Tax.

*About the author

André Santos Raquel's practice has a strong focus on banking, gaming and corporate matters. André has vast experience in negotiating, drafting and interpreting financial, commercial and civil contracts, as well as in providing regulatory and compliance advice, in particular with respect to gaming operations in Macau. He has participated in several international financial and commercial operations in multiple jurisdictions and has also strong experience in managing large scale banking litigation.

He is fluent in both oral and written Portuguese, English and Spanish.



JORGE NETO VALENTE
Advogados e Notários

OFFICES: Avenida Dr. Mário Soares, no.25, Montepio Building, Apt. 25, 2nd floor, Macau
Avenida da Amizade no. 555, Macau Landmark Building, ICBC Tower, 15th floor, Macau
TEL: +853 2871 2668 / +853 2838 2222
FAX: +853 2878 5266 / +853 2871 2633
WEBSITE: www.jvnlegal.com