

立法會
Legislative Council

LC Paper No. LS95/19-20

**Further Report by Legal Service Division on
Inland Revenue (Double Taxation Relief with respect to Taxes on
Income and Prevention of Tax Evasion and Avoidance)
(Macao Special Administrative Region) Order (L.N. 84 of 2020)
Gazetted on 22 May 2020**

Members may recall from LC Paper No. LS83/19-20 dated 28 May 2020 and issued to Members vide LC Paper No. CB(2)1094/19-20 that the Legal Service Division ("LSD") was scrutinizing the legal and drafting aspects of the captioned Order ("L.N. 84"), and would make a further report if necessary.

2. To recap, L.N. 84 is made by the Chief Executive in Council under section 49(1A) of the Inland Revenue Ordinance (Cap. 112) to give effect to the Arrangement between the Hong Kong Special Administrative Region and the Macao Special Administrative Region ("Macao") for the Elimination of Double Taxation with respect to Taxes on Income and the Prevention of Tax Evasion and Avoidance ("HK/Macao Arrangement") done in November 2019 together with its Protocol. LSD has sought clarification from the Administration on certain legal and drafting aspects of L.N. 84. Details of the Administration's response at **Annex** are summarized below.

Nature of footnote to Article 1(2) of the HK/Macao Arrangement

3. It is stated in the footnote to Article 1(2) of the HK/Macao Arrangement that the two expressions "非稅務法人或某程度屬非稅務法人" and "完全透明或部分透明" used in the Article "are different expressions used by the two Sides to convey the same meaning. The former is the expression used by the Hong Kong Special Administrative Region, whereas the latter is the expression used by the Macao Special Administrative Region". The Administration has replied that the footnote is part of the text of the HK/Macao Arrangement, and thus forms part of the text of L.N. 84 and has legislative effect.

Typographical error in Article 10(6) of the HK/Macao Arrangement

4. The Administration will rectify the typographical error "situatedin" in the English text of Article 10(6) of the HK/Macao Arrangement as "situated in" by editorial amendments pursuant to section 12 of the Legislation Publication Ordinance (Cap. 614).

Reason for not listing in the HK/Macao Arrangement the oversight bodies of the tax authority in Macao

5. According to paragraph 13(c) of and footnote 3 to the Legislative Council Brief (File Ref: TsyB R2 183/800-1-1/30/0 (C)) issued by the Financial Services and the Treasury Bureau on 20 May 2020, information exchanged between Hong Kong and Macao pursuant to the HK/Macao Arrangement will only be disclosed to the tax authorities concerned or their oversight bodies. According to the Administration, the oversight bodies of the tax authority in Macao are the Chief Executive and the Secretary for Economy and Finance of Macao. LSD has enquired why the relevant oversight bodies are not explicitly stated in L.N. 84, and whether Macao would be required to seek the written agreement from Hong Kong in relation to the addition of other authorities as the oversight bodies in the future. In gist, the Administration has responded that:

- (a) Hong Kong and Macao agreed that in relation to the disclosure of exchanged information to the oversight bodies of the tax authorities concerned, the Exchange of Information Article of the HK/Macao Arrangement should follow the provisions of the Model Tax Convention on Income and on Capital and the Convention on Mutual Administrative Assistance in Tax Matters ("relevant Conventions"), under which oversight bodies are not listed separately; and
- (b) the relevant Conventions do not require the contracting jurisdictions to seek agreement from other jurisdictions on the list of authorities that can be regarded as oversight bodies.

6. Subject to Members' views on the matters set out in paragraphs 3 to 5 above, no difficulties have been identified in relation to the legal and drafting aspects of L.N. 84.

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15 June 2020

**Inland Revenue (Double Taxation Relief with respect to Taxes on
Income and Prevention of Tax Evasion and Avoidance)
(Macao Special Administrative Region) Order
(L.N. 84 of 2020)**

Government's Response

Use of footnote in Article 1(2), Part 1 of the Schedule to L.N. 84

The footnote is part of the text of the Comprehensive Avoidance of Double Taxation Arrangement between Hong Kong and Macao (“Macao CDTA”), and thus forms part of the text of L.N. 84 and has legislative effect.

Typographical error in Article 10(6), Part 1 of the Schedule to L.N. 84

2. The typographical error “situatedin” will be rectified as “situated in” by editorial amendments pursuant to section 12 of the Legislation Publication Ordinance (Cap. 614).

Listing out the oversight bodies in L.N. 84

3. In the context of Comprehensive Avoidance of Double Taxation Agreements/Arrangements, there are situations where jurisdictions are required by their respective domestic laws to disclose the information exchanged with other jurisdictions to the oversight bodies of the tax authorities concerned. Both the Exchange of Information (“EoI”) Article of the Model Tax Convention on Income and on Capital (“MTC”) promulgated by the Organisation for Economic Co-operation and Development as well as the Secrecy Article of the Convention on Mutual Administrative Assistance in Tax Matters (“Convention”), the latter of which entered into force in both Hong Kong and Macao in September 2018, allow the disclosure of exchanged information to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or

prosecution in respect of, the determination of appeals in relation to the relevant taxes, or the oversight of these persons or authorities.

4. The Macao CDTA was signed in November 2019. Noting that the Convention had already entered into force in both Hong Kong and Macao, the two sides agreed that in relation to the disclosure of exchanged information to the oversight bodies of the tax authorities concerned, the EoI Article of the Macao CDTA should follow the relevant provisions of the MTC and the Convention under which oversight bodies are not listed separately. The same approach was adopted in the Comprehensive Avoidance of Double Taxation Agreement between Hong Kong and Estonia signed in September 2019¹.

5. The Commentary of the MTC provides that oversight bodies generally are those which supervise tax authorities as part of the general administration of the government of a contracting jurisdiction. Neither the MTC nor the Convention requires the contracting jurisdictions to seek agreement from other jurisdictions on the list of authorities that can be regarded as oversight bodies.

**Financial Services and the Treasury Bureau
Inland Revenue Department
June 2020**

¹ See Inland Revenue (Double Taxation Relief with respect to Taxes on Income and Prevention of Tax Evasion and Avoidance) (Republic of Estonia) Order (Cap. 112DI).