



New oil and mining tax regimes

Two significant laws which implement the fiscal regimes of the New Oil Law and the New Mining Law have recently been published and shall enter into force on 1 January 2015.

The two regimes, i.e., petroleum and mining, are similarly regulated in many aspects and share the same principles of simplicity, clarity, and technical accuracy, namely regarding taxation of non-resident entities, deductibility of costs and expenses, transfer pricing, thin capitalization rules, and amortizations.

I. Oil Operations (Oil and Gas)

The new tax regime applies to individuals and corporate entities, whether residents or non-residents in Mozambique, which **perform petroleum operations** in Mozambique under a concession agreement.

As an introduction, we would like to highlight some concerns related to the **protection of investment**, namely:

- (i) The clarification of technical language - a glossary of several terms used in the new laws is published as an annex;
- (ii) A more comprehensive treatment of situations scarcely regulated before, e.g., the densification of the territoriality principle for the purpose of the determination of what is considered to be Mozambican income; and,
- (iii) The possibility to negotiate a fiscal stabilisation mechanism through which taxpayers may negotiate fixed taxation conditions for 10 years.

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According to this new tax regime, taxpayers are subject to the application of the **general taxation rules in Mozambique**, namely on income (IRPS and IRPC) and consumption (VAT) and, cumulatively, are also subject to the **special rules** established in this law.

To this effect, we refer to the review of the **Petroleum Production Tax** (*Imposto sobre a Produção do Petróleo*), which is levied on oil and gas produced in each concession area and is due by corporate entities performing petroleum operations under a concession agreement.

This tax rate remains at 10% for oil and 6% for gas and is levied on the value of the oil and gas produced. The value of oil and gas, for the purpose of applying the tax rate, is determined under specific rules which are based on the average selling prices of oil and gas in the month the tax refers to. It should be noted that the tax must be paid in cash and may, in some circumstances, be demanded in kind.

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Petroleum Production Tax

The **cost recovery and production sharing** mechanisms are also regulated, drawing on the traditional concepts of cost oil, available oil, profit oil and produced oil. Costs incurred by the concessionaire on petroleum operations, excluding interest and other financial costs, are recovered from 60% of the annual available oil - the portion exceeding this limit is transferred to the following years. In turn, profit oil is shared between the State and the concessionaire according to a variable scale, the result of which is obtained through a mathematical formula.

The **special rules** foreseen to determine the Personal Income Tax (*Imposto sobre o Rendimento das Pessoas Singulares* - IRPS) or Corporate Income Tax (*Imposto sobre o Rendimento das Pessoas Colectivas* - IRPC) due on the income obtained from petroleum operations include, namely: (i) the characterization of deductible and non-deductible costs and expenses; (ii) amortization rules; (iii) thin capitalization rules; (iv) registration of inventory; and (v) a withholding tax rate of 10% on the payment of services related to concession agreements undertaken by non-resident entities.

Transfer pricing rules are also further developed, including the application of the arm's length principle to the transfer of assets between different concession agreements held by the same concessionaire.

It has also been made clear that the IRPC of entities running petroleum operations under a concession agreement should, as a general rule, be calculated individually for each concession area (costs and income should also be determined separately in relation to each area) and each concession agreement area must have its own Tax Identification Number (*Número Único de Identificação Tributária* - NUIT).

Concerning the **assignment of interests** (a similar regime applies to mining), it is made clear that non-resident entities, which transfer oil rights, if only indirectly involving oil assets in Mozambique, may be subject to tax in Mozambique:

- In this sense, it is clarified that gains obtained by non-resident entities in Mozambique arising from the direct or indirect transfer (whether or not for consideration) of oil rights in Mozambican territory, including gains obtained through the sale of interests, shares or equity in entities holding oil rights are regarded as gains derived from real estate located in Mozambican territory and are subsequently subject to IRPS or IRPC in Mozambique.
- Furthermore, the territoriality rule is expanded to consider of Mozambican source income arising from the direct or indirect transfer (whether or not for consideration) between two non resident entities of shares of entities that hold oil rights in Mozambique, regardless of where the sale occurs. To ensure this rule's enforceability, the law provides that the purchaser and the company which hold the oil rights are **jointly and severally** liable.
- Moreover, it is also foreseen that the buyer will step into the seller's shoes in what concerns amortization at the stage of research and development.

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Lastly, the tax benefits expressly granted by law are exemptions of custom duties (for five years starting from the approval of a development plan for the import of certain goods) according to the Annexes which were published with the above mentioned law, on imported goods to be used in petroleum operations. As to the aforementioned goods, we underline the possibility of the exemption be transferred with authorization of the Finance Minister.

To ensure this rule's enforceability, the law provides that the purchaser and the company which hold the oil rights are jointly and severally liable

The follow up regulation of this recently created tax regime is eagerly awaited to clarify the practical implications of several specific measures.

II. Mining Activities (Law no. 28/2014, 23 September)

This regime applies to individuals or legal persons, regardless of their residence, which perform mining operations in Mozambique.

These entities are subject to the general taxation regime and cumulatively to the special taxation regime established in this law, namely: (i) Tax on Mining Production (IPM);

(ii) Surface Tax (ISS); (iii) Tax on Income Deriving from Mineral Sources (IRRM); and (iv) special rules to determine the taxable income under IRPS and IRPC.

i. **Tax on Mining Production** (“*Imposto sobre a Produção Mineira*” - IPM)

Entities which perform mining operations in Mozambique (license holders or not) are subject to this tax.

There are a number of exemptions, if certain conditions are met, although the beneficiary is not released of its reporting obligations.

IPM tax rates vary between 8% for diamonds, 6% for precious metals, precious and semiprecious stones and heavy sands, 3% for basic metals, charcoal, ornamental rocks, etc. and 1,5% for sand and stone, and are levied on the value of the extracted mineral product after treatment.

The value of the mineral product is determined by specific rules, by which it is allowed to deduct certain costs.

This tax is assessed by the taxpayer and is due monthly.

ii. **Surface Tax** (“*Imposto sobre a Superfície*” - ISS)

Entities which perform mining operations in Mozambique (title holders or not) are subject to this tax.

ISS is due annually and is levied on the mining area of the exploration at stake.

Surface Tax rates vary between 17,50MT/ha and 25.000,00MT/ha, whether they relate to the first year of prospecting and research or is the 6th year onwards of the mining concession, respectively, and are levied on the number of hectares of the area subject to a prospecting license, research, mining concession or mining certificate.

iii. **Tax on Income Deriving from Mineral Sources** (“*Imposto sobre a Renda de Recurso Mineiro*” - IRRM)

Only Mining concession or mining certificate holders are subject to this tax.

The IRRM tax rate is 20% on the cash earnings accumulated during the year, determined according to specific rules.

iv. **Income Tax**

To determine IRPS or IRPC due as a result of the income derived from the performance of a mining activity, the law foresees special rules similar to the ones applicable to petroleum operations with the particularities of the mining activity.

The new sectorial tax rules hereby described will represent an added degree of complexity to the agents involved. We remain at your disposal for any other developments and any further clarification that you may require.

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