Global tax guide to doing business in Mozambique

Overview

The Mozambican tax system today has a structure comparable to most modern tax systems, presenting a tripartite structure, through which income, consumption and property are separately taxed. As a result of the growing development of the extractive industry in Mozambique, the tax component for this sector is gaining its autonomy. In any case, the current configuration of the Mozambican tax system is relatively recent.

Mozambique has agreements to prevent double taxation with the following countries: Portugal, Italy, Mauritius, United Arab Emirates, Macao Special Administrative Region, South Africa, India, Vietnam and Botswana.

In the foreign exchange context, any foreign exchange transaction, with the exception of current transactions, requires prior authorization from the Bank of Mozambique and subsequent registration. Respective amounts of foreign currency and other means of payment abroad, must be declared, whenever they exceed the amount equivalent to US$5,000. Foreign currency is free for non-residents in Mozambique, as well as other means of payment abroad, up to the limit declared at the entrance of these non-residents in Mozambique.

In this chapter

Legal system

Mozambique is divided into provinces and these into districts, which in turn are divided into administrative posts and these into localities. These divisions are joined by local authorities, called Municipalities. The country is operated under the common law legal system. The constitution of the Republic is based on the principle of legality. Based on this principle, only parliament may approve the revision and amendment of the essential elements of taxes, namely, the incidence rate, tax benefits and guarantees of taxpayers. The executive branch only has the power to regulate tax law.

Taxation authorities

The Tax Authority of Mozambique (AT) administers the national tax system in Mozambique. AT was created in 2006 and currently has 234 local collection units.

Business vehicles

The Mozambican Commercial Code, makes it possible for Mozambican or foreign individuals or clients to set up a business in Mozambique in one of six different ways: (i) general partnership (*Sociedade em Nome Colectivo*); (ii) limited partnership (*Sociedade em Comandita*); (iii) capital and industry partnership (*Sociedade de Capital e Indústria*); (iv) quota company (*Sociedade por Quotas*); (v) single person quota company (*Sociedade Unipessoal por Quotas*) and (vi) share company (*Sociedade Anónima*).

Foreign companies that do not intend to establish themselves in Mozambique may operate through the establishment of a branch. A foreign company or an external consortium must have a foreign trade representation.

Partnerships

Public-Private Partnerships (PPP) refer to developments in a public domain or in areas providing public services, excluding mineral and oil resources; large projects; and business concessions. The general regime for contracting PPP projects is that of a public tender and subsidizing, as per the rules that govern public procurement. As an exception and subject to prior authorization expressed by the Government, the contracting of PPP undertakings may take the form of negotiations or direct agreements.

The PPP Legislation also provides that the Government may grant types of financial incentives or facilities, in particular for projects of interest, such as national strategic plans that prove to be economically viable, but financially not feasible. In these cases, the State or another public entity may participate in the financing by way of subsidy, or participation in the share capital, or in the provision of financial guarantee, which can vary between 5% to 20% of the total amount.

Corporations

Mozambican private limited companies must have, in their designation, the mandatory mention "Limited" or, abbreviated "Lda.". There is no minimum amount of capital set by law. All documents that are issued outside Mozambique, must comply with the following formalities: they must be authenticated by a Notary Public, and legalized at the Embassy / Consulate of Mozambique (as applicable).

If the documents are prepared in a language other than Portuguese, it will be necessary to have them translated into Portuguese by a sworn translator.

Limited liability companies can have a single partner who is considered a natural person. This company is called a single-member quota company. In other cases, private limited companies must have a minimum of 2 (two) partners and a maximum of 30 (thirty) partners.

Sole Proprietorship

A sole proprietorship is when an individual entrepreneur carries out business in his own name, with a prescribed business activity. This company is owned by a single individual, who acts without legal separation between his personal assets and his business, that is, the principle of separation of assets does not apply. In this situation, the entrepreneur is responsible for unlimited debts incurred in the exercise of his activity before his creditors, with all the personal assets that make up his assets (houses, cars, land, etc.) and those of his spouse (if he is married in a communion of goods).

Foreign corporation (without a Mozambican branch)

For the purposes of setting up foreign commercial representation in Mozambique, several acts /procedures are necessary. These procedures include, the Unique Tax Identification Number (NUIT) and the Opinion of the supervising body, in the event that the activity to be exercised does not fall within the competence of the Ministry of

Industry and Commerce.

Tax benefits

Private foreign and national investments are offered a set of benefits, which include, among others, deductions from the tax base under the corporate income tax (IRPC) and exemptions from customs duties on imports. The minimum amount of eligible foreign direct investment, for the purposes of the benefits mentioned above, is that corresponding to 2,500,000 Meticais (approximately 71,500 Euros). The tax benefits include: (i) exemption from customs duties and value added tax on imports of capital goods classified in class “K” of the Customs Tariff; (ii) investment tax credit; (iii) accelerated amortizations and reintegrations; (iv) deductions from the tax base of investments made in the modernization and introduction of new technologies; and (v) deductions from the tax base of investments made with professional training; (vi) exemption or reduction of the IRPC tax rate and (vii) exemption from VAT in the taxation of goods.

Tax Benefits Statute (CBF)

The tax benefits statute (CBF) is composed of a range of tax benefits. The CBF consists of a series of tax benefits structured in a general and specific way, attributed upon approval of an investment project. Concession contracts for mining and petroleum operations are awarded through a public tender process, pursuant to which applications for concession rights must be addressed to the Ministry of Energy and Mineral Resources.

CBF has generic benefits such as exemption from customs duties and VAT on imports, tax credit for Investment, accelerated amortizations and reintegration’s and cost deductions with the introduction of new technologies and professional training. At specific level, the CBF provides benefits depending on the following investment areas:

1. Creation of Basic Infrastructures
2. Trade and Industry in Rural Areas
3. Manufacturing and Assembly Industry
4. Agriculture and Fisheries
5. Hotel and Tourism
6. Science and Technology Parks
7. Mega Projects
8. Rapid Development Zones
9. Industrial Free Zones
10. Special Economic Zones

Specific benefits for the mining and oil sector

The exemption from customs duties, excluding VAT, is established for a period of 5 years. This exemption covers import of machinery, equipment and other goods classified as class K.

In addition, for specific goods that are not classified in class K, the law provides for a list of equivalent equipment and class K equivalents that are also exempt from customs duties.

Financing a corporate subsidiary

Debt financing

Withholding tax implications

Interest payments including participating interest made by a resident company to a non-resident with whom they do business are subject to a 20% withholding tax. However, the withholding tax may be reduced or eliminated under an applicable double taxation treaty. Most of Mozambique’s double taxation treaties have a reduced tax rate of 10%, except those with Mauritius and South Africa where the withholding tax has been reduced to 8%.

Thin capitalization

When a taxpayer's indebtedness to a non-resident entity, with whom there are special relationships, is excessive, the interest paid in relation to the part considered in excess is not deductible for the purposes of determining taxable profit.

Special relationships exist when: a) the non-resident entity holds a direct or indirect interest in the taxable person's capital of at least 25%; b) the non-resident entity does, in fact, have a significant influence on the management of the taxable person; or c) the non-resident entity and the taxable person are under the control of the same entity, namely by virtue of there being a direct or indirect participation.

Nonetheless, the interest paid in respect of the part considered in excess, will be deductible for the purposes of determining taxable profit. The interest will be deductible if the taxable person demonstrates that, taking into account the type of activity; the sector in which it operates; the size of the company and other relevant criteria, it could have obtained the same level of indebtedness, under similar conditions with an independent entity.

Corporate income tax

Income tax rate

Corporate income is subject to a tax rate of 32%. Income not properly documented and expenditures done in a confidential or unlawful manner are taxed, separately, at the rate of 35%.

Capital gains

In general, capital gains correspond to the balance determined between capital gains and losses realized in the same year. In the case of capital gains on securities, only: (i) 75% of their value is considered when held for less than twelve months; (ii) 60% of its value when held for a period between 12 and 24 months; (iii) 40% of the their value when they are held for a period between 24 and 60 months; and, finally, (iv) 30% of its value when held for 60 or more months.

Capital gains in the extractive industry are calculated based on the difference between the amortization value and the acquisition value, deducting charges for the valuation of assets and disposal expenses, being taxed in full and separately at a rate of 32%.

Dividends

Dividends received are, in principle, included in the taxable income for IRPC purposes. However, they are excluded from the tax base (participation exemption) when the social participation in relation to which dividends are paid corresponds, to at least 25% of the company's share capital, which pays dividends and is held for a period equal to or greater than 2 years.

Branch tax

The income obtained by a subsidiary of a non-resident company and without a permanent establishment is subject to a 20% withholding tax. However, when there is a permanent establishment, tax is levied on profit at a rate of 32%.

Computation of taxable income

Taxable base

A resident entity is taxed on its worldwide income. An entity that is not resident is taxed only on the income earned in Mozambique.

Taxable profit is constituted by the algebraic sum of the result for the year and changes in equity positive and negative verified in the same period and not reflected in that result.

Tax losses determined in a given year are deducted from taxable profits, in any, one or more of the five following years. Tax losses may not be carried back to previous years.

Deductions

A taxpayer is generally permitted to deduct its current expenses in computing business income. As a general rule, capital expenses are not deductible.

Income tax reporting

Mozambican resident corporations and non-resident corporations that carry on business in Mozambique are required to file an annual corporate income tax return. Corporate tax returns must be filed within five months of the fiscal year-end of the corporation in order to avoid late filing penalties. Installment payments are required in respect of current-year taxes.

Cross-border payments

Transfer pricing

Mozambique's transfer pricing regime generally conforms to the arm's length principle of the Organization for Economic Co-operation and Development (OECD). The Mozambican Revenue Authority can impose a transfer pricing adjustment in respect of a transaction that is not made on arm's length terms or conditions. A transfer pricing adjustment can also be made in respect of a transaction that would not have been entered into at all by arm's length parties if it can reasonably be considered that the transaction was not entered into primarily for non-tax purposes. Mozambican taxpayers are also required to maintain contemporaneous documentation in respect of transactions subject to the transfer pricing rules.

Withholding tax on passive income

Payments made by a resident of Mozambique to a non-resident in respect of certain types of interest payments, rents, royalties, dividends, management or administration fees and trust income distributions are subject to tax under corporate income tax (IRPC) at the rate of 20%. However, the rate may be reduced until 5% under an applicable double-tax treaty.

Withholding tax on services fees

Payers must deduct and withhold 20% of any payments to a non-resident of Mozambique in respect of general services performed in Mozambique. For the sectors of telecommunication, construction and rehabilitation of infrastructures linked to electricity and the chartering of vessels, the withholding tax is 10%.

Payroll taxes

Mozambican pension plan

The employer is subject to the payment of a 4% Social Security contribution, in relation to each worker.

Employment insurance

Work insurance is required to cover accidents at work.

Indirect taxes

Value-added tax

The current value-added tax (VAT) rate is 17% but is not imposed on all supplies. The rate for "zero-rated" supplies (e.g., exported goods and services) is zero percent and the "exempt" supplies (e.g., Banking services as well as some health and education services) are not subject to the VAT.

Land use fee

In Mozambique, land is owned by the Mozambican state. The state grants part of the land for use and charges a fee called the "land use fee." There are two types of fees: (i) authorization fees and (ii) annual fees. Rates are fixed and updated regularly. The amounts applied are different for national and foreign investors, and they also differ for different areas of the country and different types of land use.

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