



## LAW NO. 27/2014 OF SEPTEMBER 23: SPECIFIC RULES ON TAXATION AND TAX BENEFITS OF THE OIL ACTIVITY

### I. BACKGROUND AND OBJECTIVES

The new Petroleum Law (Law no. 21/2014 of August 18) provides that the specific framework on taxation of petroleum operations shall be established by law. In this context, Law no. 27/2014, of September 23, was approved and establishes the Specific Rules on Taxation and Tax Benefits of Petroleum Operations (*Regime Específico de Tributação e de Benefícios Fiscais das Operações Petrolíferas - "RETFAP"*). This new law came into force on January 1, 2015.

RETFAP, which repeals Law no. 12/2007 and Law no. 13/2007, both of June 27, seeks to bring the Mozambican system closer to modern international taxation practices in the oil sector. The new law also seeks to ensure a greater share of the benefits generated by petroleum activities for the State and to make the legislation more appropriate to the current socio-economic situation of the country. The legislation applies to legal entities incorporated and registered in Mozambique and to Mozambican or foreign individuals that carry on oil operations under a concession contract.

The newly approved legislation provides more detailed and systematic regulation of the **Petroleum Production Tax** (*Imposto sobre a Produção Petrolífera - "IPP"*), which now has a clear, well-defined scope.

In addition, RETFAP introduces a set of new specific rules relating to the **Corporate Income Tax** (*Imposto sobre o Rendimento das Pessoas Colectivas - "IRPC"*).

Taxable persons for IPP and IRPC that carry out petroleum operations under a concession contract will also continue to be subject to other taxes established under the Mozambican tax framework, including value added tax and municipal taxes, as well as other tax charges.

When it comes to tax benefits, RETFAP does not change the types of benefits currently in force for the petroleum sector. Thus, the amendments essentially affect the extent of the benefits and clarify the conditions for their award, maintenance and cancellation.

## II. TAX FRAMEWORK FOR THE OIL ACTIVITY

### A. TAX ON OIL PRODUCTION

TAX ON OIL PRODUCTION (IPP)	
<b>Taxable Persons</b>	Legal entities that carry out <u>petroleum operations</u> <sup>1</sup> in Mozambique under a concession contract are taxable persons for IPP purposes.
<b>What Is Taxed</b>	IPP is charged on the oil produced in the area of the concession contract, in other words, in the geographic area covered by the said contract.
<b>Taxable Event</b>	The obligation to pay the tax is deemed to arise when the <u>oil produced</u> <sup>2</sup> enters the measuring station defined by the Government.  In the case of a payment in kind, the obligation to pay the tax is deemed to arise when the oil produced is delivered to the point defined by the Government.
<b>Rates</b>	Crude oil: 10% Natural gas: 6%  The rates may be reduced by 50% when the purpose of the production is the development of local industry.
<b>Tax Base</b>	The above rates apply on the value of the oil produced.
<b>Assessment And Payment</b>	IPP is paid by the taxable persons and the payments should preferably be made in cash. The Government may, however, notify the taxable person to pay the tax in kind (and this is then paid by handing over oil or gas).
<b>Observations</b>	Besides the set of new rules introduced to specify and determine the value of the oil produced, the new law changes the taxable event that gives rise to the obligation to pay the tax. This is now the point the oil produced enters the measuring station, rather than the time of its extraction.  The tax authorities may correct the tax base, amending the declared value, whenever there is a deviation from the prices applied in the reference markets or a difference from normal market prices.

<sup>1</sup> According to the Glossary in Annex I to Law no. 27/2014 of 23 September, **Petroleum Operations** are those which involve the planning, preparation and implementation of activities of exploration, research, development, production, storage, transport, termination of these activities or the end of the use of the infrastructures, including the implementation of the demobilisation plan, sale or delivery of the oil to the point of exportation or supply stipulated, this being the point at which the oil is delivered for consumption or use or is loaded as merchandise, including in the form of liquefied natural gas.

<sup>2</sup> According to the Glossary in Annex I to Law no. 27/2014 of 23 September, **Petroleum Produced** is the oil that has been extracted from an oil deposit, initially separated and processed into crude or condensed oil or natural gas, measured at the measuring station approved by the Government, for the purposes of payment of the tax on production, including any volumes of oil lost as a result of deficiencies or negligence during the oil operations. This definition applies in the same terms to the concepts "Crude Oil Produced", "Condensed Oil Produced" and "Natural Gas Produced", as applicable.

## B. MAIN CHANGES TO CORPORATE INCOME TAX

### Determination Of The Taxable Amount And Principle Of Independent Entities

Besides the clear identification and definition of the income or gains and the costs or losses deductible in the context of petroleum operations, RETBFAP also provides for ring-fencing, a concept already established by the last amendment to the Corporate Income Tax Code currently in force.

Thus, to limit any attempts at transferability of costs and income generated in the different areas of the concession contract held by the same holder, RETBFAP makes it clear that the assessment of the taxable amount in relation to the income earned in carrying out petroleum activities must be done individually. In other words, it must be done by reference to the results earned in each area of the concession contract in each tax year. The costs and income from each concession may only be deducted or imputed in the specific context in which they are generated. In other words, they must be deducted and imputed individually and separately.

This means that concessionaries must obtain a single tax identification number (NUIT) for each area of the concession contract and have separate and individualised organised accounting.

### Amortisations

The concessionaire may amortise the depreciable items of the assets used in the oil sector, as long as they are capable of losing value as a result of wear and tear. RETBFAP has established that the expenses of prospecting and research, as well as the expenses of development and production, among others, are now treated as depreciable items of the intangible and tangible assets, respectively. They are amortised as follows:

TYPE OF ASSET	RATE
Research and Evaluation Costs	100%
Development Costs	25%
Petroleum Production Assets	20%
Acquisition of Petroleum Rights	10%
Other Assets	10%

### Withholding Tax Obligation

RETBFAP establishes that taxable persons must withhold tax (for the purposes of IRPC), at the definitive rate of 10%, on the gross amount paid to non-resident entities that provide services related to carrying out petroleum activities, regardless of where the services are provided, as long as the beneficiary of the service is a Mozambican resident or has a permanent establishment in this territory.

### Capital Gains Taxation

RETFAP provides that capital gains obtained by non-residents in Mozambique, with or without a permanent establishment, resulting from the transfer, for value or not, of oil rights in Mozambique, are subject to taxation at the rate of 32%.

Furthermore, the law now makes it clear that gains from the transfer of rights, shares or stakes in companies holding oil rights are, for tax purposes, deemed to be gains relating to real estate with their source in Mozambique.

Finally, special relevance relates to the fact that RETFAP has made it clear that gains resulting from the transfer, for value or not, directly or indirectly, between commercial companies not incorporated under Mozambican law, of stakes in the share capital of companies holding petroleum rights or oil real estate assets (e.g. fields and deposits) located in Mozambique, are deemed earned in Mozambique, regardless of where the transfer in question takes place. As a result, this rule on incidence allows income earned outside Mozambique by entities that are not resident in Mozambique to be taxed here. The responsibility for payment of this tax arising from gains earned by a non-resident entity without a permanent establishment in Mozambique is imputed jointly and severally to the acquiring entity or to the holder of the petroleum rights. The tax due must be paid within 30 days of the date of transfer of the petroleum rights.

### III. BENEFIT SHARING MECHANISMS

In summary, the RETFAP establishes a set of specific rules on the recovery of costs incurred by the concessionaires in carrying out petroleum operations and on how to share the profits generated by petroleum operations – after deducting the costs and expenses incurred by the same operations – between the State and the concessionaires.

The sharing must be done in accordance with a variable scale, determined by the application of several weighting factors inherent to the income generated and costs and expenses incurred in the operations. The share **attributed to the State may vary between 15% and 60 % of the benefit (i.e., profit-oil) achieved.**



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*Sinais, 2012 (detail)*  
Tinta acrílica, stencil  
e MDF sobre contraplacado  
Dimensões variáveis  
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#### IV. TAX BENEFITS

The framework on tax benefits existing prior to the entry into force of the RETBFAP is practically re-created in the new legislation. The law does, however, provide for a broadening of the assets used in the context of the oil activity (and considered to be equipment in Class K of the Customs Tariff) that are exempt from customs duties at the time of their importation.

#### V. FINAL REMARKS

The practical reach of the RETBFAP is still to be determined as the Government has 90 days from the date of publication of this diploma (September 23, 2014) to regulate the same.

However, this new legislation applies to all the remaining oil operations that have been implemented after the date it came into force: January 1, 2015.

The RETBFAP provides that economic operators that carry out petroleum operations under a concession contract in force at the date of entry into force of the law must comply with the tax obligations as established in the respective contracts, except if the concessionaire expressly requests the application of the RETBFAP within 60 days of its entry into force. If this happens, it will lead to the application of the legislation under analysis here as from the new tax year.

The new legislation also creates the option of negotiating a tax stability regime for a period of 10 years from the approval of a development plan – the law does not identify the respective parameters yet – and it is also subject to the payment of 2 % of IPP from the 11<sup>th</sup> year of production.

As a consequence, although the RETBFAP came into force in January 2015, some aspects of this regime will require subsequent regulation.

Despite the above mentioned, we should see the publication of this legislation as a clear step towards a more appropriate and effective framework, with inherent greater protection of Mozambique's economic interests, for taxation and the concession of tax benefits to economic operators that carry out petroleum activities in Mozambique.

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