



## LAW NO. 28/2014 OF SEPTEMBER 23: SPECIFIC RULES ON TAXATION AND TAX BENEFITS OF THE MINING ACTIVITY

### I. BACKGROUND AND OBJECTIVES

Following the publication of Law no. 20/2014, of 18 August, which established the new legal rules on the use and enjoyment of mineral resources in Mozambique, Law no. 28/2014, of September 23, was published and came into force on January 1, 2015. Its aim is to establish, on the one hand, new specific rules on taxation of all mining activity and, on the other, to grant the tax benefits applicable to that activity (RETBFAM).

RETBFAM, which repeals Law no. 11/2007 and Law no. 13/2007, seeks to bring the Mozambican system closer to modern international taxation practices in the mining sector. Secondly, it aims to bring all tax rules relevant to the sector together in one piece of legislation, thus creating a single framework to govern the taxation and tax benefits applicable to the mining sector.

Looking specifically at the applicable taxes, one important change is that RETBFAM has innovatively created the **Tax on Income from Mineral Resources**. In parallel, through the announced objective of mere legislative modernisation and evolution, RETBFAM also introduces a set of new specific rules on the following taxes: i) **Mining Production Tax (IPM)**; ii) **Surface Tax (ISS)**; and iii) **Corporate Income Tax (IRPC)**.

In addition, the taxable persons of the taxes identified above shall continue to be subject to other taxes and rates applicable under Mozambican tax law. These include value added tax and municipal taxes as well as other tax charges and without prejudice to any exemptions allowed by law.

As to tax benefits, RETBFAM maintains unchanged the type of benefits currently in force in the mining sector. Thus, the amendments essentially affect the extent of those benefits.

## II. TAX FRAMEWORK FOR THE MINING ACTIVITY

### A. MINING PRODUCTION TAX

MINING PRODUCTION TAX (IPM)											
<b>Taxable Persons</b>	Legal entities or individuals that carry on a mining activity <sup>1</sup> in Mozambique, regardless of whether they do so under a mining title, qualify as taxable persons.										
<b>What Is Taxed</b>	IPM is charged on the mining product extracted and resulting from the mining activity carried on in Mozambique, whether or not under a mining title.										
<b>Taxable Event</b>	The obligation to pay the tax is deemed to arise when the product is extracted.										
<b>Exemptions</b>	<ul style="list-style-type: none"> <li>■ Mining products extracted for construction, craft products and maintenance of infrastructures, in areas not subject to a mining title or mining authorisation, as long as done by individuals who extract directly and do not sell the product;</li> <li>■ Self-consumption of mining products as long as authorised by the Mining Law;</li> <li>■ Mining samples without commercial value, extracted under a Prospecting and Research Licence;</li> <li>■ Mining products extracted for geological or scientific research.</li> </ul>										
<b>Assessment And Payment</b>	IPM must be paid by the taxable person in relation to each month of the calendar year in which the extraction of mining product takes place.										
<b>Observations</b>	<p>In face of previous legislation, RETBFAM makes it clear that the incidence of IPM corresponds, as a rule, to the mining product extracted after its treatment.</p> <p>Despite the various exemptions from IPM, the beneficiaries of those exemptions must submit information and reports to the tax authorities on the mining products they have extracted from the ground.</p> <p>For the calculation of the taxable value, the law establishes various costs that can be deducted to reduce this value.</p>										
<b>RATES</b>											
<table border="1"> <thead> <tr> <th>TYPE OF MINING PRODUCT</th> <th>RATE</th> </tr> </thead> <tbody> <tr> <td>Diamonds</td> <td>8%</td> </tr> <tr> <td>Precious metals, precious and semi-precious stones, and heavy sands</td> <td>6%</td> </tr> <tr> <td>Basic metals, coal, ornamental rocks and other mining products</td> <td>3%</td> </tr> <tr> <td>Sand and stone</td> <td>1,5%</td> </tr> </tbody> </table>		TYPE OF MINING PRODUCT	RATE	Diamonds	8%	Precious metals, precious and semi-precious stones, and heavy sands	6%	Basic metals, coal, ornamental rocks and other mining products	3%	Sand and stone	1,5%
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All mining products used in Mozambique for the development of local industry benefit from a reduction of 50% in the IPM rate.											

<sup>1</sup> The RETBFAM defines mining activity as: "operations that consist of carrying on, together or alone, prospecting and research, development and extraction of mining products and of the subsequent programme of closing the mine, excluding sales activities".

**B. SURFACE TAX**

<b>SURFACE TAX (ISS)</b>	
<b>Taxable Persons</b>	Legal entities or individuals that carry on mining activity in Mozambique, regardless of whether they do so under a mining title, are taxable persons for ISS purposes.
<b>What Is Taxed</b>	ISS is due on an annual basis and is charged on the area of the mining activity, that is, on the area geographically demarcated and attributed to the benefit of the mining title under which the activity is carried on. In the case of mineral water, ISS is charged on each mining title.
<b>Taxable Event</b>	The obligation to pay the tax is deemed to arise as from the time of allocation of the area subject to the granting of one of the following mining titles: i) Exploration Licence; ii) Mining Concession; or iii) Mining Certificate.
<b>Exemptions</b>	ISS taxable persons are exempt from the payment of the annual rate for use and enjoyment of land in relation to the area of the mining title.
<b>Assessment And Payment</b>	ISS is paid to the services of the administration. The way the payment is made will be defined on future regulations.
<b>Observations</b>	In face of the previous legislation and besides updating the rates, ISS is now calculated on the basis of the area covered by the mining title calculated in hectares, and not, as it was, in kilometres.

**RATES**

TYPE OF MINING PRODUCT	PERIOD OF TIME	RATE
Exploration Licence	1 <sup>st</sup> and 2 <sup>nd</sup> year	17,50 MT/ha
	3 <sup>rd</sup> year	43,75 MT/ ha
	4 <sup>th</sup> and 5 <sup>th</sup> year	91,00 MT/ha
	6 <sup>th</sup> year	105,00 MT/ha
	7 <sup>th</sup> and 8 <sup>th</sup> year	210,00 MT/ha
Mining Concession	1 <sup>st</sup> to 5 <sup>th</sup> year	30,00 MT/ha
	6 <sup>th</sup> year and following	60,00 MT/ha
	For mineral water	85.000,00 MT/ ha
Mining Certificate	1 <sup>st</sup> to 5 <sup>th</sup> year	17.500,00 MT/ha
	6 <sup>th</sup> year and following	25.000,00 MT/ ha

**C. TAX ON INCOME FROM MINING RESOURCES**

<b>TAX INCOME FROM MINING RESOURCES (IRRM)</b>	
<b>Taxable Persons</b>	Taxable persons for IRRM purposes are the legal entities or individuals who hold a mining concession or a mining certificate.
<b>What Is Taxed</b>	IRRM is a tax charged on the gains accumulated and earned under a mining title during the tax year.
<b>Taxable Event</b>	The law provides that IRRM is a tax charged on the net cash flow earned under a mining title (i.e. concession or mining certificate), from the time this flow gives rise to an Internal Rate of Return (IRR), previous to IRPC, equal to or greater than 18 %. However, the IRRM is only due when there are net cash gains at the end of each tax year.
<b>Assessment, Tax Return Obligation And Payment</b>	<p>The amount of IRRM due is calculated by applying the applicable rate to the closing balance of the net cash gains, when this is positive.</p> <p>The taxable person must file the annual tax return for IRRM on the same date as the annual tax return for IRPC.</p> <p>Payments on account and payment of the final IRRM are made in the same terms as IRPC. By 31 May of each year, the taxable person must prepare the estimate for IRRM as payments on account are calculated on the basis of the estimate presented. The payment of the final IRRM must be made in two instalments in August and November.</p>
<b>Observations</b>	This tax enables the State to share in the extraordinary direct benefits that result from carrying on mining activity, as it is charged on net cash flow as long as this is at least 18 %.
<b>RATES</b>	
<b>CONDITIONS</b>	<b>RATE</b>
IRR (equal to or greater than 18%) and net cash gains	20%

## D. MAIN CHANGES IN CORPORATE INCOME TAX

### Determination of the Taxable Amount and the Principle of Independent Entities

In light of ring-fencing, (a concept already established by the last amendment to the Corporate Income Tax Code currently in force) and to limit any attempts at transferability of costs and income generated under different mining titles held by the same holder, RETBFAM makes it clear that the determination of the taxable amount in relation to the income earned from the mining operation must be done individually. In other words, it must be done by reference to the results earned under each mining title (i.e., Exploration Licence, Mining Certificate or Mining Concession) in each tax year. The costs and income from any mining title 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 taxable persons must obtain a single tax identification number (NUIT) for each mining title and have separate and individualised organised accounting<sup>2</sup>.

### Amortisations

The mining title holder may amortise the depreciable items of the assets used in the mining sector, as long as they are capable of losing value as a result of wear from normal use, operation and passage of time, even if they have been acquired under a financial leasing contract. Because of the particular characteristics of the assets used in this sector, RETBFAM has established the following amortisation rates:

TYPE OF ASSET	RATE
Acquisition of Mining Rights	10%
Research and Prospecting Expenses	100%
Development Expenses	25%
Mining Production assets	20%
Other Assets	10%

### Withholding Tax Obligation

RETBFAM requires economic operators to 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 on mining activity, regardless of where the services are provided, as long as the beneficiary of the services is resident in Mozambique or has a permanent establishment in this territory.

<sup>2</sup> However, the law provides that prospecting and research operation carried out up to obtaining the first mining concession licence must be considered a mining title whenever the area of the mining concession corresponds exactly to the area covered by the preceding prospecting and research licence.

### Capital Gains Taxation

RETFAM 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 mining rights in Mozambique, are subject to taxation at the fixed rate of 32%.

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

Finally, in the context of capital gains generated from the mining activity, special relevance attaches to the fact that RETFAM 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 a mining title, or other securities issued by such entities, relating to this title and involving mining real estate located in Mozambique, are deemed earned in Mozambique, regardless of where the transfer in question occurs. The responsibility for the 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 mining right.

### **II. TAX BENEFITS**

The rules regarding tax benefits existing prior to the entry into force of RETFAM are practically re-created in the new legislation. The law does, however, provide for a broadening of the assets used in the context of 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.

### **III. FINAL NOTES**

RETFAM applies to all mining operations and activities implemented after the date it came into force: January 1, 2015. However, the practical reach of RETFAM is still to be determined as the Government has 90 days from the date of publication of the diploma (September 23, 2014), to regulate the same.

Without prejudice, this legislation provides that economic operators that carry on mining operations under a mining concession contract made under the previous rules must comply with the tax obligations as established in the respective contracts, except if these operators expressly request the application of the RETFAM rules.

The new legislation also creates the option of negotiating tax stability for a period of 10 years from the date mining operations begin. This can be extended up to the end of the initial mining concession although it is subject to the payment of 2 % of IPP from the 11th year of production.

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

Despite all this, we should see the publication of this legislation as a clear step towards greater clarity, simplification and efficiency for the taxation and the concession of tax benefits to entities that carry on mining activities in Mozambique.

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