

OIL OPERATIONS

CHANGES TO THE SPECIFIC REGIME ON TAXATION AND TAX BENEFITS



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The Specific Regime on Taxation and Tax Benefits of Oil Operations (*Regime Específico de Tributação e de Benefícios Fiscais das Operações Petrolíferas* - "RETBFOP"), approved by Law no. 27/2014 of 23 September, was recently amended by Law no. 14/2017 of 28 December, which came into force on 1 January 2018.

The main changes made to the RETBFOP relate to non-deductible expenses, to the taxation rules applicable to capital gains arising from the disposal of oil rights, to fiscal stability and to the rules on certification of accounts applicable to companies that carry on oil operations under a concession contract.

In relation to non-deductible expenses, the change introduced to the RETBFOP establishes that costs or losses resulting from tax due to the transfer for value or otherwise of interests in the oil sector are not deductible.

In addition, the new legislation provides that the gains resulting from the disposal for value or otherwise, whether direct or indirect, of oil rights located in the Mozambican territory, qualify as capital gains.

This change to the regime broadens the scope of territorial application of capital gains to the extent that it applies to capital gains realised both by residents and by non-residents in Mozambique, while the application of the previous law was restricted to capital gains realised by non-residents in Mozambique, with or without a permanent establishment.

The Specific Rules on Taxation and Tax Benefits of Oil Operations (Regime Específico de Tributação e de Benefícios Fiscais das Operações Petrolíferas - "RETBFOP"), approved by Law no. 27/2014 of 23 September, were recently amended by Law no. 14/2017 of 28 December, which came into force on 1 January 2018.

Further in relation to the taxation of capital gains, the new legislation provides that capital gains resulting from the difference between the realisation value and the acquisition value of stakes representing the share capital of companies that hold an oil right, or other movable or immovable assets issued by those companies, are fully taxed. The previous law only referred to immovable oil assets.

The new law also establishes that capital gains are taxed autonomously at the general rate of 32%. Responsibility for payment of the tax arising from gains earned by a non-resident entity without a permanent establishment in Mozambique is jointly and severally attributed to the acquiring entity or the entity holding the oil right.

In terms of fiscal stability, the new legislation maintains the period for the possibility of negotiation at 10 years and determines that the granting of fiscal stability, in relation to the assessment, rate and tax benefits, to the holder of the right to carry on operations, as from the granting of the right and up to the said period of 10 years from the start of commercial production, without excluding the requirements for viability and profitability of the project.

Finally, the recently approved legislation establishes a broadening of the requirements that must be met for certification of accounts of companies that carry on oil operations under a concession contract.

Under the new legislation, the companies referred to above may, upon authorisation of the Minister of Finance, which may not be altered during the lifetime of the project, adopt the US dollar as the currency in which the accounts are presented, provided that:

- They have made an investment in an amount at least equivalent USD 500,000,000 (five hundred million US dollars);
- That more than 90% of their transactions are in US dollars.

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