

# Legal Framework



For Tax in  
Mozambique

No. 1 General Overview

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## GENERAL OVERVIEW OF THE TAX SYSTEM IN MOZAMBIQUE

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## 1. INTRODUCTION

This Manual aims to introduce the tax system currently in force in the country, including:

- Calendar of the main taxpayer obligations;
- Introductory explanations to facilitate an understanding of the tax system;
- Descriptions of the fundamental principles and concepts underlying the current tax system;
- Description of the taxes and contributions and a brief summary of the recent evolution of the system;
- Description of each of the taxes in the system;
- Other Matters:
  - The Accounting and tax system;
  - General guarantees and the means of defence available to the taxpayer;
  - Organization of the tax authority;

This manual is an updated version – [Version V02](#) – containing the amendments to the legislation that impacts on the National Tax System and Municipal Tax System.

The topics covered in this Manual are of a complex nature and the Manual is concise. The Manual should not be understood, in any manner to substitute the legal documents and should not be used to obtain professional assistance in relation to the complexity of the economic relations underlying the tax system.

Our thanks are due not only to USAID who sponsored the update of this edition but to GIZ – German Technical Cooperation for their support in developing the Legal Framework for Tax sub-series.



## 2. GLOSSARY

### Acronyms:

**ATM** – Tax Authority of Mozambique (*Autoridade Tributária de Moçambique*) created by Law nº 1/2006, 22 March

**DAF** – Fiscal Department Management

**DGA** – Customs Department Management (*Direcção Geral de Alfândegas*). This is one of the principle units of the ATM, with jurisdiction over the Customs function of the country

**DGI** – Tax Department Management (*Direcção Geral de Impostos*). This is one of the principle units of the ATM

**ICE** – Excise Tax - Tax on Specific Consumption.

**INSS** – National Institute of Social Security

**IRPC** – Corporate Income Tax (*Imposto sobre o Rendimento das Pessoas Colectivas*)

**IRPS** – Individual Income Tax (*Imposto sobre o Rendimento das Pessoas Singulares*)

**NUIT** – Tax Identification Number (*Número de Identificação Tributária*). This number is assigned in accordance with the Regulation of Decree nº 52/2003, 24 December.

**VAT** – Value Added Tax

**ZFI** – Industrial Free Zone (*Zona Franca Industrial*). This is defined in Law nº 3/93, 24 June (Investment Law)

### Concepts:

**Fiscal Department** – entity responsible for tax collection and the taxpayers' records in the respective tax zone (also known as “*Repartições de Finanças*”).

**Economic Activity** – production, trade, or service activities, including mining, agriculture, forestry, livestock and fishing.

**Fiscal Area** – the territorial zones in the country for the purpose of tax collection and taxpayer's records.

**National Territory** – the entire land surface, maritime zone and the air space limited by national boundaries.

**Objective Exemptions** – exemptions applicable to designated domestic or imported goods, independent of the taxable person.

**Non-Objective Exemptions** – exemptions applicable to the taxable person, independent of the goods supplied.

**Sisa** – tax applicable to the transfer of immovable property.



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**Respective Tax Department** – branch of the Ministry of Finance nearest to the place where the taxable person carries on business (headquarters or permanent establishment), or in its absence the residence of the taxable person.

**Rural Area** – land located in the countryside, outside the scope of a municipality.

**Tax Representative** – person appointed (as required by Mozambican law) to represent a non-resident taxpayer.

**Tax Revenue** – tax generated State receipt, including taxes, custom duties, levies and licences, and excluding wealth receipts.



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### 3. CALENDAR OF TAXPAYERS' PERIODIC OBLIGATIONS

In relation to the main taxes (VAT, IRPS, IRPC, ICE), as well as INSS, the calendar for the taxpayers' obligations, is as follows:

#### Monthly obligations:

Day	Obligation	Applicable Legislation
10	Submission of social security contributions	Instructions from INSS
20	Submission of tax withheld tax on IRPC and IRPS during the prior month – IRPC M/39, IRPS M/19	Art.29 IRPS Regulation and Art. 45 IRPC Regulation
Last working day	Submissions of monthly VAT return (Modelo A) declaring the sales undertaken in the previous month and the VAT received during the same period	Art. 32 VAT Code,
	Submission of the declaration (by the entities subject to ICE - Excise tax) of goods produced in the country, outside a bonded warehouse, together with submission of the tax assessed	P. 3 Article10 ICE Code

#### Annual obligations:



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<b>Month</b>	<b>Obligations</b>	<b>Applicable Legislation</b>
January	Submission of an Income Declaration to the earners of the respective income. The Declaration should be submitted by the 20 <sup>th</sup> day of the month by entities who pay withholding tax on account of IRPS or IRPC	Line b), P.1, Art. 44 IRPS Regulation
March	Deadline to deliver to the DAF (Fiscal Department) from January up to March, an annual declaration on the approved form (1). This declaration should be completed by those entities that have paid any income subject to withholding tax on account of IRPS or IRPC in the prior year (Form M20H)	Line c) ,P. 1, Art. 44 IRPS Regulation ;
	Deadline to deliver an annual declaration of tax withheld from non-resident taxable persons (form M/20H).	P. 6, Art. 44 IRPS Regulation
	Income declaration that states the payments made subject to withholding tax, when the recipient benefits from exemption, waiver or reduced rate of withholding tax	Line a) Art 45 IRPS Regulation
	Deadline to deliver the annual declaration (M/10 and M/10V), from January up to March, for taxpayers who have earned income of the first category only (dependent employment)	Art.10 and13 IRPS Regulation
April	Deadline to submit the annual declaration (M/10 and M/10 V1) from January up to April, for taxpayers that have earned income other than from the first category (dependent employment)	Art.10 and 13 do IRPS Regulation
May	Payment of the first instalment of advance income tax – (IRPC M/39)	Art. 27 IRPC Regulation
	Submission of annual declaration of income IRPC (M/22) - independently of existence of profit or losses	Art. 39 IRPC Regulation
	Together with the submission of the annual declaration of income (M/22), payment of the difference, if any, (M/39) between the total IRPC calculated in the annual declaration and the respective advanced payments	Art. 27 IRPC Regulation
	Deadline for payment of the amounts of IRPS in relation to income earned in the previous year – first category (M/19)	P 1 Art. 28 IRPS Regulation
June	Payment of the first instalment of special advanced income tax (IRPC M/39)	Art. 71 IRPC Code
	Submission of the Annual Declaration of Accounting and Tax Data (M/20) and the related annexes	Art. 40 IRPC Regulation
	Deadline for payment of the amounts of IRPS in	Line a) P 1 Art.28



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	relation to income earned in the previous year for the second, third, fourth and fifth categories (M/19)	IRPS Regulation
July	Payment of the second instalment of advanced income tax (IRPC M/39)	Art. 70 IRPC Code
August	Payment of the second instalment of special advanced income tax – IRPC M/39	Art. 71 IRPC Code
	Deadline for payment of the IRPS tax amounts due added by interest in relation to the late submission of the annual declaration	Line b) P 1 Art.28 IRPS Regulation
September	Payment of the third and last instalment of advanced income tax (M/39)	Art. 70 IRPC Code
October	Payment of the third and last instalment of special advanced income tax (M/39)	Art. 71 IRPC Code

**PLEASE NOTE** – When date is not specifically referred to, the deadline is the last working day of the month



## 4. NATIONAL TAX SYSTEM

### 4.1. Introduction

The State needs to obtain revenue to fund expenses of for **public needs** (the collective needs of a politically organised society). Such revenue originates primarily from the collection of **tax revenues** (compulsory contributions, in money or in kind) that may have the nature of **taxes** or **levies** or from the sale and exploitation of assets of **national wealth**.

Tax and levies are defined as follows:

- **Tax** is defined as a unilateral, compulsory monetary contribution. The objective of tax is to generate resources to fund the provision of services that will satisfy the **public need**. (e.g. IRPC, IRPS, VAT)
- **Levies** are defined as compulsory monetary contributions that:
  - Correspond to the obligation assumed by the State to provide certain specific services relating to the satisfaction of public or semi-public needs or, alternatively, make them available to the population;(e.g. airport landing levies, garbage collection levies, radio levies), or,
  - Originate as a counterpart of a specific activity of the administration to meet an explicit request of the taxpayer (passport fees, hunting licenses, mining licenses, forestry-cutting licenses).

In the first instance, they are **fees or user charges**, whilst in the second, (where the activity of the administration usually derives from the power of inspection) they are **licenses**.

*For levies, the character of unilateral is absent because there is a specific counterpart from the side of the administration (the levy is paid only by the person that requests the provision of the corresponding service, license or other administrative act).*

Within the scope of these definitions, **goods** or **public services** are those that allow the community to obtain the benefit of the use of a utility that is not susceptible to individualization (an indispensable requirement for the divisibility of the respective costs and the corresponding enforcement of a levy) and therefore cannot be covered by determined consideration.

Examples of services of this nature are the police force, the construction of a new road, public electrification in cities, etc. These aim to satisfy the needs of the community but the individual benefits for each of them cannot be determined (or the determination is not practical or politically acceptable).

Resources collected by public entities (State, Municipalities, etc) normally finance such services. These are based on criteria other than that provided by a consideration (or price of the utilization of the service) since such consideration is not determinable.

The general accepted criterion is the cost sharing criteria, i.e. **tax burden**. This relates to the citizens or the company's ability to contribute based on the wealth owned or obtained, the consumption, and sale of assets, the transfer of property and other transactions (i.e. **taxable**



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**transactions).** This assumes that the taxpayers are financially and economically able to pay the tax required from them.

The **tax** always aims to affect, directly or indirectly the taxpayer's income during a specific tax period (the fiscal year) or accumulate under assets or wealth.

Taxes are classified as:

- **Direct Taxes** – taxes directly on income or wealth (e.g. IRPC, IRPS and the Special Tax on Gambling); and
- **Indirect Taxes** – Taxes indirectly affecting the income of the final consumer by the respective level of expenditure incurred (e.g. VAT).

Taxes, particularly Direct Taxes are classified as follows:

- **Proportionate** – when the respective rate is fixed independent of the amount of the tax value (e.g. IRPC);
- **Progressive** – when the respective rate increases as the remuneration increases (e.g. IRPS);
- **Decreasing** – when the tax is a proportionate rate, but lower rates are applicable to the lower end of the pyramid of the taxable income (in Mozambique the old tax on salaries was a decreasing tax.);
- **Regressive** – when the tax rate varies inversely with the amount of the taxable income (e.g. Individual Municipal Tax and Tax on National Reconstruction). These have fixed amounts.

The progressive tax has been considered to be the most adequate to apply and observe the criteria and objectives of social justice. The current Mozambican tax system could be classified as deeply unfair because about 75% of the total tax revenue of the State is generated by indirect taxes (e.g., VAT, Tax on Specific Consumptions (ICE), import duties, etc.), whilst the progressive tax (IRPS) represents just above 10% of total tax revenue<sup>1</sup>.

The system has been increasingly questioned since the 1980's. This highlights inefficiency in the application of the principle of progressive tax (namely in terms of taxation of the capital income due to the increasing sophistication they may present). It also highlights the increasing mobility of capital within the economic globalization framework and the weaknesses of the tax administration for levels of tax evasion experienced in cases where the principle of withholding at the source is not applicable.

The effectiveness of the VAT system is highlighted, as well as the virtues of the selective taxation for a certain type of consumptions that are indicators of certain forms of wealth.

The primary purpose of tax is to collect financial resources for the State; however, additional tax objectives are as follows:

- Objectives of redistribution of income and of national wealth through progressive taxation;

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<sup>1</sup> Statistics of 2006



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- Orientation of consumption through selective tax forms (e.g. ICE);
- Penalization and discouragement of socially harmful consumption (taxation on tobacco and alcohol);
- Incentive to certain economic activities by subjecting the corresponding income to more favourable tax rates. In addition, the orientation of investment to less developed zones in the national territory.

Another tax objective associated with imports was the protection of the national industries. The policies of progressive liberalization of the business exchanges and of custom “disarmament” irreversibly affect the satisfaction of such an objective.

### 4.2. General Principles and Concepts of the Current Tax System

Article 100 of the Constitution of the Republic states the following “taxes are created or changed by the law that determines them, according to the criteria of social justice”. This is the only reference in the constitution text to taxation.

The ordinary Law complements the constitutional text. The principles regulating the organization and operation of the national tax system are contained in the following Laws:

- Law n° 15/2002, 26 June – Law on the Basis of the Tax System;
- Law n° 2/2006, 22 March – Law on General Taxation.

The principles and concepts established in these laws are as follows:

#### General Principles:

- Taxation aims to satisfy the financial needs of the State and other public entities, and to promote social justice, equality of opportunity and the necessary redistribution of wealth and income;
- Taxation respects the principles of generality, equality, legality, non-retroactivity, material justice and the efficiency and simplicity of the tax system. Taxes not established by law cannot be collected;
- Taxation covers the applicability, rates, fiscal benefits, guarantees, and obligations of taxpayers, the tax authorities and covers the scheme for tax offences.

#### Concept of Tax Revenue:

For the purpose of the tax legislation, **tax revenue** includes **taxes**, **levies**, and **special contributions**, defined as follows:

- **Taxes** are compulsory contributions, which are assessable in money terms. Taxes are demanded by a public entity for the pursuance of public ends unrequited and where tax event is based in manifestations of contributable capacity;
- **Levies** are contributions assessable in money terms which are demanded by a public entity as counterpart for the utilization of a public asset or service, or for the removal of a juridical limitation to the activities undertaken by individuals;



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- **Special contributions** are contributions provided as a counterpart or as an increase in the value of assets belonging to the taxpayer that resulted from public works or from the creation or expansion of public services, or from the wearing out of public assets as a result of the performance of an activity.

### Principle of Taxation Legality:

- The bases of the taxation policy and tax system are defined by Law in the terms of the Constitution;
- The Law on the Basis of the Tax System determines the applicability, rates, and the tax benefits of the national taxes. The Law also covers the guarantees and obligations of the taxpayer, the tax authorities and the basic procedures to liquidate and collect taxes;
- The Law on Municipal Finance determines the applicability, rates and the tax benefits of the municipal taxes;
- The tax justice system is applied through the courts in the tax and custom jurisdictions for total and effective coverage of all legally protected rights and interests in taxation matters.

### Illicit Acts:

Income illicitly obtained or acquisition, ownership, or transmission of assets or any other such act is not exempt from taxation when such acts meet the assumptions of the applicability provisions.

### Fiscal Benefits:

Fiscal benefits are temporary measures that prevent or reduce taxation and pursue extra-taxation objectives of relevant public interest, namely economy orientation.

Fiscal benefits may be exemptions, reduction of rates, deductions in taxable income and charges, accelerated depreciation and any other form of benefit foreseen in the Law. Benefits may be awarded through specific laws, including those ruling tax contracts.

Without affecting the acquired rights, tax benefits apply for a maximum period of five years, unless another period is expressly established or if they have a structural character by nature.

### Interpretation of Taxation Rules:

- To determine the meaning of the taxation rules and to qualify the events to which they apply, general rules and principles are observed to interpret and apply the laws;
- Whenever expressions specific to other juridical areas are mentioned in the taxation rules, these shall be interpreted with the meaning they have there, unless other understanding arises directly from the law;
- If doubts relating to the meaning of the applicability of the rules persist, the economic substance of the corresponding taxation event shall be taken into account;
- In the case where the juridical act or business is simulated, taxation applies to the real juridical act or business, and not to the simulated act or business;



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- Omissions resulting from taxation rules that should be included in the legislation are not susceptible of analogical interpretation;
- Rules that determine the tax applicability and exemptions are not susceptible to extensive or analogical interpretation.

### **Application of the Tax law – Timing and Situation:**

The tax rules applicable to the taxpayer can only be applied to events, which occurred after the rule came into force. No charge can be demanded from the taxpayer from a rule that:

- Corrects inaccuracies or errors of the law;
- Eliminates doubts of interpretation of the legislation in force;
- Alters legislation in force to favour fiscal abuse;
- Determines a punitive scheme, for a tax infringement, more favourable to that which was established by the law in force when it occurred, where judgement has not yet been passed.

Without affecting International Treaties or Conventions of which Mozambique is a part of, and unless there is legal disposition to the contrary, the taxation provisions apply to events that occur in the national territory and to foreign income earned by residents.

### **Definition of the taxable person:**

A taxable person is a person who is obliged to make a tax contribution, of a material or a formal nature. This can be an individual or a collective person (e.g. - an entity, a trust fund, a formal or informal organization or any other association of persons).

For the purpose of this definition, a tax contribution means any obligation:

- To pay taxes, to withhold and submit taxes on behalf of another person or to respond to an obligation of a third party;
- To submit declarations within the legal periods of time, to provide clarification about a tax situation and to provide data and information related to the tax affairs to the tax authorities;
- To provide a security;
- To keep accounting records and books.

The following are not defined as taxable persons:

- those who support the cost of the legal repercussion tax, without affecting the right to reclamation, hierarchical or contentious appeal in the terms of the taxation laws; or,
- those who provide information on third parties on tax issues, exhibit documents, issue opinions in an administrative or judicial case, or allow access to buildings in the working place.



**The Taxpayer** is the taxable person obliged to pay taxes and other legal charges associated with them.

**Tax Personality and Representation:**

- Tax personality consists of the susceptibility of being subject to a juridical-taxation relation;
- Taxation of a household family does not imply that it has a tax personality. The spouses may practice all the acts related to the tax situation of the household and those related to assets or interests of the other spouse, if the latter is aware of them and has not opposed to them;
- The tax capacity practiced is determined by the civil law;
- Their respective representatives undertake the tax rights and duties of incapable taxpayers and of entities without juridical personality. These representatives are designated according to civil law and by persons that legally or *de facto* administer their interests, pay the taxes due on account of the assets they administer and comply with all the related taxation obligations;
- The taxation acts practiced by the legal representative on behalf of the represented, impacts on the juridical sphere of the latter within the limits of power of representation that have been conferred to the former;
- The fulfilment of the taxation duties by the incapable does not invalidate the act, without affecting the right to reclamation, hierarchical or contentious appeal of the representative.

**Compulsory Designation of a Taxation Representative:**

An individual or collective person residing in Mozambican territory has to be designated for the purpose of representation to the tax administration in the following cases (and in terms of the applicable legislation):

- Non-residents, individuals or corporations (with or without permanent establishment in the country), that have obtained income or own assets located in Mozambican territory;
- The partners of non-resident corporations, resident or not, with or without permanent establishment in Mozambican territory, that have obtained income or own assets located therein;
- Taxable persons who are resident in the national territory but have been absent for a period longer than one hundred and eighty days.

Once the representative has been designated, the revocation of the powers of representation will only take effect after the tax authorities have been notified.

**Organic Representation:**

- The rights and duties of corporations are performed by their representatives (designated in the bylaws) or, in their absence, by the formal or informal board of directors, or by whom the board of directors designates;



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- The representatives of corporations referred to in the previous paragraph and the legal representatives of entities without juridical personality that are subject to a tax may also confer, in the terms of the law, the power of attorney to perform acts of taxation proceeding nature;
- The permanent establishment of non-residents may exercise their taxation rights and duties, and intervene in the administrative procedure by expressed authorization of the headquarters or effective leadership and through the representative when the tax event is related to that person;
- The designation mentioned in the previous paragraph is made in the commencement of the declaration of activity or of alterations, where it shall be expressed accepted by the representative.

### **Taxation Substitute:**

- The taxation substitute is the taxable person who is obliged to comply with the material and formal contributions of the tax obligation in place of the taxable person;
- Tax substitution is effective (especially through the duty of withholding tax due by the substituted), at definitive title or on his behalf, on the payment to the other person, and the duty of delivery of the withheld amounts to the public treasury;
- The delivery of the tax by the substitute, without the necessary retention, confers the right of return to the substitute on behalf of the substituted according to the civil law;
- The tax withheld and paid by the substitute, even if unduly, is considered as having been paid in the name and on behalf of the substituted.

### **Tax Responsible:**

Tax responsible is the taxable person to whom the payment is charged, related to a tax debt of a third party that was not paid in time.

### **Corporate Bodies' Liability**

Administrators, Directors, Managers and other persons that perform (even if only *de facto*) functions of administration of limited liability companies, cooperatives and public companies are responsible in relation to them (and in solidarity amongst them) for the tax debts of the collective person in the cases of tax infringements committed by them according to the terms, conditions and limits determined by law.

This liability is extensive to the members of internal fiscal bodies of companies when the committed offences are shown to be a result of neglected functions of control.

### **Tax Address and Taxpayer Number:**

Resident taxable persons, their legal or voluntary representatives, and the representatives of non-resident taxpayers, are obliged to have a tax address in Mozambique.

Tax address is determined as follows:

- For individuals, the usual address of residence in the national territory;



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- For corporations, the address of the statutory headquarters in the national territory. The address can also be the address of the effective leadership, or of the establishment where the accounting books and records are kept, if other than the headquarters;
- In the case of permanent establishment of non-residents located in the national territory, the address is the place of centralization of the management and of the business.

*For those considered as relevant taxpayers by the tax authorities, or in other specific cases, a tax address may be established other than that determined by applying the above criteria.*

The tax authorities attribute a tax identification number (NUIT) to each taxpayer and to the substitutes.

Taxpayers have to include this NUIT number in their declarations, invoices, correspondence with the tax administration and other documents mentioned in the law.

### 4.3. Recent Development of the Current Tax Framework

The current tax system is the result of a reform initiated in 1998 that has the following main pillars:

- **Value Added Tax (VAT)** is a indirect tax on expenditure. VAT is applied at the rate of 17% on the supplies of goods and services undertaken within the country, including imports. This substituted the general sales tax created in 1978, which was a multi-stage, cumulative tax with differentiated rates for the different phases of business. The rates were 5% to the producer or importer, 5% to the wholesaler and 10% to the retailer.
- **IRPC** (*Imposto sobre o Rendimento das Pessoas Colectivas*) is a Corporate Income Tax and **IRPS** (*Imposto sobre o Rendimento das Pessoas Singulares*) is a Individual Income Tax. These direct taxes replaced the income tax system established in 1968, which was regulated by the Code of Income Tax.

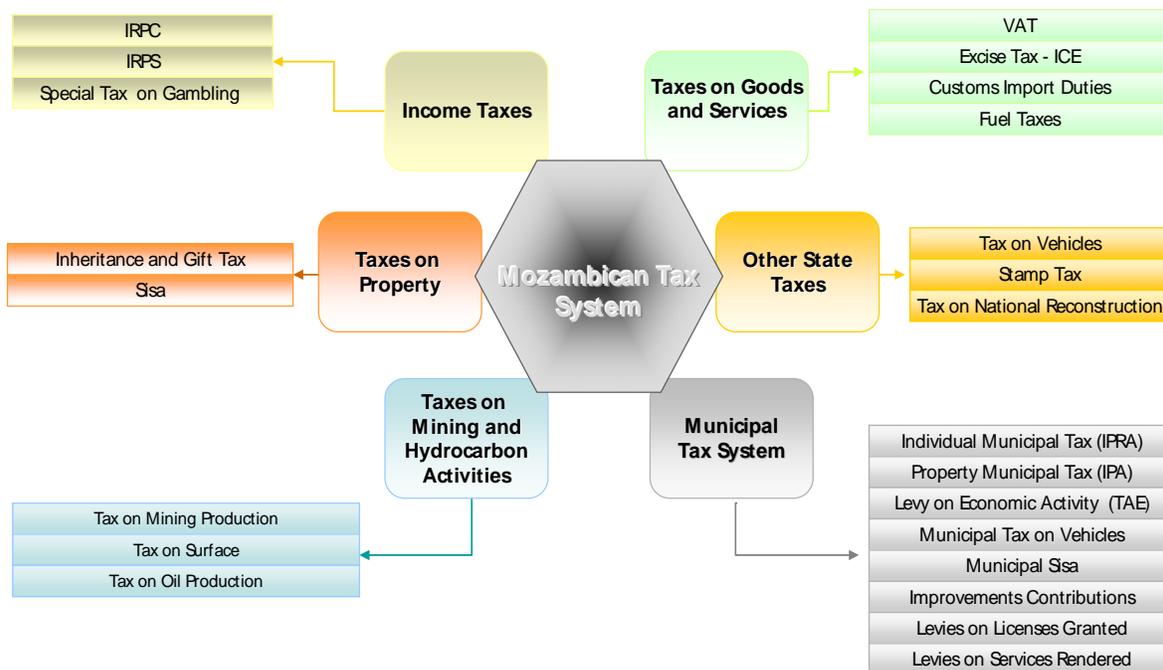
The former system was based on a set of taxes with proportional rates applied on the different types of profits or net income. In the case of individuals, this was complemented, by a tax, levied on the set of the family household income subject to the different specific taxes in which capital taxes, namely on profits and dividends, and some types of interests were also directly levied.



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- The **Municipal tax system** was regulated by Decree No. 63/2008 dated 30 December which approved the Municipal Tax Code..

The tax system in force in Mozambique includes the following:



The National System of Social Security (INSS) is not technically defined as a State tax as it is not revenue generated by the State. This is revenue earmarked to finance the **National System of Social Security**. It is an entitlement to future social benefits by the contributors and other recipients of the system. The following compulsory contributions established by Decree 4/90, dated 13 April are:

Description	Rates
Cost to the employer	4%
Cost to the employee, withheld and charged by the employer on the payroll	3%

The **chargeable basis** of these rates, in accordance with article 10 of the Social Security Regulation approved by Decree 53/2007, dated 3 December is as follows:

- Basic gross salary of the employee;
- Bonuses, commissions and other remunerations paid on regular basis;
- Management awards.



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In accordance with article 4 of the same Regulation national or foreigner employees fall within the scope of the Social Security System. Within the scope are also residents within the national territory, who are employed in an economic activity, even if the work is on a part-time basis, including remunerated probation and trainee periods. The following remunerations are under the framework of a person working for an employer:

- Directors, managers and members of the corporate bodies, working under an employment contract, including individual firms;
- Individual entrepreneurs with employees rendering services or with permanent establishment;
- Cargo handlers, contracted by a company for handling goods in the port or by an employment agency;
- transporters staff;
- State or Municipal civil servants as well as employees of public companies who are not ruled by the General Statutes of the State Civil Servants;
- Seasonal workers;
- Employees of political parties, trade unions, social associations or organisations as well as non-governmental organizations.

For foreign employees the contribution is waived if they can present proof that they contribute to a social security system in another country.

Where the employees are subject to the rules of General Statutes of the State Civil Servants, a system of social security prevails and in this case, a single contribution is levied on the employee at a rate of 7%.



## 5. TAX DEBRIEFING

### 5.1. State Taxes

#### 5.1.1. Corporate Income Tax (Imposto sobre os Rendimentos das Pessoas Colectivas – IRPC)

##### Applicability:

The following entities are subject to IRPC:

- Private companies and any other public or private corporations with headquarters or effective management in the national territory. The total income, including that obtained outside the national territory is subject to IRPC (observing any applicable international Double Tax Treaties- the Treaties are currently entered with Portugal, Mauritius, Italy, and United Arab Emirates);
- Entities, with or without juridical personality, that do not have headquarters or effective management in the national territory. Only the income obtained in the country is subject to IRPC, since they are not subject to the Individual Income Tax (*Imposto sobre o Rendimento das Pessoas Singulares – IRPS*).

For the purpose of tax applicability, income obtained in the national territory means the income of a permanent establishment therein located. In addition, income related to buildings located in the national territory or income owed by an entity with residence, headquarters, or effective management in the national territory, or the payment of which is imputable to a permanent establishment therein located.

##### Tax Transparency:

Tax Transparency relates to partners of companies described below. Such companies have headquarters or effective management in national territory, being the taxable income for IRPS or IRPC purposes, if applicable, determined in the terms of the IRPC, even if profits have not been distributed:

- Civil societies not incorporated as a business;
- Professional firms;
- Companies holding assets, where the majority equity capital belongs directly or indirectly to a family group.

The imputation to the partners or members of the entities shall be apportioned to them in accordance with the terms of the act of incorporation of the entity or, in the absence of this, equally among them.

##### Exemptions:

The following, amongst others, are exempt from IRPC:

- Income resulting directly from an activity subject to the Special Tax on Gambling established in Law n.º 8/94, 14 September;



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- Companies and other entities to which the regime of fiscal transparency is applicable, mentioned above.

### Applicable Rates:

The rate of IRPC is 32%, except in the cases provided for in the following table:

Specific situations	Rates
Agricultural or livestock activities, up to 31 December 2010 (1)	10%
Income subject to withholding tax at source	20%
Entities that do not have headquarters or effective management in national territory and do not have a permanent establishment therein to which the income may be imputable, - as a withholding tax	20%
Entities that do not have headquarters or effective management in national territory and do not have a permanent establishment therein to which the income may be imputable - when income is derived from rendering services of international telecommunications and transport as well as assembling and installation of equipment related to the latter entities	10%
Income from items traded on the Stock Exchange of Mozambique has a withholding tax	10%
Expenses not duly documented and those of a confidential or illegal nature (2)	35%

*(1) Please note that there is a draft law under discussion in the Parliament to extend the period of application of this rate by 2015.*

*(2) These expenses are levied autonomously at the rate of 35%, and the respective deduction for tax purposes is prohibited.*

### Determination of the Income and Taxable Income

For purposes of taxation, the fiscal year coincides, in general, with the calendar year. A different taxation period can be adopted when the nature of the activity justifies this, or if a permanent establishment of companies and other entities are without headquarters or effective management in the national territory. The period adopted shall be maintained for at least five years.

The taxable income comprises:

- The profit of private companies and entities that undertake primarily a commercial, manufacturing, or agricultural activity. All activities that consist of the undertaking economic operations of business character, including services provision will be considered;

*The tax losses in a fiscal year are deductible from the taxable profits, from one or more of the five subsequent years.*

- The total income corresponding to the sum of the income originated by the various categories considered for the purpose of IRPS, in the remaining cases.



### 5.1.2. Individual Income Tax (Imposto sobre os Rendimentos das Pessoas Singulares – IRPS)

#### Applicability:

The Individual Income Tax (IRPS) applies to the total annual amount of income (expressed in value or in kind) obtained in any place, currency, and manner, including income generated from illegal acts. Income is classified in the following categories:

- First Category: income from salaried employment;
- Second Category: corporate and professional income;
- Third Category: income from capital and capital gains;
- Fourth Category: income from property;
- Fifth Category: other income.

IRPS is applicable to individual persons residing in the national territory. The tax is applicable on all the income, including that generated outside the national territory. In addition, the tax is applicable to non-residents for the income generated in the national territory.

*In the case of households, the tax is due on the combined income of household members.*

#### Determination of the Taxable Income:

The taxable income for the IRPS is the aggregation of the income earned in the various categories in each year, after the deductions and allowances permitted by the Code.

For taxation purposes, the income subject to withholding tax is not taxable, albeit without affecting the option of aggregation.

The income exempted is included in the aggregation simply for determining the rate to be applied to the remaining income.

#### Applicable Rates:

The tax rates are presented in the table below:

Annual Taxable Income (MT)	Rates	Amount to deduct (MT)
Up to 42.000	10%	0
From 42.001 to 168.000	15%	2.100
From 168.001 to 504.000	20%	10.500
From 504.001 to 1.512.000	25%	35.700
Above 1.512.000	32%	141.540



### 5.1.3. Simplified Tax for Small Taxpayers (ISPC)

Law No. 5 / 2009, dated January 12, approved the Simplified Tax for Small Taxpayers aiming reducing costs of compliance with tax obligations and expenses with supervision and control by the simplification of procedures as well as to encourage taxpayers to register and pay tax.

It should be noted that the taxation of taxpayers in ISPC is optional. For taxpayers who elect for taxation in ISPC on the supply of goods and services VAT, IRPS or IRPC are not applicable.

The taxable persons of ISPC who earn other income besides the income classified as second category of IRPC (business and professional income) are taxed on ISPC only on income of this category. The remaining income is declared for the purpose of taxation in IRPS.

#### Applicability:

Individuals or corporations who develop agricultural, industrial or commercial, as well as manufacturing and services (including exporters and importers), may elect for taxation in ISPC, provided that:

- The turnover of the previous year is less than or equal to 2,500,000.00 MT;
- Do not be required for the purpose of IRPS or IRPC to have formal accounting books.

#### Exemptions

Taxable persons with a turnover equivalent to 36 minimum wages of the higher minimum wage in force on 31 December of the previous year of the tax year are exempt.

#### Determination of the Taxable Income:

The taxable income is the volume of revenues obtained and determined by the taxable person in each calendar quarter, when the taxable person elects to be taxed on the basis of turnover.

#### Applicable Rates:

The annual payable fixed amount of ISPC is 75,000.00 MT or, alternatively, the rate is 3% of turnover of that year.

### 5.1.4. Value Added Tax (Imposto sobre o Valor Acrescentado – IVA)

#### Applicability:

Value Added Tax applies to the value of the supply of goods and services (for consideration) in the national territory, by taxable bodies. The tax also applies to the importation of goods.

VAT is also applied to the following:

- The supply of services, free of charge, for the private use of the owner, staff or others, for activities not related to the business;



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- Private utilization of goods which form part of the business assets by the owner, staff, or others, for activities not related to the business, as well as for use in exempt activities, where the VAT right of deduction has been exercised;
- Unless otherwise proven, goods are also considered to have been supplied when they are acquired, imported, or manufactured and they are not kept in the inventory of the business. In addition, inventory, which has been consumed in quantities that may be considered excessive, taking into account the volume of production will be considered a supply.

### Exemptions:

The following domestic transactions are exempt from VAT (list merely indicative):

- The supply of certain goods and provision of services expressly indicated in the VAT Code:
  - The supply of goods and services in the area of Health;
  - The supply of goods and services related to social assistance and activities undertaken by public or non-profit bodies, whose objectives are of a social, cultural or artistic nature;
  - The supply of goods and services for the collective interest of members of non-profit bodies. The purposes and objectives of these bodies will be of a social, political, associative (labour and trade), religious, philanthropic, recreational, sporting, cultural or civic nature. The members pay a fixed fee established by the statutes;
  - The supply of goods and services in the area of Education;
  - The supply of goods and services in the agricultural, forestry, livestock and fishing industries, as expressly indicated.
- Banking and financial transactions;
- Leasing of immovable property for dwelling purposes or in rural areas, leasing of property, and for trade, manufacturing and office premises;
- Insurance and reinsurance transactions as well as related services performed by insurance brokers and other insurance agents;
- Transactions subject to Sisa even if exempted from the same;
- Supplies pertaining exclusively to an exempt activity or supplies which did not give rise to a right of deduction. In addition supplies of goods, where on their acquisition the tax did not become deductible.

In relation to the activities of importation, exportation, and international transportation, the following, amongst others, are zero-rated:

- The final importation of goods of that would qualify for an objective exemption, or would benefit from the exemption of custom duties;



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- The importation of goods in transit and the temporary importation or drawback of goods that are exempt from custom import duties;
- Transmission of goods sent or transported with a foreign destination by the seller or by a third party on his behalf, and other similar operations;
- Provision of services that are directly related with the transit, exportation or importation of goods exempted from tax because they were declared to be under the temporary regime, drawback or in transit.

### **Taxable Value:**

The taxable value of the supply of goods and services subject to VAT is generally the value of the consideration, which has been or is to be obtained from the purchaser, the recipient, or a third party (including taxes, duties, levies, and other charges but excluding the VAT).

### **Tax Rate:**

The tax rate is 17%. However, it is important to be noted:

- For goods or services subject to a fixed price regime (including fuel), there are effective rates which are differentiated by applying the general tax rate to fractions of the respective price;
- The “zero” rate regime applies to a limited number of exemptions with exportation activities;
- A percentage of 5% applies on sales undertaken by taxpayers in the “simplified scheme”. These taxpayers do not have the right to deduct input VAT.

### **Right to deduction:**

To calculate the monthly VAT payable to the State treasury, taxable persons deduct the input tax on the acquisition of goods and services from other taxable persons.

The rules can be summarized as follows:

- Taxable persons supply goods and services subject to output VAT (therefore not exempt there from) may deduct the total input tax charged on the purchase of goods and services;
- For taxable persons that undertake exempt transactions, if the exemption gave rise to the right of deduction (as is the case in exportation), the total input tax is also deductible;
- If taxable persons exclusively undertake transactions that are exempt and do not give rise to the right of deduction (e.g. agricultural, forestry, livestock or fishing activities), deduction or refund does not take place;
- If there are simultaneous transactions where some give rise to the right of deduction and others do not, only the input tax charged in the acquisitions to undertake the former is deductible.



## Requests for Refund:

If input tax in a determined tax period exceeds output tax, the excess is deductible in subsequent tax periods. After a period of twelve months (since the excess started), the taxpayer can request a refund (providing the credit exceeds MT 50,000), generally.

### 5.1.5. Other Taxes on Goods and Services

#### 5.1.5.1. Excise Tax on Specific Consumption

The Excise Tax on Specific Consumption levies the consumption of specific goods detailed in the list (annexed to the respective Code). This is applied to the producer or the importer, relative to the specific case.

The rates currently in force are detailed in the Law 17/2009, dated of 10 September. This Law presents a Table, which also lists the eligible goods.

The established rates are ad valorem rates ranging from 5% to 75%. For certain items in the table, the application of ad valorem rates must be combined with the minimum amount of tax payable by a specific unit of taxation.

Tax payment is due when the manufactured goods leave the production unit for trading or when the imported goods are cleared from customs, or when the finished product leaves the warehouse under customs control.

*Alcoholic beverages and processed tobacco are subject to a special inspection regime. A stamp provides the proof of the tax payment. The tax also becomes due when these products are located in the national territory for trading purposes and they do not have the required stamp.*

#### 5.1.5.2 Customs and Import Duties

Import duties are levied on the value of goods to be imported or exported through the borders of the national territory (Custom Territory).

The CIF (Cost, Insurance & Freight) value is normally adopted, and the rates in force are as follows:

Description	Class	Rates
Raw materials	M	2.5%
Intermediary goods	I	7.5%
Capital goods	K	5.0%
Consumer goods	C	20.0%
Essential goods (1)	E	0.0%
Fuel	N	5.0%
Energy	W	0.0%

*(1) Considered as goods of basic consumption as well as pharmaceuticals in general.*

For imported goods that are exempt from duties, and for custom clearance of zero rated products (table of custom duties), a fixed fee is levied, the Custom Services Levy (*Taxa de Serviços Aduaneiros – TSA*).



Normally, export goods are free from duties (zero-rated), but are subject to the “*ad-valorum* rate” (“*taxa de sobrevalorização*”). This applies to a limited range of products (e.g. cashew nuts and wood).

### 5.1.5.3 Levy on Fuels

The levy on Fuels is classified as a tax, as it was originally designated this when it was imposed for the first time by Decree 22/90, dated 24 September (tax on fuels). Now it is also designated as a “Levy on fuels” by Law 15/2002, dated 26 June and by the Regulation approved by Decree 56/2003, dated 24 December.

The levy applies to all fuel, produced or imported to be traded in the national territory. The levy is applied to the following taxable persons:

- Refiners, importers or distributors that produce in industrial scale, or trade in any form within the national territory;
- Individual or corporate importers that introduce fuel for their own use or use by third parties in the national territory, by surface or by sea.

The applicable rates are fixed and are updated every quarter by the Minister of Finance in accordance with the inflation rate. Each change in the rate cannot exceed 5%.

Kerosene has a temporary suspension of this Levy.

Decree 56/2003, dated 24 December establishes specific “incentives” by way of reimbursing a part of the amount paid or a reduction in the applicable rate. This is applicable to Diesel for certain specific consumption (mechanised farming, mining industry, energy generation, fishing boats),

*A significant portion of the Levy is allocated to the Road Fund (Fundo de Estradas)*

### 5.1.6. Taxes on Property

#### 5.1.6.1 Tax on Inheritance and Gifts

The Tax on Inheritance and Gifts applies to the transfer (free of charge) of movable and immovable property, by inheritance, legacy, donation, or any judicial business between living persons. The tax also applies when the property is transferred for a separate usufruct, utilization or dwelling.

*For the purpose of this tax, movable properties are considered urban buildings located in the national territory.*

The following are not subject to tax:

- The transfer, free of charge, of pensions or allowances by death;
- Donation of goods associated with charity or assistance, or goods designed to meet economic and social need or public disaster relief.



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When a transfer of assets is both free of charge and charged, the tax is applied to the portion transferred free of charge. The portion transferred at a price is subject to Sisa if urban buildings are involved.

*The tax is due by individuals that acquire property free of charge even if the right to usufruct, utilization, and habitation has been transferred to another person.*

### Criterion of Territory:

The following rules apply when determining the tax on inheritance and donations:

- When the transferor and the recipient of the assets, or of the rights on them, or both, are residents in the national territory the tax is levied on the total assets or rights acquired (free of charge), independent of their location;
- When neither the transferor nor the recipients are residents in the national territory, the tax is levied on the transferred assets and rights located in the national territory.

For the purpose of this tax, the following assets or rights are considered located in the national territory:

- Urban buildings;
- Rights on corporeal movable assets not subject to registration;
- Rights on movable assets registered or subject to registration in the national territory;
- Credit or wealth rights on individuals or corporations when the debtor has residence, headquarters, effective management or permanent establishment in the national territory;
- Capital shares when the share owned company has its headquarters, effective management or permanent establishment in the national territory;
- Rights on industrial property, copyrights, and related rights, registered or subject to registration in the national territory.

### Rates and Non-Taxable Minimum Amount:

The tax rates are as follows:

Description	Rates
Descendents, spouses and ascendants	2%
Brothers and family related up to 3 <sup>rd</sup> degree	5%
Any other persons	10%

In case of the transfer (free of charge) of movable or immovable assets or of urban buildings or rights on them to spouses, sons or daughters (natural or adopted), or family members, a **non-taxable minimum amount** is fixed. This amount is equivalent to five hundred times the highest minimum monthly salary to be deductible from the taxable value (determined net of deductible charges and debts).



### 5.1.6.2 Sisa

Sisa is applicable to transfers (for consideration) of the right, or a portion of the right on immovable properties, such as urban buildings located in the national territory.

However, with the implementation of the Municipal Tax System Sisa was replaced at municipalities by the Municipal Sisa. Therefore, as of December 30, 2008, the Sisa is payable only in the transmission of real estate located outside of municipalities

The transfer is considered to be the purchase and sale, donation on compliance, perpetual rent, rent for life, auction, adjudication by agreement or court decision, constitution of usufruct, utilisation or dwelling, long lease, charge upon an estate or any other act by which the right of property on urban buildings is transferred for consideration.

Sisa is applicable on the following examples:

- A lease that contains a clause that leased urban buildings become property of the lessee after all agreed rents have been met;
- A lease or sub-lease of urban buildings for a period longer than twenty years, the duration of which is established in the beginning of the contract by expressed agreement of the stakeholders;
- Acts derived from companies incorporation when the partners contribute the share capital with urban buildings;
- Acquisition of urban buildings by exchange or permutation. The tax will be levied on the declared difference of values, or by the difference between the net wealth values, depending on which one is higher.

Sisa is due by individuals or corporations, to whom the rights on urban buildings are transferred at the rate of 2%. This is levied on the value declared by the transfer or the wealth value of the building, depending on which one is higher, unless the latter is distorted when compared to the fair market value.

In the case that the recipient or the recipient partners have residence in a territory subject to a tax regime clearly more favourable, the applicable rate is 10%, and no exemption or reduction is granted, in the terms of the IRPC Code.

*The transmission of urban buildings by merger or division of companies is exempted.*

## 5.2. Other State Taxes

### 5.2.1. Tax on Vehicles

The Tax on Vehicles applies to the use and benefit of vehicles, licensed and registered in the country. The tax also applies to vehicles that are circulating or being used under normal conditions of utilisation, and one hundred and eighty days have passed since the vehicle entered the national territory. The tax applies to the following vehicles:

- Light and heavy vehicles equal or less than 25 years old;
- Passenger Motorcycles, with or without side car, equal or less than 15 years old;



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- Aircrafts with engine for private use;
- Boats for leisure with an engine for private use.

*Vehicles are considered to be potentially in use if they circulate by their own means or are parked in roads or public places. Boats and aircraft for leisure are considered to be utilized if they have valid navigation licenses.*

However, with the implementation of the Municipal Tax System it was introduced the Municipal Tax on Vehicles (IAV) regulated by Decree No. 63/2008 dated 30 December 2008 to replace the corresponding state tax.

Therefore, as of December 30, 2008, the Tax on Vehicles is applicable only on the **owners of taxable vehicles residents outside of municipalities.**

The tax rates are based on following criteria:

- Light cars - fuel used, cylinders of the engine, power, voltage (when moved on electricity) and age;
- Heavy cars - cargo or passenger capacity and age;
- Motorcycles - cylinders of the engine and age;
- Aircrafts - the maximum authorised weight at take off;
- Leisure boats - the propulsion from 25 (HP), tonnage and age.

The rates to be applied are annexed to the Regulation approved by Decree 19/2002 dated 23 July.

The Minister of Finance has the authority to review the tax rates whenever necessary (considering the macroeconomic variations), however the new rates cannot be more than double the previous ones.

### 5.2.2. Stamp Tax

The Stamp Tax applies to documents, contracts, books, papers and acts mentioned in the Table annexed to the respective Code, including amongst others the following:

- Acts and contracts celebrated at a notary;
- Issue of insurance policies, at the moment of collecting the premiums;
- Issue of credit and debit cards and cheques issued by credit institutions resident in national territory,
- Issue, acceptance or presentation for payment of bills and promissory notes;
- Credit operations including overdrafts and similar operations;



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- Operations undertaken by or through the intermediation of credit institutions, financial firms and other legally similar entities, whenever interest, premiums, commissions and similar payments take place;
- Public wills at the moment they are executed, and closed or international wills, at the moment of approval and opening;
- Books of businesses including the cases where separate sheets are printed by a computerised system or similar for subsequent use as a book;
- Loans undertaken by shareholders to companies.

*Transactions subject to Value Added Tax, and not exempted there from, however, are not subject to the stamp tax.*

The applicable rates, depending on the nature of the different acts and tax events and the possibility, or not, to determine the respective value, are “ad valorem” rates (percentages or permillage), or fixed quantitative (specific rates).

The tax is always paid by means of a bill and the liability for assessment and payment (listing is not exhaustive) belongs to:

- Notaries, registrars and other public entities, including the State departments and institutions, in relation to acts, contracts and other events where they intervene;
- Credit institutions providing credits and securities and being creditors of interests, premiums, commissions and other similar payments;
- Insurance companies in relation to the sum of the insurance premium, cost of the policy and any other values charged in conjunction or in separate document, as well as to the commissions paid to brokers, net of taxes;
- Entities issuing bills and other credit instruments, cheques, credit and debit cards and promissory notes or, in the case of financial instruments issued abroad, to the first entity that intervenes in the negotiation or payment;
- Lesser or sub-lessor, in rentals and sub-rentals;
- Any other entities that intervene in the acts and contracts, issue, or use the documents, books, titles, or papers subject to the stamp tax.

### **5.2.3. Tax on National Reconstruction**

This tax is regulated by the Code approved by Decree 4/87, dated 30 January. The tax on national reconstruction is a general tax on persons and is legally defined as “representing the minimum contribution of each citizen to the public expenditure”. The tax is applied to all persons residing in the national territory, including foreigners, when certain conditions of age, occupation, ability to work, and the other conditions in the respective Code are met.

The tax rates are of an irrelevant amount and are established on yearly basis by the Minister of Finance. Each Provincial Government, diversified to cater for the level of development and the socio-economic conditions prevailing in each district and region, bases the rates on proposals.



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The Municipal Tax System was introduced in 2001 and the application of this tax was reduced to the areas of the country that were not yet municipalized. As a result, “the taxpayers that make proof of having paid the Individual Municipal Tax in the respective residential district” are exempted.

### 5.3. Municipal Tax System

Law 1/2008, dated 16 January redefines the financial, budgetary and wealth regimes of the municipalities and reformulates the Municipal Tax System instituted initially by the Law 11/97, dated 31 May.

Under provisions of Law 1/2008 (Law on Municipal Finances), the Municipal Tax System includes the following taxes and other charges:

- Municipal Individual Tax;
- Municipal Recurrent Property Tax;
- Municipal Tax on Vehicles;
- Municipal Sisa;
- Improvements Contributions;
- Levies on Granted Licenses and on Economic Activity;
- Tariffs and Levies for Provision of Services.

The entry into force of this new setup of the Municipal Tax System took place with the publication of the Municipal Tax Code, approved by Decree No. 63/2008 dated 30 December.

The essential elements of each of the taxes, which integrate the Municipal Tax System in the country, are presented below.

#### 5.3.1. Individual Municipal Tax

The annual poll tax is similar to the Tax on National Reconstruction. It is collected as a State tax outside the municipal areas and applied to national and foreign persons residing in the respective municipality aged between 18 and 60 years old. The persons must meet the circumstances of occupation, ability to work and the other conditions established in the Code.

The annual value of the Municipal Individual Tax is determined in accordance with the highest national minimum salary in force on 30 June of the preceding year. The tax will be applied through the rates of 4%, 3%, 2%, and 1%, depending on the classification of the different municipalities (levels A, B, C, and D, respectively,).

#### 5.3.2. Municipal Recurrent Immovable Property Tax

##### **Applicability:**

The Municipal Recurrent Immovable Property Tax applies to the assessed property value of urban buildings in the respective municipality. Urban building means any land plot including buildings and constructions incorporated or built on them under permanent condition if:



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- they are part of the assets of individuals or corporations for whom it may be imputed the respective use and benefit without the payment of a rent;
- they are susceptible in normal conditions, to generate income and are dedicated to any activity other than agriculture, forestry, or livestock.

For these purposes:

- Permanent condition of the buildings and existing constructions means buildings (even movable by nature), that have non-temporary objectives and are in the same location for a period longer than six months;
- In a regime of horizontal property or other form of condominium, each autonomous fraction will be defined as a building.

The taxable persons are the holders of the property right on 31 December of the year prior to the year of collection. It is assumed that the persons who have registered the property in their name, at the property registrar may have possession of the property by any means at that date.

### **Exemptions:**

Newly constructed urban buildings in the parcel defined for dwelling are exempt for a period of five years counting from the date of the dwelling license.

### **Applicable Rates:**

The rates of the tax are 0.4% and 0.7%, depending when dealing with buildings for residence or any other purpose, respectively.

The Municipal Property Tax rates apply on the asset value of buildings.

### **5.3.3. Levy on Economic Activity**

In the terms of the Municipal Tax Code still in force, the rate for economic activity assumes the nature of “license of open door”. The Levy is due on any activity of commercial or manufacturing nature, including the supply of services, in the municipal territory once it is exercised in an establishment.

Under same Code, the Levy for economic activity is applied in relation to each establishment and is due for a determined amount, graduated in relation to the following factors:

- Nature of the activity undertaken;
- Location of the establishment;
- Occupied area.

The powers of the Municipal Assembly are:

- To deliberate in matters of typology of the establishments subject to levy. This considers the factors mentioned above as well as the specific mechanisms for issuing and inspecting the corresponding levy.



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- To determine the rates to be in force each year on dependence of the above mentioned criteria. This cannot exceed the maximum of twenty times the monthly value of the national minimum salary for workers in manufacture per establishment.

This levy does not contain any of the essential elements of a “levy” and because it does not correspond to a direct service or activity provided by the municipal administration it is included in the current Municipal Tax Code.

*The payment of levy for economic activity does not affect the collection of licenses for the exercise of the respective activity (alvarás) legally established in other regulations or the imposition of the convenient fees for services by the presentation of petitions of any nature to the municipal administration or due by the granting of licences.*

### 5.3.4. Municipal Tax on Vehicles

This tax substituted the corresponding State tax in the municipalities, and entered into force through the publication of the Municipal Tax Code, approved by Decree 63/2008, dated of 30 December.

This tax will apply to the owners of the cars subject to the tax. This will be individuals, corporations, public or private entities residing in the respective municipality, presuming that the name on which the license and registration were issued is the owner, unless proved otherwise.

### 5.3.5. Municipal Sisa

The Municipal Sisa substituted the corresponding State tax in the municipalities and entered into force through the publication of the Municipal Tax Code, approved by Decree 63/2008, dated of 30 December.

It applies to the transfer (for consideration) of the right of property, or shared right, on immovable properties located in the municipal territory, to be paid by the acquirer.

### 5.3.6. Improvements Contributions

Established in Law 1/2008 and still to be regulated, it is an innovation in the Mozambican tax legislation in the post-Independence period (remote examples of the enforcement in the colonial period in the city then called *Lourenço Marques*).

The Improvements Contributions is defined as a special contribution to the undertaking of public works that add value to the real state. The Contributions will have as a total ceiling the expenditure actually incurred and as an individual ceiling the benefit that will result from the public work for each benefited property.

The launch may take place when the buildings located in the respective area of influence benefit from the following public works directly or indirectly executed by the municipality:

- Opening, enlargement, illumination and tree plantation on squares or streets;
- Construction and expansion of parks and gardens;
- Works to improve the beauty of the landscape in general.



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The taxable person for Improvement Contributions is the owner or person in possession of the property who benefits from the work. The following requisites shall be observed for the respective assessment:

- The initiative to undertake the public works will come from the municipality, or from at least two thirds of the owners of the immovable properties located in the zone of influence of the public work to be undertaken;
- If the initiative for public work comes from the municipality, the plan of the works shall have to have the prior agreements of at least two thirds of owners of the buildings benefiting from the works;
- The improvements contribution shall be calculated by considering the expenditure incurred for the work that will be shared by the benefited properties, with the possibility of having a maximum of twelve partial payments;
- At taxpayer that pays the improvements contribution in a single payment will benefit from a discount of 15% on the total value of his contribution.

*Street and recreational public open spaces, paving, simple paving repairs and repaving, alteration of the geometry of the roads and public open spaces, placement of guides and gutters are excluded from the Improvements Contribution if undertaken by the municipality and directly benefit the adjacent properties.*

### 5.3.7. Other Municipal Tax Revenue

#### 5.3.7.1 Levies on Licenses:

Municipalities may collect license fees on:

- Construction of infrastructure and simple equipment;
- Concession of licenses for land development, execution of private construction works, occupation of a public place due to construction works and to the utilisation of the buildings;
- Use and exploitation of the municipal land;
- Occupation and utilisation of the public space under municipal administration and utilisation of public assets;
- Supply of services to the public;
- Occupation and utilisation of reserved locations within markets and fairs;
- Authorisation of informal markets in the public streets and sites;
- Control and inspection of weights, measures and measuring devices;
- Car parking in parks and other sites reserved for that purpose;
- Authorisation for the use of advertising for social propaganda;



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- Utilisation of any installations of public comfort, convenience or recreation;
- Performing burials, concession of plots and use of vaults, bone-vault and other installations in cemeteries maintained by the municipality;
- Sanitary licensing of installations;
- Any other license granted by the municipalities, which is not exempted by law;
- Registrations determined by law.

### 5.3.7.2 Tariffs and Levies on Provision of Services:

Municipalities who provide a public service under their direct administration in the following cases may apply tariffs and levies on services:

- Water and electrical energy supply;
- Garbage collection, disposal and treatment, and sewage connection, conservation and treatment;
- Collective urban transportation of persons and goods;
- Utilisation of slaughterhouses;
- Maintenance of gardens and markets;
- Maintenance of streets.

*The determination of the tariffs to be charged is the responsibility of the municipal assembly, on a cost recovery basis whenever possible.*

### 5.4. Special Tax Regimes

The following activities are subject to a special tax regime:

- Services of gambling and betting stakes;
- Mining activity;
- Oil and hydrocarbon activity;
- Companies operating in the regime of Industrial Free Zones.

#### 5.4.1. Special Tax on Gambling

The supply of gambling services is subject to a special framework determined in Law 8/94, dated 14 September (Law on Gambling) that determines the Special Tax on Gambling.

This tax is levied on the gross income of companies providing services of gambling net of the individual gains awarded to gamblers. The Special Tax on Gambling is dealt in the concession agreement, as follows



- 20% for a concession period from 10 to 14 years;
- 25% for a concession period from 15 to 19 years;
- 30% for a concession period from 20 to 44 years;
- 35% for a concession period from 25 to 30 years.

The rate to be applied is determined by the concession contract and the following shall be observed:

- Income subject to the Special Tax on Gambling is exempt from IRPC and other taxes on profits. The operations are exempt from VAT including the price of the betting stakes and the tickets for access to the gambling premises.
- Imported equipment and materials to be used exclusively for the implementation, rehabilitation, expansion and/or modernisation and start-up of the projects licensed for the activity are exempted from custom duties, VAT and Excise Tax;
- Other activities undertaken by the concessionaires who are not subject to the Special Tax on Gambling are subject to the general tax system.

A portion of the revenue generated from the Special Tax on Gambling is assigned to finance activities to promote tourism and strengthen the services that control, and inspect the activities of casinos and other gambling places. This portion is, determined by the Council of Ministers will be not less than 20% of the total revenue.

Fifty percent of the revenue collected in the stamp tax levied in the entry tickets and cards for the casino revert to the municipality or municipalities located in each concession zone.

#### 5.4.2. Specific Tax on Mining Activity

Persons undertaking a mining activity in the country, including extraction of mineral water, under Law 11/2007, dated 27 June are subject to two specific taxes, a **Tax on mining production** and a **Tax on the surface rights**, in addition to the taxes integrating the **National Tax System**.

##### 5.4.2.1 Tax on Mining Production

Individuals and corporations involved in mining extraction (with or without a mining title), are subject to the Tax on Mining Production. This is levied on the value of the mining product extracted from the soil, independent of the respective sale, exportation or other purpose.

The tax rates are as follows:



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<b>Mining product extracted from the soil</b>	<b>Rates</b>
Diamonds, precious metals (gold, silver and platinum) and precious stones	10%
Semi-precious stones	6%
Basic minerals	5%
Coal and the remaining mining products	3%

The following are exempted from the tax on mining production:

- Mining products extracted for construction in areas not subject to a mining title or mining authorization, if undertaken by:
  - Individuals in areas where the products extracted are to be used in that area for the construction of dwellings and other installations;
  - Individuals using the land, when the products extracted are to be used in artisan ceramics. This includes construction of dwellings, warehouses and other installations on their own land;
  - Individuals or corporations that will use the products extracted in projects of construction, rehabilitation or maintenance of roads, railways, dams and other engineering works or infrastructure of public interest in areas subject to the land use and benefit title when such projects are undertaken by the interested parties.
- Mining products extracted for geological research undertaken by the State through specialised entities or by education institutions or scientific research.
- The mining products marketed under a marketing license.

### 5.4.2.2 Tax on Mining Concession (*Tax on Surface*)

The Tax on Surface is due annually and applies to the area subject to license for recognition, license for prospecting and research, mining concession or mining certificate or, in the case of mineral water on each mining title.

The tax obligation is chargeable as the concession of the area subject to a license for recognition, license for prospecting and research, mining concession, or mining certificate is attributed.

The applicable rates are a fixed annual amount, differentiated according to the nature of the corresponding title and graduated by ageing of the rights.

### 5.4.3. Specific Tax on Oil Activity

Persons undertaking oil activities in the country are subject to Law 12/2007, dated 27 June. In addition, persons are subject to a tax on oil production, which applies to the oil produced in the



## GENERAL OVERVIEW OF THE TAX SYSTEM IN MOZAMBIQUE

national territory on the areas assigned to develop and produce. The other taxes under the National Tax System, including municipal taxes also apply.

For the purpose of applying this tax, the term “oil,” means oil, natural gas and other hydrocarbons produced or susceptible to be produced from oil, natural gas or clays or bituminous sands.

The tax is levied on the total quantity of oil extracted from the oil well, measured at the first measuring station established by the Government. This includes quantities of oil lost due to deficiency of the oil operation or negligence.

The tax base is the value of oil produced. This calculation is based on the average prices that the producer has sold or contracted at during the month, having reference to the international prices in the main international centres for oil exports.

With the exception of concessions granted before Law 12/2007 (in which case the contracted rates may prevail), the applicable rates are the following:

Description	Rates
Oil	10%
Natural gas	6%

#### 5.4.4. Industrial Free Zones (Zonas Francas Industriais – ZFI) and Special Economic Free Zones (Zonas Económicas Especiais - ZEE)

Industrial Free Zones and Special Economic Free Zones can be created under Law 3/93, dated 24 June (Law on Investment). Under this Law, those zones are defined as:

##### Industrial Free Zones:

*“An area or unit, or a number of units of manufacturing activity geographically delimited and regulated by a specific custom regime. This regime operates on the basis that goods are circulating exclusively for the production of goods for exportation purposes, as well as the exporting goods thereby are exempted from all custom, tax and tax related impositions and also benefit from especially instituted exchange control, taxing and labour regimes...”*

##### Special Economic Free Zones:

*“... The area of activity in general, geographically delimited and regulated by a specific custom regime. This regime operates on the basis that goods coming into the zone, crossing through, becoming industrially transformed or leaving out of the country are totally free of all custom, tax and tax-related. In addition, it benefits from an offshore exchange control and tax, labor and migration regimes specifically established ... ”*

Ministerial Decree 202/2010, dated of 24 November, approved the Regulation applicable to the Industrial Free Zones and Special Economic Free Zones. The tax regime can be summarised as follows:

- Operators and companies in ZEE, and operators in ZFI enjoy exemption from custom duties on the importation of building materials, machinery, equipment, accessories, spare parts, and other goods used in their respective licensed activities in the ZEE and ZFI, established under the Code of Fiscal Benefits;



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- This exemption is also extended to Value Added Tax, including when due in acquisitions made in the domestic market, as well as inside of ZEE;
- The supply of goods and services which might be made in the geographic area of the ZEE and ZFI, as well as the provision of services directly related to such transactions during their stay in these areas are exempt from VAT;
- ZFI operators and companies benefit, since a Certificate is issued, of the following incentives on IRPC
  - exemption during the first ten tax years;
  - reduction rate at 50%, from the 11th up to the 15th fiscal year;
  - reduction rate at 25% for the life of the project.
- Companies operating in Isolated Free Zones approved under the Regulation of Free Zones, enjoy the following incentives on IRPC:
  - exemption during the first five tax years;
  - reduction rate at 50%, from the 6th up to the 10th fiscal year;
  - reduction rate at 25% for the life of the project.
- ZEE operators benefit, since a Certificate is issued, of the following incentives on IRPC:
  - exemption during the first five tax years;
  - reduction rate at 50%, from the 6th up to the 10th fiscal year;
  - reduction rate at 25% for the life of the project.
- ZEE companies benefit, since a Certificate is issued, of the following incentives on IRPC:
  - exemption during the first three tax years;
  - reduction rate at 50%, from the 4th up to the 10th fiscal year;
  - reduction rate at 25%, from the 11th up to the 15th fiscal year.
- ZEE service providers, approved under the Regulation of Free Zones, benefit from reduction rate at 50% on IRPC during five tax years.



## 6. THE ACCOUNTING FUNCTION AND THE TAX SYSTEM

Article 42 of the Commercial Code establishes the **compulsory principle** of business accounting in the following terms:

*“...any private entrepreneur is obligated to have organised accounting records adequate for his business activity that enables the historic knowledge of all the operations as well as the periodic preparation of balance sheets and inventories”.*

The Accounting System for Business Sector, approved by Decree No. 70/2009 dated December 22 is applicable to all commercial businesses, except for those that operate in banking or insurance sectors. It includes the General Chart of Accounts for large and medium-sized companies (PGC-NIRF) and for small and other companies (PGC-PE) which compulsory applies to their businesses according to objective criteria of firm size.

The mandatory use of the Accounting System for Business Sector can be interpreted by considering Article 2, paragraph 4 of this Decree that only remain exempt under Article 2 of Decree No. 36/2006:

*“Smaller entities such as those with an annual turnover not exceeding that established in paragraph 2, article 75, of the Corporate Income Tax Code are waived from the obligation of adopting the PGC”.*

Article 75 of the IRPC Code refers to the **accounting obligations of companies**, stating that:

*“1. Commercial companies or civil companies in a commercial form, cooperatives, public enterprises and all other entities that carry on a commercial, manufacturing or agricultural activity as their main business, with headquarters and effective management in the Mozambican territory, as well as entities that, although not having headquarters or effective management in that territory but have a permanent establishment therein, are obliged to have organised accounting records in accordance with the commercial and fiscal law (...) which provides control over taxable profits.*

*2. The companies and entities referred to in the preceding paragraph with a turnover in the previous year of equal to or less than 2,500,000.00MT may elect for a simplified accounting system unless they are public enterprises, joint stock companies or incorporated partnerships.*

*3. In maintaining the accounting records the following, shall be observed:*

*a) all postings are to be supported by documentary evidence, dated and available for submission whenever necessary;*

*b) the transactions are to be recorded chronologically, without amendments or erasures and any errors shall be adjusted as soon as they are detected.*

*4. Delays in the account records of more than 90 days from the last day of the month to which the transactions relate are not permitted.*

*5. The accounting books, ancillary records, and their respective supporting documents shall be kept in good order for a period of 10 years.”*

Article 106 and Law n° 2/2006, dated 22 March (Law on General Taxation) establishes that:

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“...

- a) *The taxable person obliged to organise his accounting system, shall do so recording all data according to the applicable rules, in a adequate form to assess the tax as well as enabling a inspection of the accounting records within a reasonable period of time;*
- b) *The entrepreneur that is not obliged to have organised accounting records shall comply with the accounting obligations established in the applicable legislation, namely to have accounting books and records as established in that legislation, to record transactions according to the forms and periods of time established therein and to have and keep the supporting documents;*
- c) *The duties referred to in preceding paragraphs shall be complied to taking into account the principles of completeness, accuracy, timing, presentation on historical sequence and duly supported;*
- d) *When the original of an invoice issued abroad or the other documents required by Law, or by any other tax provisions, is written in a language other than Portuguese, it is compulsory to present its translation into Portuguese if required by the tax administration;*
- e) *When the transactions are undertaken in the national territory, invoicing shall be in the national language and currency;*
- f) *The use of abbreviations, numbers, acronyms, and symbols shall be duly clarified in the accounting records;*
- g) *Events fiscally relevant of the activities shall be clearly understandable since they arise until their conclusion;*
- h) *The accounting records may be subject to adjustments in accordance with the terms established in the applicable legislation, but those adjustments cannot eliminate the original entry, or leave doubts about when they were introduced;*
- i) *Books, records and other documentation required by the legislation, including accounting processing by computerised means and microfilms, shall be kept in good order for the time period established in the tax legislation;*
- j) *When activities occur in more than one establishment, the accounting records related to all the activities shall be centralized in one of them selected by criteria determined in the tax legislation;*
- k) *The duties mentioned are also applicable to the taxpayer with an organized accounting system and the respective accounting books and registers;*
- l) *Receipts, invoices and equivalent documents required by the applicable legislation shall be issued and kept in a complete form, clearly filled in and signed, or the taxpayer will be subject to the consequences established for errors and omissions verified;*
- m) *Within the limits of reasonability, the taxpayer shall grant all cooperation to the tax department aiming at the integral fulfilment of the tax obligations (the duty to cooperate);*



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n) *The duty to cooperate includes the complete and true communication of the relevant events for taxation and the presentation of the existing means of proof;*

o) *Whenever the declarations, receipts, invoices, and equivalent documents are not considered clear or there are omissions in them, the tax administration will notify the taxable person or his fiscal representative to provide the required clarifications (the duty to clarify)”.*

To determine taxable income, namely in terms of the income tax (IRPC and IRPS) and expenditure (VAT) is fundamental to maintain an accounting system under certain requirements. This explains the emphasis done to these matters in the tax legislation.

Law 2/2006 dated 22 March (Law on General Taxation) establishes that:

- The **tax base** is determined, by the method of **direct assessment** (article 88, paragraph 1);
- **Direct assessment** aims to determine the actual income or the actual value of assets based on the criteria established in the law. This considers and identifies each case individually, respecting the principles of investigation and material truth (article 89);
- In the case of business or professional incomes of individuals and corporations, the direct assessment is based on the **organised accounting system** or, in cases permitted by law, the **simplified accounting system** (article 90);
- According to certain presumptions and parameters established in the Law and other taxation legislation, the determination of the tax base may be **indirect** (article 88, n<sup>o</sup> 2);
- The taxation legislation can also establish a simplified taxation regime (article 88, p.3);

In relation to **indirect assessment**, article 91 of the Law states the following:

- The **indirect assessment** aims to determine the tax base according to criteria or parameters that reflect the average type of contribution ability;
- Taxation on the basis of the operations that the taxable person has carried out is part of the indirect evaluation;
- Indirect assessment may only be levied on cases and conditions expressly mentioned in the law.

Indirect assessment presumes the use of **indirect methods** (indicators) which are to be used when the following events occur (article 92 of Law 2/2006):

- The non-existence of organised accounting records or accounting books required in the respective tax code as well failure, delay or irregularity in the recording or organisation thereof;
- Refusal to show the accounting records, the accounting books and required supporting documents as well as concealment, destruction, misuse, corruption or falsification thereof;



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- Existence of several accounting systems or groups of accounting books with the intention of concealing the truth from the tax authorities;
- Errors or inaccuracies in the accounting records or strong indications that the accounting records or accounting books do not reflect the exact financial position and profits actually obtained.

*Indirect methods can be applied after the expiry of the period prescribed in the applicable legislation for the regularization or the display of the missing elements*

Article 94 of the abovementioned Law 2/2006 states that:

- Application of indirect methods of taxation shall specify the reasons for the impossibility of direct and accurate verification and quantification of the taxable amount. In addition, the income of the taxpayer in relation to objective indicators of the activity need to be described indicating the criteria utilised in its determination;
- In case of application of indirect methods due to furtherance of objective indicators of the activity scientifically based, the justification shall also include the reasons for not accepting the justification presented by the taxpayer in the terms of the Law.

In terms of the rules to determine the taxable amount and the assessment of the tax payable for IRPC, IRPS (in relation to the “business income”) and VAT purposes, it can be concluded that:

- The assessment of the taxable amount and tax payable according to the rules of the normal regime (**direct assessment** based on the accounting profit and on the value of the taxable transactions from the accounting system) assumes the existence of **organised accounting records**, even in the cases where this requirement is not expressly established;
- Taxation on the basis of a percentage of the sales undertaken (in the case of the simplified accounting system prescribed in the IRPC Code), is similar to a case of assessing the taxable amount by the **indirect method**;
- In contrast, in the case of the VAT simplified scheme, the assessment is still by **direct assessment**.

The following are the requisites of accounting and record keeping, depending on the taxation regime applicable to the taxpayer:

### **VAT:**

- In the normal scheme an organised accounting system according to the rules of the General Chart of Accounts;
- In the simplified taxation scheme, maintenance of registers for (i) purchases, (ii) sales and rendered services and (iii) general expenses as well as to meet the remaining requirements determined in the respective Code article 47;
- In the “exemption scheme”, requirement of an accounting system is not compulsory.



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### IRPC:

- In order to comply with the normal taxation rules entities must keep an organised accounting system according to the rules of the Accounting System for Business Sector;
- The “simplified accounting system” may have some application in the case of entities that do not have a trading activity as the main activity. These entities are subordinated to the rules of taxable income assessment in the different income categories established in the IRPS Code;
- In relation to the “simplified taxation regime”, although the Code does not mention expressly any recording elements of compulsory character, it seems necessary to maintain, at least, the requirements established for the “simplified accounting system” to comply with the rules indicated in article 47 that presumes the existence of the records of sales and rendered services.

### ISPC:

- The taxpayers of the ISPC are required to record each month in an approved format<sup>2</sup>, total daily purchases and sales

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<sup>2</sup> Format approved by Order of the Ministry of Finance dated 22 May 2009



## 7. GENERAL RIGHTS AND MEANS OF DEFENCE OF THE TAXPAYER

Article 50 of Law 2/2006, dated 22 March (Law on General Taxation) defines taxpayer's rights as:

"...

- a) *not to pay taxes not established in harmony with the Constitution;*
- b) *to submit claims or hierarchical appeal, request revisions or submit contentious appeals for any acts or omissions of the tax authorities that were harmful to the legally protect rights or interests of the taxpayer. These must be made within the time period and the justification established in the Law 2/2006, 22 March;*
- c) *to be informed by the Tax Department on the interpretation of the tax laws and the most convenient and reliable way to comply with them;*
- d) *to be informed about their correct taxable situation".*

To understand line b) above, reference is made to Law 15/2002, (Law on the Taxation System Basis) which refers to the rules of tax assessment and the general scheme of taxation infringements.

In terms of tax assessment, article 26 of Law 15/2002 states that:

*"...It is officious when assessed by the tax administration or is self-assessed when assessed by the taxpayer; being officious it can be of the additional type or the presumed type".*

In the case of officious assessment and additional assessment, article 85 of Law 2/2006 states that the notification to the taxpayer should include the following information:

- Name of the taxpayer;
- Tax identification number;
- Date of notification;
- The event object of the notification and the respective tax period;
- Amount assessed, interest and fines;
- Request for the tax payment and the respective deadline;
- Place, way and period of time to effect the payment;
- Basis for the assessment when it implies an increase of the taxable amount in relation to that declared by the taxpayer;
- Procedures to claim, review, appeal, or contentiously appeal that may be exercised, indicating the deadlines and the competent institutions.



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Note that this procedure (compulsory notification to the taxpayer) does not apply when the assessment is performed based on the taxpayer's returns within the normal period of the levying and collection of the different taxes. In this case, it is up to the taxpayer to proceed with the respective payment without depending on any notice from the tax administration.

Whenever there is a divergence between the tax value assessed by the tax administration and the value self-assessed by the taxpayer the latter can request the necessary clarifications invoking his right as stated in abovementioned line d) of article 50 of Law 2/2006. Article 58 of the same Law states:

- "1. The taxpayer enjoying the legally protected rights and interests shall be notified (...) in order to exercise the right of hearing to contest on the relevant events for the decision.*
- 2. The right of hearing exists in the following phases of the proceedings:*
  - a) Before the assessment if it is significant different from the income return presented by the taxpayer;*
  - b) Before the total or partial rejection of claims, reviews, appeals or petitions;*
  - c) Before the revocation of any benefit or administrative act in taxation matters;*
  - d) Before the conclusion of the report of the tax inspection.*
- 3. Hearing may not take place when it becomes unnecessary, namely when:*
  - a) The act is not unfavourable to the taxpayer;*
  - b) It is necessary to take an immediate decision, unless the collection of the receipt is at risk in that case.*
- 4. Hearing is waived when the assessment is performed on the basis of the income return of the taxpayer or the decision on the request, claim, review, appeal, or petition is favourable to him."*

Once the notification is received, and whenever it seems to have errors or lack of justification for the amounts, to which it refers to, the following procedures are available to the taxpayer:

- The **claim**, which shall be against the entity that performed the liquidation, usually the Directorate of the respective Taxation zone;
- The **contest** or **hierarchical appeal**, to submit to the respective hierarchical superior, usually the President of the Tax Authority;
- The **contentious appeal**, to the Tax Court of first level.

Specifically in relation to the **claim**, article 127 of Law 2/2006 states that grounds exists on the occurrence of "...any illegality, namely:

- a) Erroneous qualification and quantification of the income, profits, wealth values and other tax events, including the total or partial inexistence of the taxable event;*



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- b) *Incompetence;*
- c) *Absence or fault in the legal demand;*
- d) *Non-compliance with other legal formalities.”*

A non-chargeable claim cannot be submitted when a contentious appeal has been submitted with the same justification (p. 2 of article 127).

The non-chargeable claim is presented within a period of 60 days from the following events (article 128 of Law 2/2006):

- End of the period for payment of the tax instalments legally notified to the taxpayer;
- Notification of the remaining acts, even when they do not originate any assessment excluding the assessment of the taxable amount by indirect methods;
- Notification of auxiliary liable persons in the process of fiscal execution;
- Formation of presumption of tacit rejection;
- Knowledge of acts against the interests legally protected not covered in the previous paragraphs.

When the justification consists of the non-compliance with essential formalities, the corresponding period established for a non-chargeable claim is one year.

In the cases when the taxable amount is determined by indirect methods, the procedure for the non-chargeable claim is substituted with the possibility of requesting the review that can take place within the subsequent three years.

The total or partial rejection confers the right to a contentious appeal to submit within the period of 30 days.

Alternatively, hierarchical appeal may take place to submit within the period of 90 days (articles 138 and 139 of the mentioned Law).

Once the hierarchical appeal has taken place and if the decision is total or partially unfavourable, a contentious appeal may take place within the period of 90 days counted from the notification of the decision.

Claim or appeal does not have a suspension effect in legal terms, unless a suitable security has been submitted.

In all cases, however, whether there is a non-chargeable claim of a hierarchical appeal, whenever there is the suspension effect of the assessment, the taxpayer shall proceed within the respective period to the payment of the part of the tax levied to the taxable amount that is not in discussion; otherwise, a fiscal execution process may proceed.

The submission of contentious appeal is ruled until the date of the publication of the new legislation, by the old Regulation on Dispute of Contributions and Taxes (Legislative Diploma 783, dated 18 April 1942), whilst Law 2/2004, dated 21 January establishes the following three hierarchical levels:



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- The tax courts established in each province in the terms of the same Law, such as the first proceeding;
- The Second Section of the Administrative Court, in second proceeding;
- The Plenary of the Administrative Court, as last proceeding.

In the first level of appeal, the tax courts shall refrain from acknowledging the tax matters subject to claim or hierarchical appeal, before such ways are exhausted.

The Tax Courts are being progressively created over the Country. Until now the following courts have been created and functioning in the following provinces;

- Maputo city; Province of Maputo (in the City of Matola), covering the provinces of Maputo, Gaza and Inhambane;
- Beira covering the Provinces of Sofala and Manica;
- Tete that covers the Province of Tete;
- Quelimane covering the Province of Zambézia; and
- Nampula covering the provinces of Nampula, Cabo Delgado e Niassa.

What has been referred to above on matters of notification of transgressions, claims, and appeals is equally applicable, with the necessary adaptations, regarding fines determined in a process of tax transgression.



## 8. INSTALMENTS PAYMENT OF TAX DEBTS

The Decree 45/2010 dated 2 November and published in the Government Gazette No. 43, I Series, becoming in force immediately after its publication date, has approved the regulation for the Payment of Tax Debts by Instalments.

This Regulation establishes the procedures to pay for tax liabilities resulting from individual and corporate income taxes liabilities, by way of instalments.

The tax liabilities (including fines, interest and other local charges, if applicable) is now possible to be paid by instalments either by voluntary payment or during the tax execution phases. However, this procedure does not suspend interests and other legal additional penalties due.

The right of payment by instalments of tax liabilities is awarded on the basis of an application properly substantiated to the Minister of Finance and delivered to the respective Tax Department (Direcções de Áreas Fiscais, Unidades de Grandes Contribuintes ou Juízo das Execuções Fiscais competentes), within the deadline provided for the payment of the tax as mentioned on the notice for this purpose.

Please note that, the application must contain the following elements:

- Identification of the applicant,
- Number of Tax Identification (NUIT),
- Nature of the tax liability, and
- Number of instalments requested.

Regarding the instalments, they must be consistently paid on a monthly basis. The number of authorized instalments is 12 (twelve), when the payment is to take place during the volunteer payment period and 24 (twenty-four), in the case of a debt as consequence of a tax execution process.

In addition, the lack of payment of any instalments results in the immediate maturity of the remaining instalments and tax execution proceedings shall be initiated for the value in debt.



## 9. TAX DEBTS OFFSET

The Regulation of Tax Debts Offset has been approved by Decree 46/2010 dated 2 November and was published in the Government Gazette No. 43, Series I. It is in force since January 1, 2011.

This regulation establishes the procedures for settling total or partial tax debts against credits recognized by the public administration or by a court of law for which the taxpayers are entitled to, in the case of tax overpayments.

Where total or partial cancellation of taxes, customs duties and other tax paid is determined, the Director of the respective Tax Department shall issue a credit note, stating the amount of credit that the taxpayer is entitled to.

The credit note should be used to offset debts of the relevant taxpayer, in existence before or after its issuance.

Offsetting tax debts can occur at the initiative of Tax Authorities or the taxpayer and can be made with any outstanding tax, except for those cases where special rules of compensation exist.

The offset is carried out in accordance in the following sequence:

- Debts of the same nature, and if they relate to regular taxes, primarily those relating to the same tax year, and then those relating to different tax years;
- Debts from withholding taxes or legally passed on to third parties and not returned;
- Debts from other taxes.

If the amount of credit is insufficient to offset the principal total tax liabilities and additional charges, the credit is applied successively in the following sequence:

- Default interest;
- Other legal charges;
- Fines;
- Tax debt, including compensatory interest.

It should be noted that the credit notes shall expire if not claimed by the interested parties within one year after notification. The term of the credit note is 5 (five) years from the date of issue.

The amount of the credit note can be reimbursed in cash through an application made by the taxpayer to the Minister of Finance within 30 (thirty) days, before the expiration of the above mentioned deadline.

Claims arisen before the entry into force of this Regulation shall continue to be analyzed and treated in accordance with the procedures for cancellation and refunds of overpayments.



## 10. ORGANIZATION OF THE TAX AUTHORITY

Law 1/2006, dated 22 March, created the Tax Authority of Mozambique (ATM). The objective of the ATM is to “ensure the effectiveness, efficiency, and equity of the application of the taxation and custom policies of the country, guaranteeing a greater convenience for the taxpayers to comply with the tax obligations and by creating a larger capacity to detect tax non-compliance and fiscal evasion”.

In the terms of article 9 of respective Organic Statutes, approved by Decree 29/2006, dated 30 August, the Mozambican Tax Authority has the following structure:

- General Directorate of Customs – *Direcção-Geral das Alfândegas*;
- General Tax Directorate – *Direcção-Geral de Impostos*;
- General Directorate of Common Services – *Direcção-Geral dos Serviços Comuns*;
- Office for Planning, Studies and International Cooperation – *Gabinete de Planeamento, Estudos e Cooperação Internacional*;
- Internal Control Office – *Gabinete de Controlo Interno*;
- Communication and Image Office – *Gabinete de Comunicação e Imagem*.

Article 10 of Law 1/2006 dated 22 March, also foresees the existence of a **Taxation Council** as a consultation body of ATM, with the mission to “analyse and follow up the evolution of the tax system and the taxation policies with the view of keeping it a decisive device of social justice”. The respective President integrating the following permanent members leads ATM:

- General Director of Customs;
- General Director of Taxes;
- General Director of Common Services;
- Other General Directors of the Tax Authority;
- Three representatives of business associations;
- Recognised experts nominated by the President of the Tax Authority.

With regards specifically to the **General Directorate of Tax (DGI)** (article 15 of the Organic Statutes of ATM), its function is to implement the tax policy and legislation and to control and inspect all actions necessary to accomplish its competences, and includes the following units:

- Directorate of Collection, Refund and Fiscal Benefits Control (*Direcção de Controlo de Cobrança, Reembolsos e Benefícios Fiscais*);
- Directorate of Audit, Inspection and Investigation (*Direcção de Auditoria, Fiscalização e Investigação*);
- Directorate of Tax Standards (*Direcção de Normaçoão Tributária*);



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- Directorate of Tax Contentious (*Direcção do Contencioso Tributário*).

The authority of **DGI** (article 16 of the same decree) is as follows:

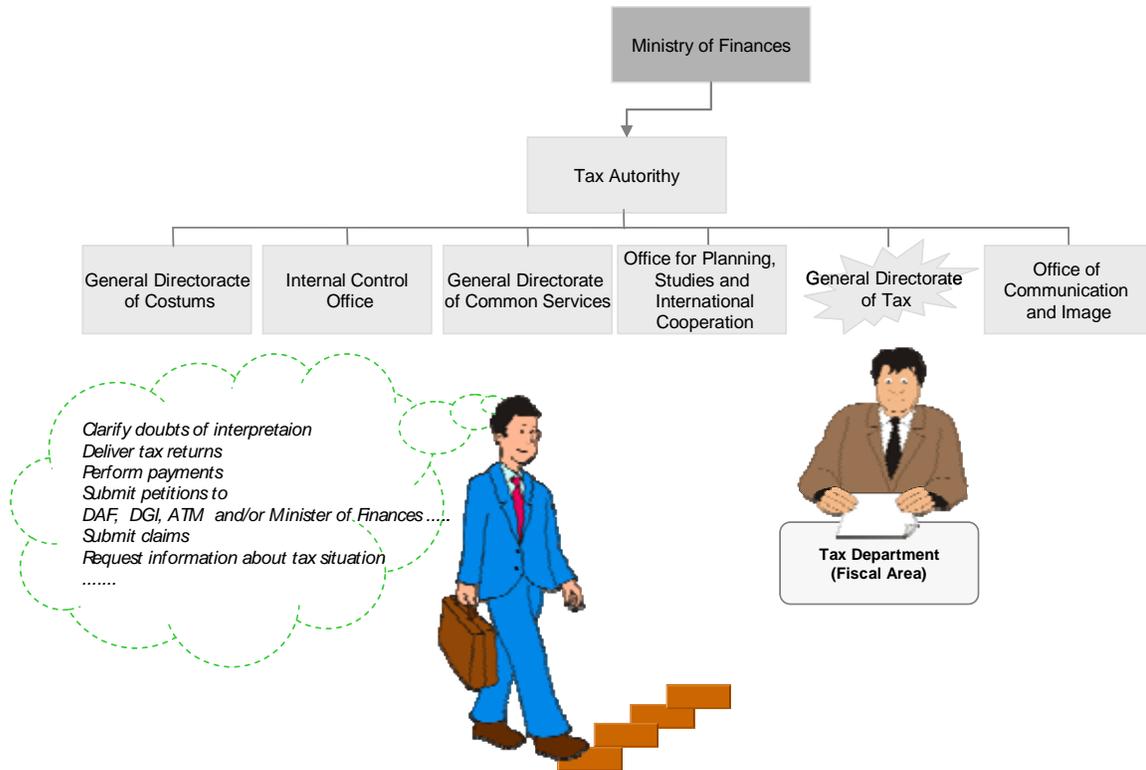
- Ensure the collection of taxes and other revenue by the State to which they are committed;
- Implement the taxation policy and undertake a continuous assessment of its impact in the financial, economic and social order;
- Control the compliance with tax legislation and the reintegration or defence of the respective violations;
- Prevent and avoid tax fraud and evasion;
- Ensure the levying, assessment and collection of taxes which are under its responsibility and proceed with the evaluation of the levels of collection;
- Perform the function of public information tax matters;
- Promote and undertake audit and inspection activities with the aim to prevent and avoid tax fraud and evasion;
- Follow-up and monitor the execution of tax benefits and proceed with the determination and control of the respective tax expenditure;
- Provide clarifications to the taxpayers about the interpretation of the tax laws, their obligations and the most convenient and secure method to comply with them;
- Collaborate in the preparation of proposals of policy measures or legislation changes within the scope of their activity;
- Report on aspects arising from the execution of tax laws;
- Maintain an updated register of the taxpayers.

Territorially and with reference to the organisation of the tax administration, the country is divided into fiscal areas each covering several districts. The city of Maputo, which is divided into two areas, designated as fiscal neighbourhoods. Each of these fiscal areas has a Directorate of Fiscal Area (the old Finance Departments - *Repartições de Finanças*), and adjoined to each of them is a Judge of Tax Executions, with the exception of the city of Maputo where there is only one Judge grouping the areas of two Tax Departments.

The Directorates of the Fiscal Area represent the principal connection of taxpayers to the tax administration where the compliance with respective obligations take place (declarative and others).



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## 11. LIST OF APPLICABLE LEGISLATION

### 11.1. General Framework

#### **Law 2/2006, dated 22 March (Law on General Taxation)**

This establishes the general principles and provisions regulating the tax jurisdiction of the country applicable to all national and municipal taxes.

#### **Law 15/2002, dated 26 June (Law on the Basis of the Tax System)**

This establishes the basis for the implementation of the new tax system on income, observing the principles of unity and progressiveness to complement the reform of indirect taxes. It also defines the principles of organization of the system, taxpayers' guarantees and obligations and the tax administration as well as essential elements of the tax.

Title III describes the content of the National Tax System and the remaining Titles are read in conjunction with Law n° 2/2006 dated 22 March, considering as revoked all that is not in conformity with the latter.

#### **Law 1/2006, dated 22 March**

This creates the Tax Authority of Mozambique.

#### **Decree 29/2006, dated 30 August**

This approves the Organic Statute of the Tax Authority of Mozambique, under the articles 12 and 21 of Law 1/2006, 22 March, and revokes Decrees 3/2000 and 5/2004, dated 17 March and 1 April, respectively. This also keeps in operation the current tax and customs services until the initiation of functions of the Tax Authority.

#### **Decree 52/2003, dated 24 December**

This approves the Regulation the Single Number of Tax Identification (NUIT) in conformity with the article 16 of Law 15/2002, dated 26 June.

#### **Decree 46/2002, dated 26 December**

This approves the Tax Infractions Regime complementary to that established in Law 15/2002, dated 26 June.

In terms of article 2 of this Decree, the regime it regulates does not apply to the tax infractions related with custom rights, tax on vehicles and municipal taxes that are regulated by specific legislation.

#### **Law 2/2004, dated 21 January**

This establishes the authority, organisation, composition and operation of the tax courts while maintaining all the previous relevant legislation (whilst the new legislation is not approved), namely the Legislative Decree 783, dated 18 April of 1942 and the Tax Execution Code approved by Decree 38 088, dated 12 December 1950.



**Decree 19/2005, dated 22 June**

This approves the Regulation of the Procedure on Tax Inspection the application of which is a supplementary extension to the General Directorate of the Customs in what is compatible with the specific nature of the respective inspection procedures.

**Law 8/2011, dated 11 January**

Approves the Exceptional Regime for Settlement of Tax Debts.

**Decree 2/2011, dated 16 March**

Approves the Regulation of the Exceptional Regime of Tax Debts Settlement.

**Decree 45/2010, dated 2 de November**

Approves the Regulation of Payments by Instalments of Tax Debts.

**Decree 46/2010, dated 2 November**

Approves the Regulation for Tax Debts Offset

**11.2. Corporate Income Tax (IRPC – Imposto sobre o Rendimento das Pessoas Colectivas)**

**Law 34/2007, dated 31 December**

Approves the new text of the Corporate Income Tax Code applicable to income during the year of 2008 and subsequent, whilst the Decree 21/2002, 30 July is revoked.

**Decree 9/2008, dated 16 April**

Approves the Corporate Tax Income Code applicable to income obtained during fiscal years 2008 and subsequent, and revokes all the legislation that contradicts it.

**Ministerial Diploma 82/2005, dated 20 April**

Approves the Regulation on IRPS and IRPC's Refund.

**Official Document (*Portaria*) 20 817, dated 27 January 1968**

Table of annual rates of depreciation referred in p. 5, article 26 of IRPC Code.

**Official Document (*Portaria*) 20 779, dated 30 December 1967**

It continues to be in force in what refers to the table of the rates and limits to provisions referred in line b) p. 1 of article 28 of IRPC Code.



### **11.3. Individual Income Tax: IRPS – Imposto sobre o Rendimento das Pessoas Singulares**

#### **Law 33/2007, dated 31 December**

Approves the new Code on Individual Income Tax applicable to income obtained during fiscal year 2008 and subsequent, whilst Decree n° 20/2002, 30 July, its changes and remaining complementary legislation against it is revoked.

#### **Decree 8/2008, dated 16 April**

Approves the Regulation of the Individual Income Tax Code applicable to income obtained during fiscal year 2008 and subsequent, and legislation against it is revoked.

#### **Ministerial Diploma 1/2007, dated 3 January**

Approves the table of withholding at source of the Individual Income Tax foreseen in article 31 of the respective Regulation applicable to labour and pension income.

#### **Ministerial Diploma 82/2005, dated 20 April**

Approves the Regulation on Refund of IRPS and IRPC.

### **11.4. ISPC – Imposto Simplificado para Pequenos Contribuintes**

#### **Law 5/2009, dated 12 January**

Creates the Simplified Tax for Small Taxpayers.

#### **Decree 14/2009, dated 14 April**

Approves the Regulation of the Simplified Tax for Small Taxpayers.

#### **Order of the Ministry of Finance dated 22 May 2009**

Establishes the mechanisms for implementing the Simplified Tax Regulation for Small Taxpayers (ISPC), approved by Decree 14/2009 dated April 14 and changes the Declaration of Cessation of Activities (M/04).

### **11.5. VAT - Value Added Tax**

#### **Law 32/2007, dated 31 December**

This approves the new writing of the VAT Code revoking Decree 51/98, dated 21st of September, and the related changes enforced by Decrees 78/98 and 79/98, both dated 29th of December, Decrees 34/99, 35/99 and 36/99, all dated 1st of June, and other complementary legislation.

#### **Decree 7/2008, dated 16 April**

This approves the Regulation of the Value Added Tax Code and revokes all legislation against it.



**Decree 77/98, dated 29 December**

Approves the Regulation on Collection, Payment and Refund of VAT.

Most of this regulation is tacitly revoked with the publication of the approved Regulation by Decree 7/2008, dated 16 April. The provisions related to the chapter on refund are presumed to be in force, a matter not treated in the current Regulation of the VAT Code.

**Decree 27/2000, dated 10 October**

Ministerial Decree related to the Special Scheme of enforcement of VAT in contracting or sub-contracting public works.

**Decree 28/2000 dated 10 October,**

Ministerial Decree related to the use of cash registers.

**Decree 80/99, dated 1 November**

Related to the applicability of VAT to the transactions of drinkable water supply.

**Decree 26/2000, dated 10 October,**

Related to the supply of services of transport of passengers by road.

**Ministerial Diploma 198/98**

Approves the Regulation of Previous Registration of Operations subject to VAT.

**11.6. Excise Tax - ICE (Tax on Specific Consumption)**

**Decree 52/98, dated 29 September (revoked)**

Approves the Code on Specific Consumption and the respective annexed table (applicable rates).

**Decree 31/99, dated 24 May (revoked)**

Approves the new table with the rates of the Code on Tax of Specific Consumption.

**Decree 37/2002, dated 11 December (revoked)**

Alters the various provisions in the Code approved by Decree 52/98 in relation to the special regime applicable to the producers of beer, wine and other alcoholic beverages and processed tobacco.

**Law 17/2009, dated 10 September**

Approves the current Code of Specific Consumption Tax.



**Decree 69/2009, dated 11 December**

Approves the Regulation of the Code of Specific Consumption Tax

**11.7. Custom Duties**

**Decree 39/2002, dated 26 December**

Approves the Preliminary Instructions and the text in the current Custom List of Tariffs with the alterations introduced by Law 2/2007, dated 7 February.

**Law nº 3/2007, 7 February**

Reduces from 25% to 20% the general rate of import custom duties applicable to consumer goods.

**The remaining customs legislation**

The dispersion and the specialised nature of the remaining customs legislation and respective regulation go beyond the objectives of this summary, having opted for the summarily reference that is inserted.

**11.8. Tax on Fuel**

**Decree 56/2003, dated 24 December**

Approves the Regulation of the Tax on Fuel, a tax originally created by Decree 22/90, dated 24 September with the designation of Tax on Fuels. The respective current rates are established in a Deliberation dated 21 February 2007, published in the Supplement to 9 of the Official Gazette, 1<sup>st</sup> Series, dated 2 March 2007.

**11.9. Other State Taxes**

**Decree 46/2004, dated 27 October**

Approves the Sisa Code.

**Law 28/2007, dated 4 December**

Approves the Code on Inheritance and Gifts.

**Decree 21/2008, dated 27 June**

Approves de Regulation of Code on Inheritance and Gifts

**Decree 6/2004, dated 1 April**

Approves the Code on the Stamp Tax altered later by Decree 38/2005, dated 29 August.



**Decree n° 19/2002, dated 23 July**

Approves the Regulation on Tax on Vehicles whilst the previous taxes on Trucks and compensation as well the car vehicles stamp were revoked.

**Decree 4/87, dated 30 January**

Approves the Code on the Tax on National Reconstruction.

**Decree 31/98, dated 1 July**

Approves the Regulation of the Military Levy.

**11.10. Municipal Tax System**

**Law 1/2008, dated 16 January**

Defines the financial, budget and wealth regime of the local municipalities and reforms the Municipal Tax System with effect only after the entry into force of the Municipal Tax Code to be approved in the terms of the new Law.

**Decree 52/2000, dated 21 December**

Refers to the approval of the Municipal Tax Code established in Law 11/97, dated 31 May already revoked by Law 1/2008, dated 16 January. This Decree was in force until the current Municipal Tax Code enters into force, approved by Decree 63/2008, dated 30 December.

**Decree 63/2008, dated 30 December**

Approves the current Municipal Tax Code and revokes Decree 52/2000, dated 21 December.

**11.11. Tax Incentives, Investment and Special Regimes**

**Decree 16/2002, dated 27 June (revoked)**

Approves the Code on Tax Benefits.

**Law 4/2009, dated 12 January**

Approves the current Code on Tax Benefits.

**Decree 56/2009, dated 7<sup>th</sup> October**

Approves the Regulation of Tax Incentives Code approved by Law n° 4/2009, dated 12<sup>th</sup> of January

**Ministerial Diploma 202/2010, dated 24<sup>th</sup> November**

Approves the Regulation of Tax and Customs Regime for Special Economic Zones and Industrial Free Zones and revokes Ministerial Diploma n° 14/2002, dated 30<sup>th</sup> January.



**Law 13/2007, dated 27 June**

Reformulates the regime of tax incentives applicable to investment projects undertaken within the scope of Law 14/2002, dated 26 June (Mining Law) and the Law 3/2001, dated 21 February (Oil Law), thus revoking the corresponding part of the Code on Tax Benefits approved by Decree 16/2002, dated 27 June.

**Law nº 11/2007, 27 June**

Reformulates the specific tax regime for the mining activity, regulating the application of the tax on mining production and the tax on surface rights (mining concession), in particular.

**Law 12/2007, dated 27 June**

Reformulates the specific tax regime for the oil production activity, namely in what refers to the application of the tax on oil production.

**Law 8/94, dated 14 September (revoked)**

Aprova o quadro legal e disciplinador da prática das actividades de exploração de jogos de fortuna ou azar no País, e estabelece o Imposto Especial sobre o Jogo.

Approves the legal framework of practice and disciplinary activities of the operation of games of chance in the country, and establishes the Special Tax on Gambling.

**Law 1/201, dated 10 February (Special Law on Gambling)**

Concerning the concessions for the operation of games of chance in the territory of the Republic of Mozambique.

**Decree 64/2010, dated 31 December**

Approves the Regulation of Special Law on Gambling.



## 12. REFERENCES

Besides the legislation listed in the previous chapter:

- Codes of VAT, IRPC and IRPS of Portugal, on which the corresponding cores of the national tax system are based
- José Joaquim Teixeira Ribeiro – “Lições de Finanças Públicas”
- António L. De Sousa Franco – “Finanças Públicas e Direito Financeiro”
- Abílio Guimarães – “Direito Aduaneiro e Fiscal”
- Aníbal Cavaco Silva – “Finanças Públicas e Política Macro-Económica”
- Vasco Branco Guimarães – “Manual de Direito Fiscal Moçambicano”
- OECD - “The OECD Classification of Taxes and Interpretative Guide”