
LEGAL OPINION

ACIS – Associação de Comércio, Indústria e Serviços
Avenida Poder Popular, nº 264, 5º andar
Prédio de AMI
Beira City
Mozambique

LEGAL OPINION

(“Tax Regime Applicable to Commercial and Residential Property Rentals”)

Dear Sirs,

1. INTRODUCTION

Basis of Instructions

We have been requested by “**Associação de Comércio, Indústria e Serviços**” (“**ACIS**”) to issue a Legal Opinion regarding the tax regime applicable to commercial and residential property rental contracts. We also provide a summary of the Legal Opinion’s contents in the form of a table in the “Schedule” attached hereto, which reflects in practical terms the Opinion herein provided.

We are qualified to practise law in the Republic of Mozambique. This Opinion is limited to matters of the law of the Republic of Mozambique as in force and applied at the date of this Opinion. We have not investigated the laws of any other country and we express no Opinion on the laws of any other jurisdiction.

In giving this Opinion we relied on the legislation enacted by the Government and published in the Official Gazette as well as on information obtained from public records and other sources believed by us to be responsible.

Legislation Examined

- (a) Law 32/2007, of 31st December (approves the Value Added Tax Code – “VAT Code”) and respective amendments;
- (b) Law 33/2007, of 31st December (approves the Individual Income Tax Code – “IRPS Code”);
- (c) Law 34/2007, of 31st December (approves the Corporate Income Tax Code – “IRPC Code”), and respective amendments;

- (d) Law 19/2007, of 18th July (approves the Territorial Planning of the Republic of Mozambique);
- (e) Decree 7/2008, of 16th April (approves the Regulation of the VAT Code);
- (f) Decree 8/2008, of 16th April (approves the Regulation of the IRPS Code);
- (g) Decree 9/2008, of 16th April (approves the Regulation of the IRPC Code);
- (h) Decree 23/2008, of 1st July (approves the Regulation of the Territorial Planning Law);
- (i) Decree-Law 47 344, of 25th November 1966 (approves the Civil Code); and
- (j) Decree 43 525 of 1961 (approves the Renting of Property Overseas, without prejudice to the provisions of the Civil Code, general, or specific governing Lease Agreements, that do not contravene this regulation).

2. OPINION

Based on the foregoing, we are of the opinion that, so far as the present laws of the Republic of Mozambique are concerned:

General Regime

The tax regime on property rental contracts currently in force in Mozambique contains specific provisions applicable to leases according to the type of rental envisaged and location of the property, according to, whether:

- (a) It is commercial or residential rental;
- (b) The property is located in a rural or urban area;
- (c) The lessor and lessee:
 - (i) Is a corporate entity and an individual, respectively, and, vice-versa; or
 - (ii) Are both individuals; or
 - (iii) Are both corporate entities.

For purposes of this Legal Opinion, and according to article 1 of Law 19/2007, of 18th July:

- (a) **“Rural area”** is considered to be a part of the national territory outside the perimeter of municipalities, cities, villages and settlements legally instituted;
- (b) **“Urban area”** is considered to be a part of the national territory within the perimeter of municipalities, cities, villages and settlements legally instituted.

Our legislation does not specifically define **“residential”** and **“commercial”** leases.

Nonetheless, according to the doctrine and the interpretation given to the provisions of article 1086 of the Civil Code, joint with the principles established under the provisions of article 4/1 and 4/2 and article 72/1 of the Tenancy Law, it is understood that a residential lease is considered to have been entered into for family housing purposes, and a commercial lease is understood to be a lease of a property for purposes related to an economic activity.

Taxation of Property Rentals from a Value Added Tax Perspective

As per provisions of article 4/1 of the VAT Code, the rental of property is treated as a “provision of services”, subject to VAT at the rate of 17% (seventeen per cent), according to what is referred in article 1/1 a) of the same Code.

However, article 9/5 of the VAT Code, sets forth that the rental of property for residential purposes, as well as for purposes of pursuing commercial, industrial and provision of services activities in a rural area is exempt from VAT.

The VAT amount received paid by the lessor to the lessee shall be delivered by the later to the competent tax department by the 30th of the following month to which it refers.

Taxation of Property Rentals from a Corporate Income Tax Perspective

The general principle of the law regarding payment of rents by a corporate entity (lessee) to another corporate entity (lessor), is that such payments are subject to withholding tax at the rate of 20% (twenty per cent) as per provisions of article 62/1 joint with article 67/1 c) of the IRPC Code. Nonetheless, should the lessor be an entity which object is the management of its own property, the withholding tax referred above is not applicable, as the law provides for a dispensation of such obligation according to article 68 f) of the IRPC Code.

Taxation of Property Rentals from an Individual Income Tax Perspective

According to the IRPS Code, income derived from property rentals falls under the Forth Category of Income (income from property rentals).

The payment of rentals by a corporate entity (lessee) to an individual (lessor) is subject to withholding tax at the rate of 20% (twenty per cent), as foreseen under the provisions of article 65/3 of the IRPS Code. But according to article 65/5 of the same Code, the lessee is entitled to deduct 30% (thirty per cent) upon the withholding tax rate, giving a final withholding tax rate of 14% (fourteen per cent) upon the gross amount of the rent to be paid.

Furthermore, if a corporate entity (employer) enters into a lease agreement for purposes of making such property available to any of its employees for residential purposes, the costs incurred with the payment of such rentals are considered a “fringe benefit” of the employee, and is ultimately part of employment income received by the employee. As such, the additional income derived from fringe benefits paid by the employer will be subject to tax at the monthly withholding rates established under the provisions of the IRPS Code.

The amount paid for rentals on behalf of employees for residential purposes and taxed as employment income is fully considered a fiscal cost to the employer.

Any amounts withheld on account on behalf of the lessor shall be delivered to the competent tax department up to the 20th of the following month to which it refers.

The total amount of income earned by an individual (including income from property rentals), shall be assessed for purposes of calculating the taxable amount at the year-end income tax return (Model M/10), in which, any tax paid on account via the withholding tax mechanism shall be deducted from the total tax amount due, provided that proof of such withholding tax paid in the previous fiscal year is provided.

The annual IRPS rates vary from 10% (ten per cent) to 32% (thirty two per cent).

Stamp Duty

Any lease agreement executed in the Republic of Mozambique is subject to Stamp Duty at the rate of 2% (two per cent), upon the highest rent value agreed between the parties corresponding to one month rent.

Registration of the Lease Agreement

Any lease agreement executed for a period longer than six years, is subject to registration at the Real Estate Registration Office (*Conservatória do Registo Predial*).

Other Matters

Assuming that the lessee is a corporate entity duly registered for tax purposes in Mozambique, it shall request the following documents from the lessor:

- (a) Lease agreement duly stamped by the Revenue Services and certified by the Notary Public;
- (b) Proof of tax registration (letter issued by the Revenue Services granting a tax identification number (*NUIT*) to the lessor);
- (c) Tax invoice and respective receipt issued by the lessor to support the payment of the monthly rent;
- (d) In case the lessor is a company which object is the management of own property, proof of such object must also be provided.

The main obligations of the lessee (assuming it is a corporate entity) include, but not limited to:

- (a) Deliver the amounts withheld on account to the competent tax department up to the 20th of the following month to which it refers; and
- (b) Issue in January of each year a declaration of income per person, who was subject to withholding tax in the previous fiscal year.

3. RESERVATIONS

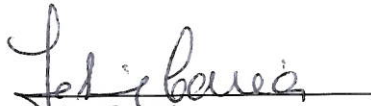
The opinions given herein are limited to matters expressly referred to herein and are governed by Mozambican law with respect to Mozambican laws as currently in force and relate to facts and matters known to us on the date hereof. We assume no obligation to update the opinion expressed herein as a result of any change in the applicable legislation occurring after the date hereof and we have made no investigation of, and this opinion does not address, the laws of any jurisdiction other than Mozambique.

This opinion expresses and describes Mozambican legal concepts in English language and not in their original Portuguese terms and, consequently, it is issued and may only be relied upon on the express condition that it shall be governed by, and that all words and expressions used herein shall be construed and interpreted in accordance with, the laws of Mozambique.

This opinion is addressed to **Associação de Comércio, Indústria e Serviços ("ACIS")** and may not:

- (a) Be relied upon by any other person or for any other purpose;

- (b) Be disclosed to any other person except to persons who in the ordinary course of the addressee's businesses have access to the relevant addressee's papers and records and then only upon the basis that they will similarly make no further disclosure;
- (c) Be filed with any governmental agency or authority or quoted in any public document, without in any such case, our express prior written consent.



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Summary Schedule

Location / Type	Lessor Individual when Lessee is a Company		Lessor Company when Lessee is a Company		Lessor Company (property management) when Lessee is a Company	
	Withholding Tax	VAT	Withholding Tax	VAT	Withholding Tax	VAT
Urban - Residential	14% retained by lessee (art. 65/3 and 65/5 of CIRPS)	Exempt (art. 9/5 a) of CIVA)	20% retained by lessee (art. 67/1 c) of CIRPC)	Exempt (art. 9/5 a) of CIVA)	Exempt (art. 68/f of CIRPC)	Exempt (art. 9/5 a) of CIVA)
Urban - Commercial	14% retained by lessee (art. 65/3 and 65/5 of CIRPS)	17% payable by lessee to lessor (art. 1/1 a) and art. 2/1 a) of CIVA)	20% retained by lessee (art. 67/1 c) of CIRPC)	17% payable by lessee to lessor (art. 1/1 a) and art. 2/1 a) of CIVA)	Exempt (art. 68/f of CIRPC)	17% payable by lessee to lessor (art. 1/1 a) and art. 2/1 a) of CIVA)
Rural - Residential	14% retained by lessee (art. 65/3 and 65/5 of CIRPS)	Exempt (art. 9/5 a) of CIVA)	20% retained by lessee (art. 67/1 c) of CIRPC)	Exempt (art. 9/5 a) of CIVA)	Exempt (art. 68/f of CIRPC)	Exempt (art. 9/5 a) of CIVA)
Rural - Commercial	14% retained by lessee (art. 65/3 and 65/5 of CIRPS)	Exempt (art. 9/5 b) of CIVA)	20% retained by lessee (art. 67/1 c) of CIRPC)	Exempt (art. 9/5 b) of CIVA)	Exempt (art. 68/f of CIRPC)	Exempt (art. 9/5 b) of CIVA)

Tax paid on account by the lessor via withholding tax mechanism by a taxpayer shall be deducted from total income subject to tax at year-end tax return

The amount retained via withholding tax mechanism shall be delivered by the lessee to the competent tax department up to the 20th of the following month
 VAT paid by lessor shall be delivered by the lessee to the competent tax department up to the 30th of the following month