

# Legal Framework



For Tax in Mozambique

No. 3 IRPS

Edition II  
December  
2011



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### 1. FOREWORD

This manual was undertaken as a result of a request from ACIS – Associação Comercial e Industrial de Sofala in collaboration with GTZ - APSP, with the support of the Sofala Provincial Government, to publish a set of tax manuals which provide necessary advice and information on legal and tax issues to the members of the association.

Under this framework the Individual Income Tax (IRPS) Manual was prepared. A major concern of ACIS is to provide information to small, medium and large member companies that are uncertain on practical issues of compliance with tax rules during their day-to-day operations.

This manual is intended to be a practical and useful tool to help managers and entrepreneurs decide on the best tax solutions for their specific activity and the size of their business. It will also allow them to run their businesses with a better knowledge of the rights, benefits, and obligations available.

In trying to achieve the goals established for the manual, cases studies were prepared by ACIS. Information and opinions were shared with auditors and relationships were established with the Tax Authorities from whom we received important information that assisted us in obtaining a reasonable understanding and interpretation of IRPS matters.

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 realities underlying the tax system.

This manual is an updated version - [Version IRPS 02](#) - containing the amendments to the legislation that impacts on the IRPS, as required and approved by the Management Committee of ACIS.

The changes in the legislation are:

- Law no. 20/2009, dated 10<sup>th</sup> September which amends the IRPC Code approved by Law no. 34/2007 dated 31<sup>th</sup> of December
- Decree no. 68/2009, dated 11<sup>th</sup> December which amends the Regulation of IRPC Code approved by Decree no. 9/2008, dated 16<sup>th</sup> April
- Ministerial Diploma no. 221/2010, dated 16<sup>th</sup> December which approves the table of withholding at source of the Individual Income Tax regarding income from employment and pension (in force since January 1<sup>st</sup> of 2011)
- Decree no. 70/2009, dated 22<sup>nd</sup> December which approves the Accounting System for the Business Sector in Mozambique, aimed at the adoption of a Chart of Accounts based on International Financial Reporting Standards, and the introduction of certain adjustments in the Chart of Accounts in force approved by Decree no. 36/2006 of 25 July
- Law no. 4/2009, dated 12<sup>th</sup> of January which approves the current Code on Tax incentives and revoked Decree no. 16/2002, dated 27<sup>th</sup> June
- Decree no. 56/2009, dated 7 October which approves the Regulation of Tax Incentives Code approved by Law no. 4/2009, dated 12<sup>th</sup> of January
- Ministerial Diploma no. 202/2010, dated 24<sup>th</sup> November which approves the Regulation of Tax and Customs Regime for Special Economic Zones and Industrial Free Zones and revoked Ministerial Diploma no. 14/2002, dated 30 January.

- Resolution of Ratification of DTA no. 35/2008, dated 30<sup>th</sup> of December - Agreement between the government of Mozambique and the government of South Africa to avoid double taxation and to prevent fiscal evasion.
- Resolution of Ratification of DTA no. 22/2011, dated 9<sup>th</sup> of June - Agreement between the government of Mozambique and the government of Vietnam to avoid double taxation and to prevent fiscal evasion.
- Resolution of Ratification of DTA no. 23/2011, dated 10<sup>th</sup> of June - Agreement between the government of Mozambique and the government of India to avoid double taxation and to prevent fiscal evasion.
- Resolution of Ratification of DTA no. 24/2011, dated 10<sup>th</sup> of June - Agreement between the government of Mozambique and the government of Botswana to avoid double taxation and to prevent fiscal evasion.
- Ministerial Diploma 175/2010, dated 6<sup>th</sup> July regarding the readjustment of the minimum wage for workers who develop activities in the sector 8. Note that this wage is highest of minimum wage which is the reference for the minimum non-taxable calculation for assessment of IRPS in 2011.
- Deliberation dated 9<sup>th</sup> of March 2011 of the Minister of Finances which regulates the processing of the compulsory accounting books through electronic means.

### ▪ GUIDE FOR USERS

This manual is structured in chapters and sections and is designed to be edited by an unbound leaf folder system. This system should allow the substitution of the outdated pages, when necessary, and allow for changes or additions in legislation by the Tax Authority.

For changes and revisions to the Manual that may be necessary, the following procedures will be followed:

- Any amendments to this version of the manual (IRPS 02) will be requested and approved by the ACIS Management Committee, who shall nominate the party responsible for the change;
- After approval by the ACIS Management Committee the electronic version of the manual will be updated by publication on the website and all members will be notified by e-mail about the amendments;
- Each update shall be dated and identified with a specific sequential number;
- The updated manual will be available on the web site to download and all members will be e-mailed a copy;
- The original manual and the amended versions shall be kept electronically and in hard copy, in the ACIS permanent file system.

The manual is presented in Portuguese and in English; however the supporting legislation is only available in Portuguese.

The manual aims to cover the fundamental issues of VAT and uses graphic presentations and practical examples to deliver a user-friendly guide on all aspects of IRPS. The manual is comprehensive however it does not deal with all the legal detail associated with IRPS and is not intended to be a legal reference.

The supporting legislation is referenced in the text or at the beginning of each chapter to ensure that the legislation can be consulted to allow a more thorough understanding.

The manual can be read in the electronic format or in hard copy, as follows:



The availability of printed versions is the responsibility of the ACIS members. Members need to ensure that they keep the last version of the document. Changes to the original are the responsibility of ACIS.

## 2. GLOSSARY

### Acronyms:

**ACIS** – *Associação Comercial e Industrial de Sofala* - Commercial and Industrial Association of Sofala

**APSP** – *Ambiente Propício para o Sector Privado* – An initiative funded by GTZ to promote a sound environment for Private Sector Development

**AT** – *Autoridade Tributária de Moçambique* -Mozambique Tax Authority

**DAF** – *Direcção da Área Fiscal* - Respective Tax Department

**Dc** – Decree

**DGA** – *Direcção Geral de Alfândegas* – General Directorate of Customs, one of the structural units of ATM, with jurisdiction over the entire country for customs related matters

**DGI** – *Direcção Geral de Impostos* – General Directorate of Tax, one of the structural units of ATM, with jurisdiction over the entire country related to tax matters

**GTZ** – *Deutsche Gesellschaft für Technische Zusammenarbeit* – an international cooperation enterprise for sustainable development with worldwide operations. The federally owned Deutsche GTZ GmbH supports the German Government in achieving its development-policy objectives.

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

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

**MF** – Ministry of Finance

**NUIT** – *Número Único de Identificação Tributária* – Taxpayer Identification number, attributable under the conditions established in the Regulation approved by Decree 52/2003, dated 24th of December.

**PGC** – *Plano Geral de Contabilidade* – General Chart of Accounts

**PGC-PE** - *Plano Geral de Contabilidade* – General Chart of Accounts which is applied to Small sized companies

**PGC-NIRF** - *Plano Geral de Contabilidade* – General Chart of Accounts which is applied to Medium and Large sized companies

**RIRPS** – Regulations of the IRPS Code

**RR** – Regulation of IRPS and IRPC Refund

**UGC** – *Unidade de Grandes Contribuintes* – Major Taxpayers Unit

**VAT** – Value Added Tax

**VATR** – Regulations of the Value Added Tax Code



**Concepts:**

**Agricultural, forestry and cattle breeding activities** – the following are considered to be agricultural, forestry and cattle breeding activities:

- commercial or industrial, directly or indirectly to those activities, which exclusively use the products for agricultural, forestry and cattle breeding activities;
- hunting and exploration of natural cattle areas, water and other natural products, which are exploited directly or by third parties;
- exploration of salt-pans, seaweed and other;
- bee-keeping;
- investigation and creation of new animal and plant varieties, dependent on those activities.

**Association to a quota / share** – contract entered into between the shareholder of a company and another person (associate) by means of which the shareholder undertakes to provide the associate with an agreed part or the total of the future profits of the quota / share in exchange of a defined installment by the associate.

**Association in participation** – contract by means of which a person (associate) partakes in an economic activity undertaken by another person (associate) and is entitled to share the profits or the profits and losses resulting from that activity for the other person.

**Bills** – a credit title transferable by endorsement which consists of a written order from one person (the payer) to another, requiring the person to whom it is addressed (payee) to pay at some fixed future date, a defined sum of money, to either the person identified as the payee or to a third person.

**Bonds** – credit titles representing a loan guaranteed by a fixed and pre-determined interest rate payable on a pre-determined date. Bonds can be issued either by commercial or by public companies.

**Certificate of compulsory collection of overdue taxes** – document for instructing the fiscal execution which implies the transfer of the compulsory collection of overdue taxes to the judicial system.

**Combining** – The obligation of the taxpayer to collate or combine the net income of the various categories for purposes of determination of the tax rate and assessment of the tax. However, income subject to withholding tax which has the nature of final tax, as for example income from gambling and that earned by non residents is not subject to requirement.

**Commercial and industrial activities** – the following are considered to be commercial and industrial activities:

- Purchase and sale;
- manufacturing;
- fishery;
- mining exploration and other extraction industries;

- transport;
- civil construction;
- urbanization and division of land into parcels;
- hotel and similar activities, restaurants and bars, as well as the selling and operation of time sharing real rights;
- travel agencies and tourism;
- workmanship;
- agricultural and cattle breeding activities not connected to the exploration of land or in which the land has a clearly auxiliary character;
- agricultural, forestry and cattle breeding activities forming part of other commercial or industrial activities.

**Consideration** – Payment in the form of money or other form of benefit in exchange for an agreed action (e.g. the receipt of goods and/or services). In most cases, the consideration is in the form of cash or cash equivalents received or receivable. When goods or services are exchanged for different good or services the tax value of the transaction shall be calculated by the total value of the goods or services received, adjusted by the amount of any cash or cash equivalent jointly received.

**Current account** – contract by means of which two people who owe values to each other undertake to transform their credits in articles of “OWING” and “RECEIVABLE”, so that only the final balance resulting from the set-off is payable.

**Delay** – is the delay in complying with the installment due, relating to the debtor (Article 1142 of the Civil Code).

**Depreciation** – represents the wear and tear of that an asset endures an annual basis due to its use or technological innovations (e.g.: computers). Depreciation is defined by a percentage which applies to the acquisition value of the asset, considering its useful life. Depreciation is a cost of the economic activity and can only be deducted to the gross income of the 2<sup>nd</sup> category, provided that the taxpayer keeps organized accounts.

**Derivative financial instruments** – derivative financial instruments are those whose values are derived from an underlying (equities, bonds, currency, ..), which are not related to the contract. It is not the asset or item which is purchased or sold as it happens in classical financial instruments. In derivative financial instruments the object of the transaction is not a financial asset, but the purchasing or selling position of such asset or item at a future date (see definition of futures, options and swaps).

**Economic activity** – relates to production, trade, or service activities, including mining, agriculture, forestry, livestock and fishing activities

**Employer** – any entity that pays or places disposal remuneration which represents income from employment and any other entity which has a control or group relation with the first entity, irrespective of the respective geographical location.

**Equivalent Document** to an invoice - is the document that, not being an invoice is normally used for sale goods and/or services as it contains all elements and requirements of an invoice. Examples of equivalent documents are: Invoice receipt, cash sales receipt (*Venda a Dinheiro*), Debit/Credit Notes, Customs bills, etc.

**Fiscal residence:**

For individuals - the physical address of the dwelling within the Mozambican territory;

- For corporations - the physical address within the Mozambican territory of headquarters, or where the effective management and accounting records are located, if it is other than the headquarters;
- For permanent establishments of non-residents - where the effective management and business development are located.

If individuals have different dwellings and it is not possible to identify one as the main residence, the fiscal residence shall be the residence most frequented, or where the main centre of operations is located.

For taxpayers considered as major taxpayers by the Tax Authorities or in other specific cases, the fiscal residence may be different from the general rule applicable to corporations as stated above.

For non-residents who have revenue subject to taxation within the national territory but who do not have a permanent establishment, the fiscal residence shall be the physical address of the tax representative<sup>1</sup>.

**Fiscal Transparency regime** – the fiscal transparency regime applies to the shareholders of the entities listed below, with head offices or effective management in the Mozambican territory and establishes that the taxable income of the referred entities determined in the terms of the IRPC Code is attributable to the taxable income of the shareholders for purposes of IRPS or IRPC, as the case may be:

- civil societies not incorporated under the commercial form;
- societies of professionals;
- asset management companies, in which the majority of the share capital is, directly or indirectly and during a period exceeding 180 days of the financial year, held by a family group or which share capital is owned, at any day of the financial year, by a number of shareholders not exceeding five shareholders and none of them is a public law corporation.

**Gross income** – all the income received before the deduction or payment of the tax.

**Imports of goods** – goods are considered to be imported when they enter the national territory. If goods fall under Customs and Special Taxation Schemes (n° 1 clause 14 of VATC), the effective date of entry in the national territory to qualify as an import is when the goods are considered ready for consumption.

**Leasing** – a contract whereby a party agrees to provide the other party the temporary use of something in return for consideration. Leasing is defined as letting when relates to immovable property and renting when it deals with moveable assets<sup>2</sup>.

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<sup>1</sup> Art. 3 of the Decree 52/2003, dated 24<sup>th</sup> December

<sup>2</sup> Art.1022 and 1023 from Civil Code

**Light vehicle** – any vehicle, including a trailer, that is not exclusively used for the transport of goods or used in agriculture, trade or manufacturing. In addition, any vehicle that is also used for the transport of people which does not have more than 9 seats, including the driver's seat.

**Loan** – a contract by which one of the parties lends money or other fungible asset to the other, where the latter has the obligation to return the same amount, kind and quality received.

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

**Net income** – the amount obtained after all deductions specific to each category are made to the gross income. The sum of the net income of all categories corresponds to the net total income.

**One-off transaction** – income resulting from a commercial, industrial, agricultural, forestry or cattle breeding activity or from the rendering of services, which do not result from a foreseeable and repeated practice.

**Opening of credit**<sup>1</sup> – the obligation to supply funds, merchandise or other values by means of a public or private written document or correspondence.

**Participation titles**<sup>1</sup> – documents representing a public loan taken out by the State and which confers to the holders the right to an annual compensation broken in two parts:

- a fixed part - regardless the activity or results, and
- a variable part - depending on the results, the turnover or any other element of the business.

**Participation units in investment funds**<sup>1</sup> – certificates representing an asset comprising the amounts of the capital investment received by the public for the acquisition of a portfolio of movable or immovable values in which the capital to be invested is determined at the creation of the investment fund.

**Postponement of maturity** – extension agreed by the creditor at the time of compliance with an obligation.

**Promissory Note** – a credit title which consists in a person (issuer) promising in writing to pay a sum of money to the other (the payee) at a fixed future date.

**Public debt titles** – documents representing a public loan taken out by the State which confers to the holders the right to the repayment of the principal and its remuneration.

**Receipt** – document that proves an amount paid, in which the collecting entity gives acquittance in the collecting document by validating through a cash register or by stamping as collected.

**Repossession Contract** – contract by means of which the buyer transfers the ownership of its securities to a lender for a price and the lender undertakes to transfer to the buyer, at the end of the agreed period, the ownership of the same quantity of securities of the same type, against reimbursement of the price, which can be increased or reduced as agreed. (Article 487 of the Commercial Code).

**Respective Tax Department** – (In Portuguese: “Direcção da Área Fiscal competente”, or “Recebedoria de Fazenda competente” or “Serviços Tributários competentes”) – the

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<sup>1</sup> Source URTI – Training Manual on IRPS – Maputo, April 2003

Ministry of Finance office that is closest to the taxpayers business, headquarters or permanent establishment, or in its absence his residence, taking into account the following:

- For individual or corporate taxpayers residing out of the national territory the respective Tax office shall be:
- the office nearest to the place of permanent establishment;
- the office nearest to the place where the tax representative has his headquarters, permanent establishment, or his residence;
- in the absence of tax representative or permanent establishment, the headquarter, permanent establishment, or residence of the acquirer.
- For compliance with tax obligations from imports, the respective Tax office shall be the Customs services.

**Shareholders loan** – a contract by means of which the shareholder lends money or other fungible asset to the company, where the company undertakes to return the same amount, kind or quality or by means of which the shareholder agrees with the company the postponement of the maturity of a credit that it holds on the company, provided that in any of the cases the credit has a permanent nature. An indication of the permanent nature is the establishment of a reimbursement period exceeding one year (Article 307 of the Commercial Code).

**Sisa** – Conveyance tax on transfer of immovable property.

**Supply of goods** – means transference of immovable property for consideration, including:

- Power, gas, heat and refrigeration supply;
- Delivery of goods, under a leasing contract with a clause providing that ownership shall pass, binding both parties;
- Delivery of goods pursuant to a sale contract which provides that ownership shall be retained until full or partial payment of the purchase price;
- Delivery of goods for consignment when the return cannot occur within 180 days;
- Permanent allocation of business assets for the private use of the owner of the business, his staff, or, in general, for purposes other than those of the business and input VAT has been deducted on the purchase. This excludes samples and gifts of small value, with limits which are to be defined by the Tax Authorities. These limits are not established by the Tax Authorities however it is advisable to use reasonable limits and apply them consistently;
- Allocation of goods by a taxable person to an exempt activity as well as allocation of fixed assets (light vehicles, sport boats, helicopters, aircraft and motorcycles) when the input VAT was totally or partially deducted on the purchase;
- Supply of second hand goods sold by taxable persons acting as specialised resellers on these transactions as well as auctioneers that are subject to special rules (articles 47 up to 49 of VAT Regulation).

Although considered as a supply of goods, tax is not due or chargeable on the transfer of a business, a totality of assets or part thereof, whether for consideration or not, when the recipient

is, or by virtue of the transfer, becomes a taxable person with an economic activity exclusively with transactions which gives rise to the right of VAT deduction.

**Supply of Services** – supply of services means any transaction, made for consideration, where there is not a supply or import of goods, including:

- Supply of services free of charge, which are not related to the business activity for the private use of the owner, staff or for third parties;
- The use of goods forming part of the business assets for the private use by the owner, staff, or in general, for purposes not related to the business activity, as well as for use in exempt activities, where the right to VAT deduction has been exercised;
- Transactions made by travel agencies and tours operators which are subject to special rules (articles 38 up to 46 of VAT Regulation).

**Swap** – is a financial transaction by means of which two parties agree, in a pre-determinate period of time, to exchange the payment of interest or principal and interest, according to a pre-established rule. This originates a similar situation to the simultaneous issuing of a loan and application of funds, with equivalent amounts and duration, but with different conditions in terms of currency and / or interest rate. The objectives of the two parties to the swap can be the modification of the degree of exposure to the interest rate risk and / or the generation of liquidity in a currency different to that which is available, without creating an open position, i.e. exchange risk.

**Tax Credit** – is a deduction to the tax which aims to reduce or eliminate the double taxation of the same income.

**Tax infraction** – act, action or omission of the taxpayer, tax substitute or representative, which is contrary to the tax laws. Crime, countermand, transgressions or contraventions are considered tax infractions

**Tax Invoice** – document commonly used in the supply of goods or services by commercial entities. The format is free, but the invoice must contain the items specified in paragraphs n° 5, 7 and 8 of clause 27 of VAT Code and the requirements of the Minister of Planning and Finance dated 1<sup>st</sup> March 2009 must be followed on the printing of the invoice.

**Taxable income** – the amount obtained after the deductions specific to each category are made to the gross income and the respective rebates to the sum of the net income of all categories

**Tax payable** – amount which results from the application of the tax rate to the taxable income, i.e. after all deductions specific to each category and rebates have been made to the total gross income.

**Works of art** – goods made by artists, for example, original paintings and drawings but excluding industrial designs, engravings, prints and lithographs whose production is limited to 200 copies, as well as other art pieces under the scope of sculpture or statuary sculpture but excluding articles of goldsmith and jewellery and ceramic works made and signed by the authors.

**MANUAL ON INDIVIDUAL INCOME TAX**

**3. TIMELINE OF OBLIGATIONS AND RELATED FORMS**

The following table summarizes the main submission and payment obligations of the taxable person for IRPS purposes:

Month	Day (1)	Obligations	Form	Applicable Legislation
January	20	Submission of tax withheld tax on IRPS during the prior month	M/19	Art. 29 RIRPS
	20	Deadline to deliver to the taxable persons an Income declaration to the earners of the respective income. The declaration should be issued by entities who pay withholding tax on account of IRPS	(2)	Line b), P.1, Art. 44 RIRPS
February	20	Submission of tax withheld tax on IRPS during the prior month	M/19	Art. 29 RIRPS
March	20	Submission of tax withheld tax on IRPS during the prior month	M/19	Art. 29 RIRPS
	31	Deadline to deliver from January up to March, an annual declaration. This declaration should be completed by those entities that have paid any income subject to withholding tax on account of IRPS in the prior year	M/20H	Line c) ,P. 1, Art. 44 RIRPS
	31	Delivery an annual declaration of tax withheld from non-resident taxable persons.	M/20-I	P. 6 Art. 44 RIRPS
	31	Income declaration that states the payments made which attracted withholding tax, when the recipient benefited from exemption, or waiver of the withholding tax	(3)	Line a) Art 45 RIRPS
	31	Deadline to deliver the annual declaration, from January up to March, for taxable persons who have earned income of the first category only (dependent employment)	M/10 & (annex M/10V optional)	Art.10 & 13 RIRPS
April	20	Submission of tax withheld tax on IRPS during the prior month	M/19	Art. 29 RIRPS
	30	Deadline to submit the annual declaration from January up to April, for taxable persons that have earned income other than from the first category.	M/10 & annex M/10 V1	Art.10 &13 RIRPS
May	20	Submission of tax withheld tax on IRPS during the prior month	M/19	Art. 29 RIRPS
	31	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 RIRPS

**MANUAL ON INDIVIDUAL INCOME TAX**

*Cont....*

<b>Month</b>	<b>Day (1)</b>	<b>Obligations</b>	<b>Form</b>	<b>Applicable Legislation</b>
June	20	Submission of tax withheld tax on IRPS during the prior month	M/19	Art. 29 RIRPS
	30	Deadline for payment of the amounts of IRPS in relation to income earned in the previous year for the second, third, fourth and fifth categories	M/19	Line a) P 1 Art.28
July	20	Submission of tax withheld tax on IRPS during the prior month	M/19	Art. 29 RIRPS
August	20	Submission of tax withheld tax on IRPS during the prior month	M/19	Art. 29 RIRPS
	31	Deadline for payment of the IRPS tax amounts due added by interest in relation to the late submission of the annual declaration	M/19	Line b) P 1 Art.28 RIRPS
September	20	Submission of tax withheld tax on IRPS during the prior month	M/19	Art. 29 RIRPS
October	20	Submission of tax withheld tax on IRPS during the prior month	M/19	Art. 29 RIRPS
November	20	Submission of tax withheld tax on IRPS during the prior month	M/19	Art. 29 RIRPS
December	20	Submission of tax withheld tax on IRPS during the prior month	M/19	Art. 29 RIRPS

*(1) The date specified is the deadline*

*(2) Non official form*

*(3) Official form to be approved.*



## 4. APPLICABILITY

In this chapter we will define who and what kind of income is subject to tax.

On January 1, 2009 entered into force the Law No. 5 / 2009, introducing a new tax - Simplified Tax for Small Taxpayers (ISPC) in order to "*reduce the costs of tax compliance and the burden of supervision and control by simplifying procedures, thus providing the extension of the tax base.*" This new tax applies to natural and legal persons engaged in the domestic, agricultural, industrial or commercial, including the provision of services but has an optional nature.

For taxpayers who elects for taxation in ISPC on income earned, IRPS is not imposed, and the provisions of the Code of IRPS are not applicable. However, taxpayers who earn income other than those classified as second category will be subject to IRPS under its Code.

### 4.1 Personal Tax Incidence

#### 4.1.1 Who is subject to this tax?

Art. 20 IRPS Code

IRPS is levied on the income pertaining to natural persons either:

- Resident in the Mozambican territory, including income obtained abroad;
- Non resident, on income obtained in Mozambique.

For tax purposes, individuals who meet any of the following conditions during the year in which the income pertains are considered to be **resident** in Mozambique for tax purposes:

Art. 21 IRPS Code

- Having resided in the country for more than 180 days continuous or in aggregate;
- Have resided for less time but who have a permanent residence which would indicate the intention to maintain permanent residence;
- Undertake public functions or commissions abroad at service of the Republic of Mozambique;
- Being crew members of aircraft or shipping vessels, provided that those are in the service of entities which are resident in or have their head offices or effective management in the Republic of Mozambique.

If the head of a household is a resident of Mozambique, all other dependants and ascendants are regarded as residents.

The communication of residence of the respective taxable person to the Tax Authorities is compulsory (see sections 9.2.1 and 9.2.3.2).

#### 4.1.2 Specific areas relating to applicability

##### 4.1.2.1 Co-ownership of income

Art. 23 IRPS Code

When the situation arises whereby the income is co-owned by more than one person, the income of each person is considered to be equal to the ratio of ownership. If a ratio cannot be determined, these are assumed to be equal.

**Example:**

Two brothers inherited a building which generates annual rentals amounting to 150.000 MT. As the ownership has not been specifically determined or stated, each brother shall declare 75.000 MT as immovable property income on which IRPS will be levied.

4.1.2.2 Specific section – Fiscal Transparency Scheme

Included in the fiscal transparency scheme applicable to the entities listed below, the income of the shareholders or members of such entities will have the taxable income determined in terms of the IRPC Code:

- Civil societies not incorporated for gain; Art. 24 IRPS Code
- Societies for professionals;
- Mere asset management societies, in which the majority of the share capital is owned, directly or indirectly and, during more than 180 days in the financial year, by a family group or which share capital is owned, at any day of the financial year, by a number of shareholders not higher than five and none of these is a public corporate entity.

The taxable income is attributable to the shareholders or members as per the incorporation act of the referred entities or, if these do not exist, in equal parts.

**Example:**

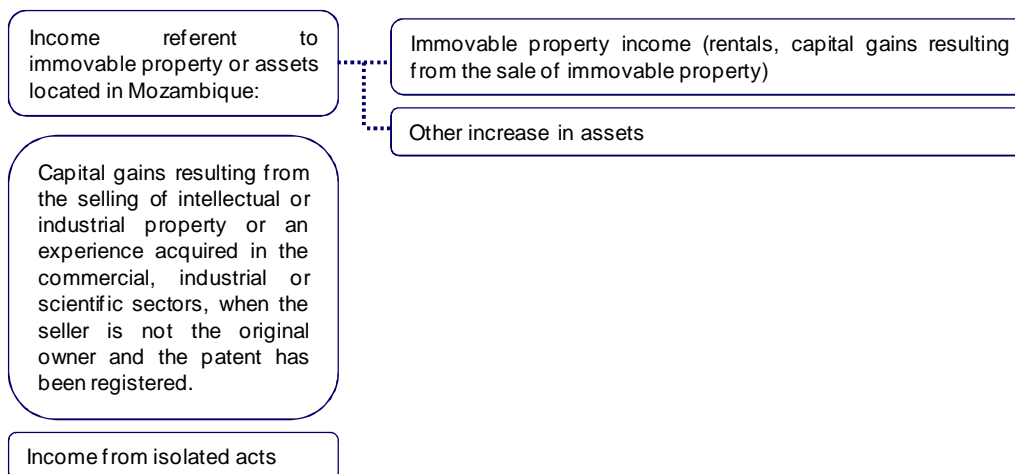
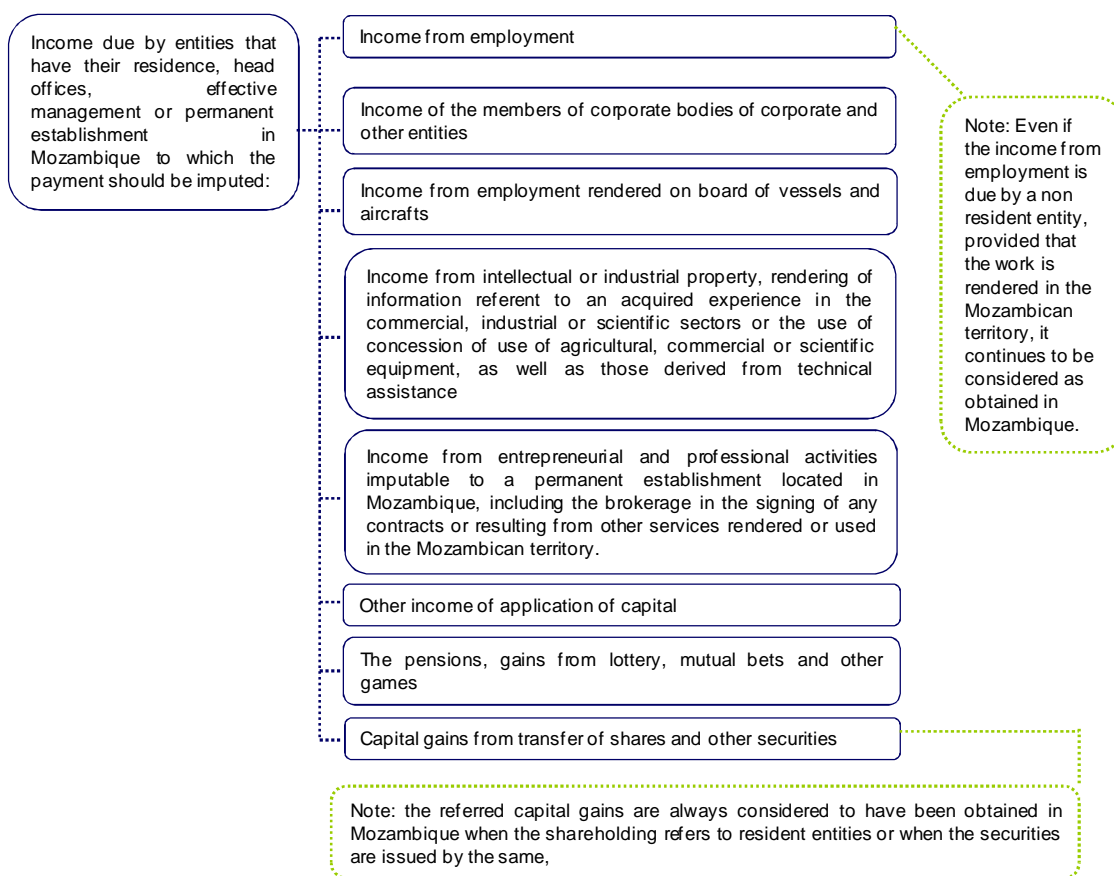
A lawyers practice incorporated by five shareholders with equal shares in 2008 generated (according with the rules of the IRPC Code) a taxable income of 3.750.000 MT. Each of the shareholders shall include an amount of 750.000 MT ( $3.750.000 / 5$ ) as income of the Second Category in its IRPS income return.

Whenever the shareholders or members of the above referred entities do not have their head office or effective management in the Mozambican territory, but they obtain income in Mozambique through a permanent establishment, the profits will be taxed on IRPS in the event of the shareholders are natural persons (residents or non residents).

4.1.3 What income is considered to have been obtained from a source in Mozambique? Art. 22 IRPS Code

The following income is considered as generated from a Mozambique source either by residents or non residents:

## MANUAL ON INDIVIDUAL INCOME TAX



### Example:

John is resident in Portugal and he owns an immovable property in Maputo. The income related to rentals is considered as obtained in Mozambique and is taxable in Mozambique given that the property is located in the Mozambican territory. If the lessee is obliged to keep organized accounts, it should withhold the tax at source on the amount of the rental payable to the lessor (see section 9.1.1.1). The withholding tax is not considered to be a final tax but a provisional tax. John will have to submit an income tax return declaring the rental income earned.

4.1.4 What is a permanent establishment?

Art. 22 of the IRPS Code  
Art. 3 of the IRPC Code

**Definition of Permanent Establishment**

Any fixed place of business through which one of the activities included in the second category of income is wholly or partially carried on.

**INCLUDING:**

- A building site or construction, installation or assembling, when it lasts more than 6 months;
- Coordination, inspection and supervision activities in connection to the above referred sites when it lasts more than 6 months;
- A construction site where the subcontractor undertakes its activities for a minimum period of 6 months;
- A place of management, a branch, an office, a workshop, a factory, a mine, an oil or gas well, a quarry or any other place of extraction of natural resources;
- An installation, a platform or drilling vessels use for the prospecting and exploration of natural resources when it lasts more than 6 months;
- The acting of an agent who is not independent in the Mozambican territory, on behalf of the enterprise and who normally has authority intermediate and conclude contracts which are binding for the enterprise.

**EXCLUDING:**

- The use of facilities solely for the purposes of storage, display or delivery of merchandise belonging to the enterprise;
- The maintenance of stock of merchandise belonging to the enterprise solely for:
  - Storage, display or delivery;
  - Processing by another enterprise;
- A fixed place of business solely for:
  - Purchasing merchandise or collecting information for the enterprise;
  - Undertake any other activity of a preparatory or auxiliary character;
  - Undertake any combination of activities mentioned above provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character;
- The undertaking of the activity in the Mozambican territory through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business and carry the business risk of the same.

#### 4.1.5 Income obtained abroad – double taxation

As previously stated, income obtained abroad by residents is taxed in the national territory. Thus, if the country in which the income was obtained has signed a treaty to avoid double taxation, (which is the case of Mauritius, Italy, Portugal, the United Arab Emirates, Macau, South Africa<sup>1</sup>, Vietnam<sup>2</sup>, India<sup>3</sup> and Botswana<sup>4</sup>), the rules on taxation contained in the specific treaty must be adhered to.

For example, the treaties determine where the income must be taxed, and in certain situations it allows that income obtained be only taxed in the State of residence. The treaties also establish reduced tax rates for certain income (e.g. royalties, interest and dividends).

When the income is taxed in the source country, the treaties allow for the deduction of the tax paid in the foreign country, from the taxable amount due by the resident taxable persons.

In the instances whereby there is no treaty with another country in which the income is obtained, the IRPS Code provides for credit for foreign tax paid, which is explained in the section 7.6.2.

#### 4.1.6 Who is an IRPS taxable person?

IRPS taxable persons are those individuals whose income is subject to IRPS, i.e. individuals who are resident or not in Mozambique and who obtain income derived in the national territory.

Art. 18 & 25 of the IRPS Code

In summary, the obligations of the taxable persons are as follows:

- To declare income – with respect to income earned;
- To pay the applicable tax.

Relating to the payment of tax, the IRPS Code provides in certain instances for a tax substitute, i.e., the partial or total payment of the tax is imposed on a third party and not to the beneficiary of the income, for example, the entity who is obliged to make payment, who has to withhold the tax at source and pay it over to the State.

#### 4.1.7 How is a household taxed?

Art. 18 of the IRPS Code  
Art. 12 of the RIRPS

Whenever there is a household concerned, the tax is due relating to the total of the income of the people that comprise that specific household and the person who is the head of the household is considered to be the taxable person. A single tax return must be submitted by the two spouses or by one of them if the other is physically or mentally disabled or absent.

If the spouses are separated *de facto* (separated under common law), each one of them can submit a return for his / her own income and that of the related dependents.

The household constitutes one of the following definitions:

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<sup>1</sup> Resolution for Ratification of DTA no. 35/2008, dated 30<sup>th</sup> of December

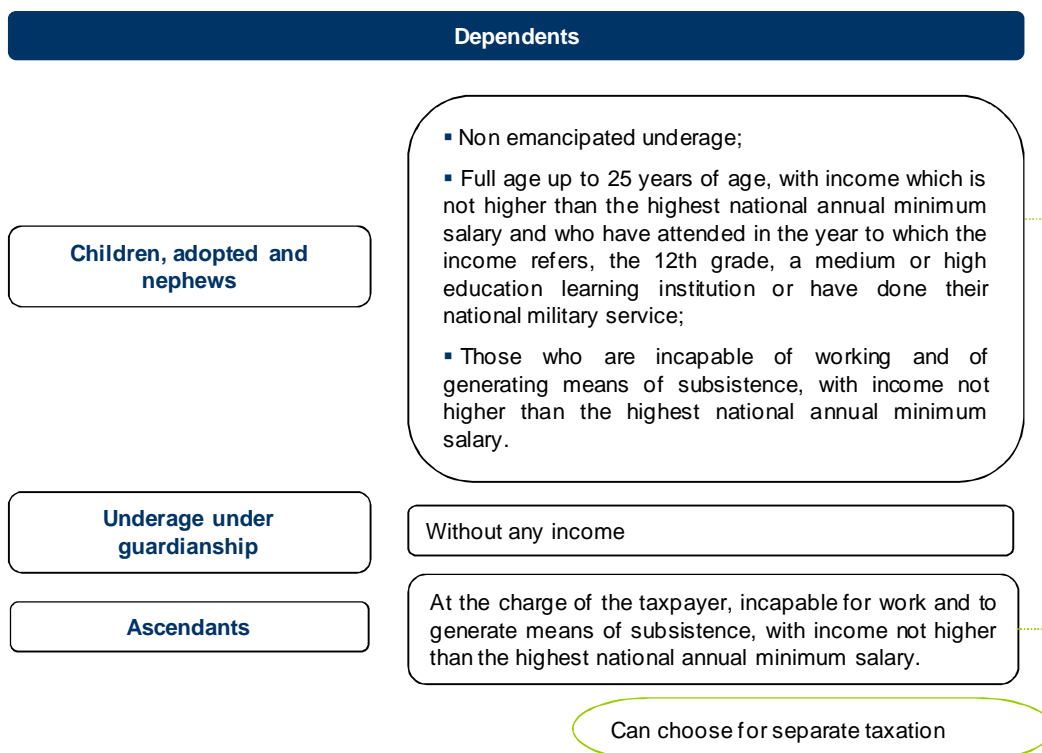
<sup>2</sup> Resolution for Ratification of DTA no. 22/2011, dated 9<sup>th</sup> of June

<sup>3</sup> Resolution for Ratification of DTA no. 23/2011, dated 10<sup>th</sup> of June

<sup>4</sup> Resolution for Ratification of DTA no. 24/2011, dated 10<sup>th</sup> of June

- Spouses who are not or whose assets are not legally separated and their dependents;
- Each one of the spouses or ex-spouses, when them or their assets are legally separated, or with respect to whom the marriage has been declared null, cancelled or dissolved, and their dependents;
- The single father or mother and respective dependents;
- The single adoptive parent and related dependents.

The following are considered **dependents**:



It is important to note that:

- Individuals cannot simultaneously be part of more than one household and neither can they be considered autonomous taxable persons if they are part of a household;
- The civil and family situation of the related taxable persons is that pertaining to the last day of the year to which the tax refers.

#### 4.1.8 How are the *de facto* unions taxed?

Art. 18 of the IRPS Code

In terms of the family Law, Law 10/2004 dated the 25<sup>th</sup> of August, whenever two people exist in a *de facto* union they can choose the taxation scheme applicable to taxable persons who are married by law and not legally separated, depending that the following conditions are met:

- The two taxable persons share the same tax domicile at least for one year and during the taxation period in question;
- Both have signed the income tax return.

Once the option is made in the tax return, both taxable persons (in the *de facto* union) are responsible for complying with the tax obligations.

#### 4.2 Income subject to IRPS

Art. 1 of the IRPS Code

IRPS is a direct tax levied on the total amount of annual income, whether this is in cash or in kind and irrespective of the currency or form in which the same is obtained, including income obtained by illicit means.

The referred income results from the following categories, after all deductions and rebates:

Income Categories	
First Category	Income from employment
Second Category	Entrepreneurial and professional income
Third Category	Capital income and capital gains
Fourth Category	Income from immovable property
Fifth Category	Other income

### 4.3 Frequently Asked Questions

**1** I got married on the 12<sup>th</sup> of December 2008. Do I submit my tax return as married or single?

The civil and family circumstance to be taken into account is the one at the 31<sup>st</sup> of December of the year to which the tax return refers. Thus, in 2009 a single return must be submitted referring to the income earned by the couple during the year 2008.

**2** I'm separated from my wife, but I'm not legally divorced, can I submit my tax return by myself?

In the case of a *de facto* separation the IRPS Code allows that each of the spouses submits a separate tax return for the respective income and of their dependents, if any.

The dependents can only be included in one household, i.e., must only be considered in the tax return of one of the taxable persons.

**3** My son Alexander is 21 years old and he started working part-time in July 2008. Can he be considered as dependent once he earns a low income?

Considering that Alexander is not considered to have a dependant age he could only be considered as dependent if during the year 2008 he was attending the 12<sup>th</sup> grade at school, a medium or high education learning institution or if he was doing his national military service and earning an annual income lower or equal to 12 minimum salaries of the highest national minimum salary, which it is currently: 12 x 5 320, 00= 63.840,00 MT.

Therefore, if Alexander is not studying or doing his national military service during 2008, he cannot be considered as dependent.

**4** During 2008 my husband Filipe worked for 5 months in Zimbabwe. As he already paid tax on his income from employment in Zimbabwe, does he still have to declare the income in Mozambique?

As Filipe is considered to be resident once he remained in the Mozambican territory for more than 180 days, the income earned abroad is subject to taxation. It is important to note that if Filipe resides for less than 180 days in Mozambique but he has a permanent residence in the national territory that gives rise to his intention to use it as permanent residence, he will still be considered to be resident in Mozambique for tax purposes.

Thus, although he has already paid tax in Zimbabwe on the income obtained in that country, it must be included in the annual income IRPS return related to 2008 and submitted in Mozambique.

Considering that there is no ratification of the Double Taxation Agreement in place with Zimbabwe, the general rule of the IRPS Code will apply, which allows for a foreign tax credit (see section 7.6.2).



**5. ASSESSMENT OF THE NET INCOME FOR EACH CATEGORY**

Before we proceed with the analysis of the income of each category which comprises the gross income, as well as the respective deductions applicable for the assessment of the net income of each category, the general formula for the calculation of the IRPS is presented below:

Formula for the calculation of the IRPS		
	Married taxable persons	Single taxable persons
	Gross income of each category	
-	Deductions to income	
=	Net income of each category	
-	Deduction of losses	
-	Tax benefits	
=	Total net income	
-	Rebates	
=	Taxable income - not taxable minimum	
÷	2	
×	Rate	
-	Rebate	
×	2	
=	Tax	
-	Deductions to tax	
=	IRPS due	
-	Withholding at source and provisional payments	
=	IRPS payable or receivable	

As it can be seen in the above table, up to the taxable income (including the deduction of the minimum not taxable), the procedures for the calculation of the IRPS are the same for married and singles. Differences occur when the marital coefficient 2 is applied for married taxable persons. The remaining steps are the same for any taxable person.

In this chapter we explain how the net income for each category is calculated, including the deduction of losses and tax benefits as applicable. The calculation of the total net income up to the calculation of the IRPS payable or receivable will be explained in the Chapter 7.

**5.1 First category**

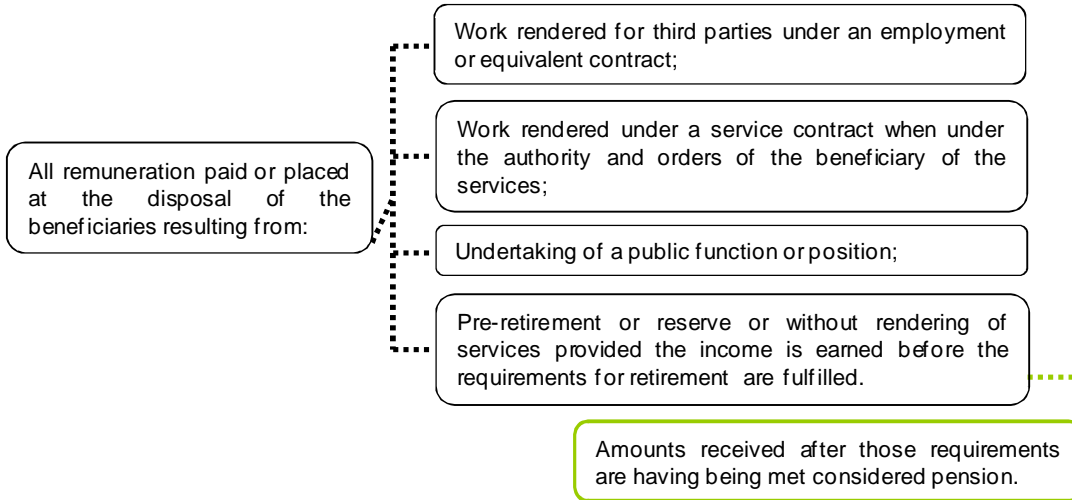
Art. 2 of the IRPS Code

**5.1.1 Which income does the first category comprise?**

The first category includes the following income:

- Income from employment, or
- Income of similar nature, and
- Pensions or life annuities.
-

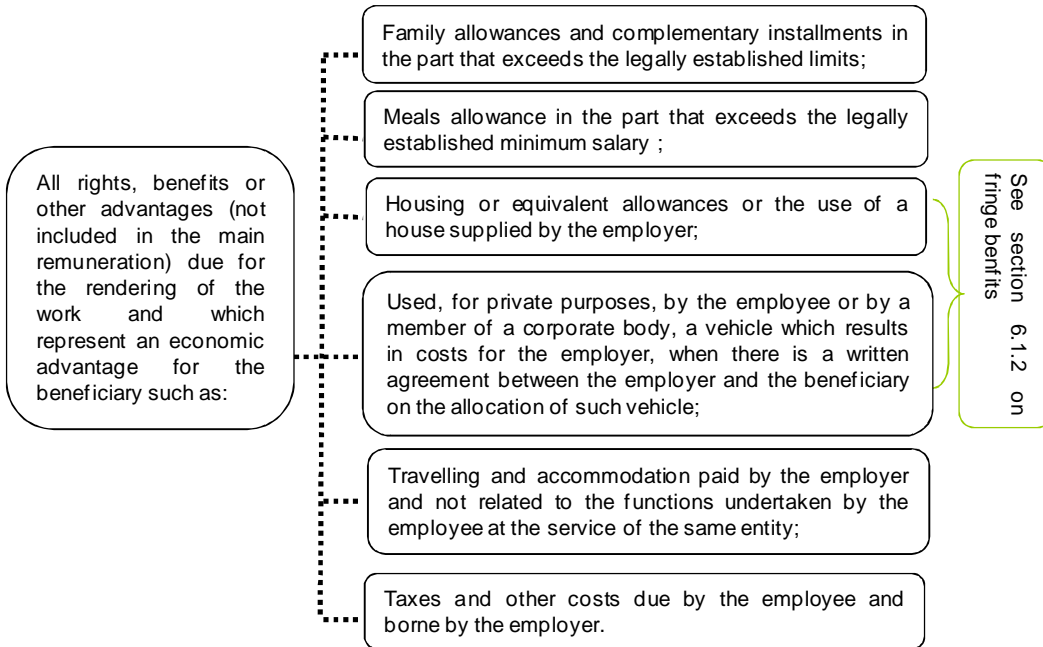
The following is considered to be **income from employment**:



Note: All remuneration above are considered income from employment irrespective of the form of payment (salaries, gratitude, percentages, commissions, awards, attendance allowances, participation in fines and other **complementary remuneration**), frequency, if the remuneration is fixed or variable or if the same results of a contract or not.

The following are considered **complementary remuneration**:

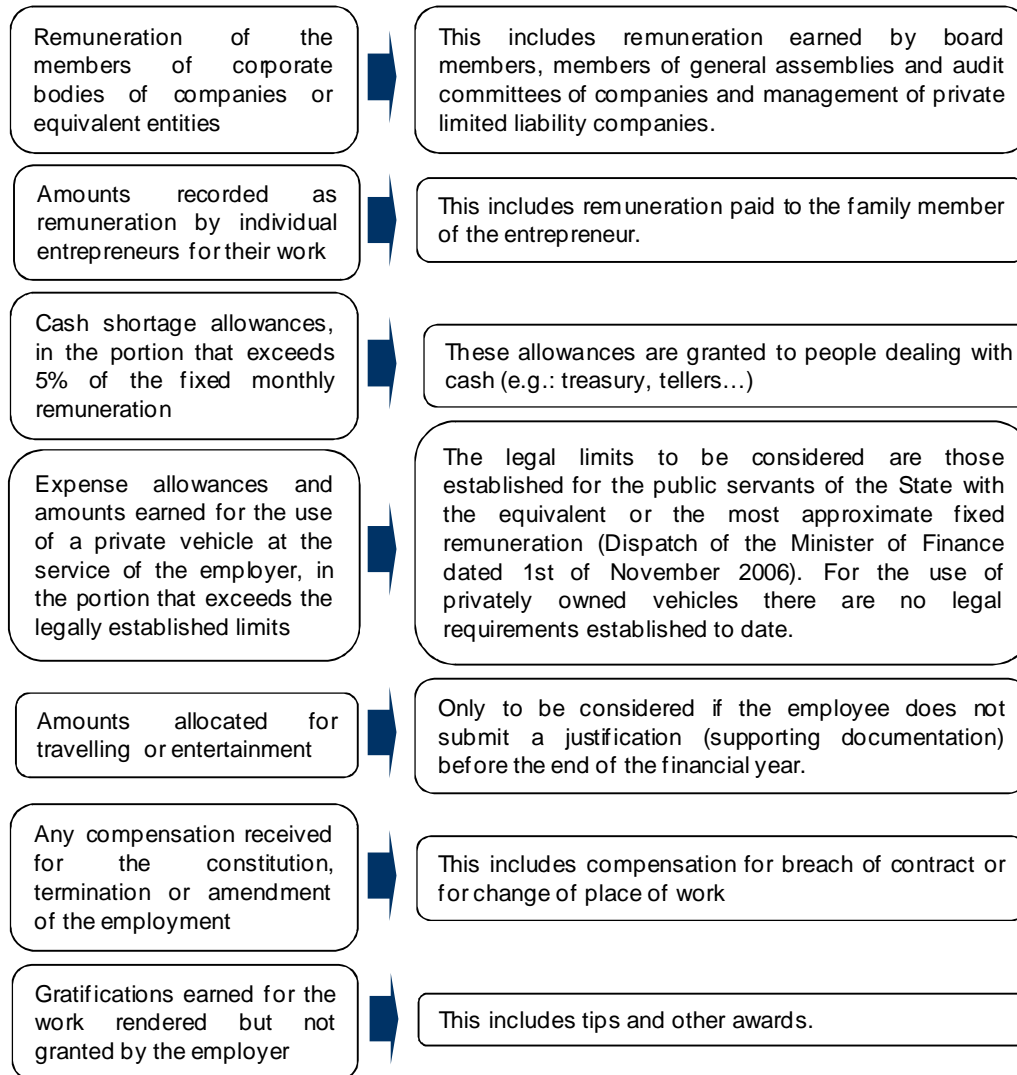
Art. 3 of the IRPS Code



Note: Benefits granted by the employer to any of the family members of or anyone related to the employee are considered income for the employee.

the following is considered to be **income equivalent to income from employment**:

Art. 4 of the IRPS



**Example 1:**

Roberto works as an accountant at a travel agency in Maputo and earns a salary of 30.000 MT. As the company has a branch in Beira, Roberto travels to Beira on monthly basis, where he remains for a day, i.e. he goes in the morning of one day and returns in the morning of the next day. Roberto receives an allowance (per diem) of 2.500 MT to cover expenses with meals and accommodation.

**Example 1 (continued):**

In order to assess if the allowance represents taxable income, the Dispatch of the Minister of Finance dated the 1st of November 2006 which defines the amounts of the allowances and Decree n 54/2009 dated the 3<sup>rd</sup> of December which establishes the careers' and salary groups of public servants as well as the Decree 14/2011 dated 25<sup>th</sup> of May which update the salaries for each salary group, need to be consulted.

Comparing the salary earned by Roberto with the salaries of public officials, without taking into account the function thereof, it is concluded that the salary received by the accountant is closer to the salaries of civil servants to whom are assigned a daily allowance of 2,000 MT

Considering that the company granted an allowance of 2.500 MT, the difference of 500 MT will represent a taxable income.

**Example 2:**

Ineida works at a bank located in Beira and in October 2008 she received the amount of 9.000 MT for payment of travelling and accommodation costs regarding a trip to Maputo to attend a training session organized for the employees.

Until the end of year 2008, Ineida only provided receipts for travelling and accommodation up to the amount of 8.000 MT. The supporting documents for the remaining amount of 1.000 MT were only provided in January 2009.

Therefore, 1.000 MT will be considered income from employment in year 2008 because no justification was submitted until the end of this year.

**Example 3:**

A company operating in the field of industrial cosmetics products started to sell a new product to avoid wrinkles during 2008. At the year-end the company decides to offer an annual trip to its best seller.

Silvia, employee of the company, was the winner. In this case, Silvia should consider the value of the trip as income from employment, as per the market value.

It is important to note that this income is not subject to withholding tax of IRPS

**Pensions** are all amounts paid or placed at the disposal of the beneficiaries as:

Art. 5 of the IRPS

- Installments due as retirement, pensions, old age, disability or life annuities, as well as other of identical nature including maintenance payments or alimony;
- Installments made by insurance companies, pension funds or any other entities, due within the scope of complementary social security schemes as a result of contributions by the employer;
- Pensions and subsidies not included in the previous bullets;
- Temporary or life annuities.

5.1.2 How is the value of fringe benefits assessed?

Art. 28 of the IRPS Code

Fringe benefits must be quantified in Meticaïs and according with the following rules, which must be successively applied:

- by the official price;
- by the official acquisition quotation;
- by the market value, in competition conditions.

In the case of **use of a residence**:

Fringe Benefits = value of the use- amount paid by the beneficiary

Where:

- the value of the use is equal to the rental paid on behalf of the beneficiary;
- in the event that there is no rental the value of the use is equal to the amount of the rental according to the market value in competition conditions, with the maximum limit of 1/6 of the total remuneration earned by the beneficiary;

In the case of **interest free loans or loans with reduced interest rate**:

Fringe Benefits =  
Principal x (interest rate of reference - interest rate borne by the beneficiary)

The interest rate of reference is the rate that corresponds to the type of transaction in question and the discount rate of the Central Bank published by Notice of the bank at the beginning of each calendar year.

In case of **allocation of a vehicle by the employer**:

Fringe Benefits (annual) = Acquisition cost x 0,25% x n.<sup>o</sup> months of use

In the case of **purchase of a vehicle** by an employee or member of the corporate bodies of the company where such vehicle has already been allocated:

Fringe Benefits = average market value - (Total income taxed previously by virtue of the allocation of the vehicle + purchase price)

5.1.3 What income in this category is not subject or exempt from taxation?

Art. 6 & 7 of the IRPS Code

All income which is not subject to taxation, such as exempt income, does not constitute taxable income and therefore are not included in the global income for purposes of assessment of the taxable income under IRPS. However, although it is not included in the total income for taxation purposes, the exempt income will be taken into account for the determination of the tax rate to be applied to the remaining income.

The following income is **not subject** to IRPS:

- Payments made by employers towards compulsory or complementary social security schemes which are exclusively destined to provide benefits in the case of retirement, disability or life annuities;
- Use and enjoyment of social utility and leisure realizations maintained by the employer, such as:
- Day-nurseries, kinder gardens, canteens, libraries, schools, prevention and medical and medication assistance to HIV positive persons, provided these represent a benefit for the employees of the company and their families and for general and not individualized use;
- Medical insurance, personal accidents or life insurance which exclusively guarantee death or disability risks, provided that the same are granted based on objective and equal criteria to all permanent employees of the company and that the insurance agreements are entered into with Mozambican resident insurance companies;
- Payments exclusively related to the professional training of the employees, conducted either by the employer or by public or other entities recognized for such purposes by the competent ministries.
- Compensations for dismissal with just cause received by the employee, resulting from the termination of the employment contract by the initiative of the employer or employee.

Pensions, as defined in section 6.1.1 are considered **exempt income** for IPRS purposes.

5.1.4 What are the deductions to the income from the 1<sup>st</sup> category?

Art. 29 of the IRPS Code

For purposes of determining the net income of the 1<sup>st</sup> category, the following amounts are deducted from the gross income **per each of the beneficiaries who has earned the same**:

- Contributions to unions;
- Compensation paid by the employee to its employer for the unilateral termination of the employment contract without giving notice, as a result of a court decision or an agreement confirmed by court.

**Example**

In 2008, the income and expenses of the couple Alfredo and Catarina were:

Income in MT:	Alfredo	Catarina
Salaries	150.000	60.000
Expenses in MT:		
INSS (social security)	4.500	1.800
Union contributions	1.500	
Compensation determined by court paid to the company due to the termination of employment contract without notice		10.000

The **total net income of the family** will be:

$$= (\text{Alfredo's gross income} - \text{Deductions}) + (\text{Catarina's gross income} - \text{Deductions})$$

$$= (150.000 - 1.500) + (60.000 - 10.000) = \mathbf{198.500 \text{ MT}}$$

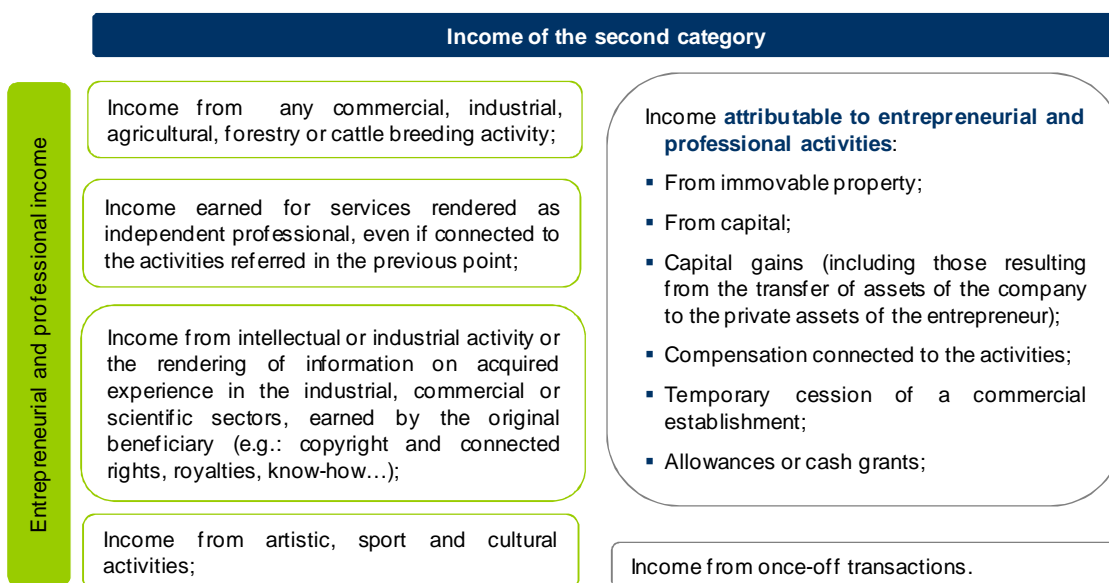
It is important to note that INSS expenses incurred by employees (3%) are no more deductible to the gross income since the 1<sup>st</sup> January 2008.

**5.2 Second Category**

5.2.1 Which income does the second category comprise?

Art. 8 of the IRPS Code

The second category comprises income which directly or indirectly results from entrepreneurial and professional activities and other of equivalent nature, namely:



## 5.2.2 How is the net income of the second category assessed?

The net income of the second category is assessed on the basis of:

Art. 30 of the IRPS Code

- Organized accounting scheme;
- Simplified accounting scheme;
- The simplified scheme for assessment of the taxable income;
- The rules for the income from employment;
- The rules applicable to once-off transactions;
- The indirect methods for assessment of the taxable income.

### 5.2.2.1 Organized accounting scheme

Art. 72 & 74 of the IRPS Code

#### Who are the taxable persons included in this scheme?

The following taxable persons earning income from the second category are included in the organized accounting scheme:

- Who during the financial year prior to the application of the scheme had an annual turnover greater than 2.500.000 MT, or
- Have elected to follow this scheme.



In cases where the taxpayer has elected to follow this scheme, then the option must be formally disclosed in the:

- Declaration of commencement of business;
- Declaration of alteration of business to be submitted until the end of the month of March of the year in which they intend to apply the chosen scheme.

#### How is the net income (or taxable profit) assessed?

Art. 34 of the IRPS Code

The taxable profit is determined according to the rules established for companies in the IRPC Code, which is covered in the IRPC manual.

The taxable profit is calculated on the basis of the net profit/loss for the year, assessed in accordance with the General Chart of Accounts and possibly adjusted by amounts to be added or deducted. Losses and tax benefits shall be deducted, if applicable to the taxable profit which the taxable income will result.

In addition to the adjustments to net income established by the IRPC Code, other limitations are added and adjustments with respect to:

- Expenses not accepted as a tax deduction;



- The deduction of tax losses;
- The realization of the share capital with the assets of the entrepreneur.

■ Expenses not accepted as tax deductions:

Art. 35 of the IRPS Code

The following expenses are not deductible even when accounted for as a cost:

- Expenses related to travel, trips and accommodation of the taxable person or member of the family unit who works with the taxable person, in the portion of the expense that exceeds in total 10% of the accounted income that is subject and not exempt from IRPS;
- Expenses relating to immovable property (depreciation, interest, rentals, energy, water and fixed line telephone) at the residence of the taxable person and allocated to the entrepreneurial or professional activity, in the portion exceeding 25% of the accounted income that is subject and not exempt from IRPS.

In instance where the taxable person undertakes his/hers activity together with other professionals, the deductible costs are apportioned according with the respective use of the respective services or means of work or, if there are no elements to allow for apportionment, proportionally to the gross income earned;

- The remuneration of the beneficiaries of income of this category, as well as the remuneration of the family members who render services, as well as other payments as expense allowances, use of own vehicle at the service of the activities, meal allowances and other similar remuneration, in the portion exceeding, as a whole, 10% of the total income accounted for subject and not exempt from IRPS.

**Example:**

Manuela works on her own as an architect. Her husband, Alexandre, works with Manuela as a designer. Manuela allocated to her activity a portion of her residence, which corresponds to half of the total area of the residence. The costs of the residence (water, electricity, rental, depreciation, fixed line telephone) were 954.000MT.

Income and expenses allocated to the activity for 2008 were:

Amounts in MT

Income:	2.700.000
Expenses:	
Salaries Manuela & Alexandre	450.000
Salaries of two employees	120.000
Travel expenses for Manuela & Alexandre	275.000
Costs of the residence allocated to the activity = (954.000 /2)	477.000
Total of expenses	1.322.000
Net profit for the year	1.378.000

**...Example:**

For tax purposes the following are considered as deductible costs:

- The expenses of Manuela and Alexandre salaries up to a maximum of:  $2.700.000 \times 10\% = 270.000$  MT. The difference is added to the net income ( $450.000 - 270.000 = 180.000$  MT);
- Traveling expenses for Manuela and Alexandre up to:  $2.700.000 \times 10\% = 270.000$  MT. The difference is added to the net income ( $275.000 - 270.000 = 5.000$  MT);
- Expenses of the residence up to:  $2.700.000 \times 25\% = 675.000$  MT, therefore as the amount of 477.000 MT was allocated, this amount is accepted as tax cost and no corrections are required.

Adjustment to the net income (MT):

	Net profit for the year	1.378.000
+	Salaries	180.000
+	Travel expenses	5.000
=	Taxable income	1.563.000

Note that the salaries paid to Manuela and Alexandre are income as defined under 1<sup>st</sup> category, subject to withholding at source (see section 9.1.1.1), which must be included in the total income.

**■ Tax losses:**

Tax losses assessed in a financial year are in general deductible from the taxable income, if any, of one or more of the subsequent five financial years.

Art. 36 & 50 of the IRPS Code  
Art. 41 of the IRPC Code

However, there are certain exceptions and specific aspects which are described below:

- In the years in which the profit is assessed on the basis of the indirect methods (see section 6.2.2.6) tax losses from previous years are not deductible, even if they are within the legal period for deduction (5 years), without prejudice of the deduction within that period of losses previously not deducted;

Note that when the Tax Authorities adjust the tax losses declared by the taxpayer, the previous deductions are amended accordingly, provided that not more than six years have elapsed in relation to the year to which the taxable profit relates.

- In the event of taxable persons undertaking agricultural, forestry or cattle-breeding activities and other included in second category, the tax losses assessed in those activities cannot be deducted, from the taxable profit of other activities of the same category;

This also applies when the activities undertaken benefit from partial exemption and / or reduction of the IRPS rate, where the losses occurred in such activities cannot be deducted from the taxable profit of other activities of the same category;

**Example:**

Ernesto undertakes two different activities, both included in the second category, namely agriculture and a restaurant. During 2008, the restaurant had a profit of 1.500.000 MT and the agricultural activity had losses amounting to 300.000 MT. The losses assessed in the agricultural activity cannot be deducted from the profits of the restaurant for tax purposes. However, Ernesto can deduct the 300.000 MT losses from the profits of the agricultural activity, if any, during the subsequent five years.

- Whenever the activity of the taxable person is substantially changed the deduction of the tax losses previously assessed ceases to apply;
- In the event of death of a sole proprietor, the deduction of the tax losses can only be used by whom succeeds to the person who has borne the losses.



The deduction of the tax losses as defined above only applies to the income generated as from year 2003 and subsequent years.

■ **Realization of share capital with the entrepreneurial assets:**

Art. 37 of the IRPS Code

When the total assets allocated to an entrepreneurial or professional activity of an individual are transferred to a company as share capital, the IRPS Code provides for the tax neutrality.

This scheme is based on the principle that the activity of the entrepreneur will continue as ongoing concern basis and as the restructuring had never taken place.

In this manner, the transfer of the assets of the entrepreneur for the realization of the share capital does not lead to the assessment of any taxable profit, provided that the following conditions are all met:

<p>The assets are transferred to a company with head offices and effective management in the Mozambican territory;</p>	<p style="text-align: center;">+</p> <p>The individual transferor becomes a shareholder holding at least 50% of the share capital of the company and the activity undertaken by the company is substantially the same as the activity that used to be undertaken by the individual;</p>
+	+
<p>The accounting entries of the transferred assets and liabilities are made for the values as they were accounted for by the individuals;</p>	<p>The shares received in exchange of the transfer are valued, for purposes of taxation of the gains or losses referring to their subsequent transfer, by the net value correspondent to the transferred assets and liabilities;</p>
+	+
<p>The company undertakes to comply with the provisions of article 58 of the IRPC Code , by issuing a statement to be attached to the tax return of the individual referring to the year of transfer.</p>	

However, a taxable profit will be assessed whenever:

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- The transferred assets comprise assets where the taxation of the gains has been deferred, namely in case of private assets allocated to the entrepreneurial activity and where the gain would only be assessed with its subsequent sale.
- The shares received in exchange of the transfer of the entrepreneurial assets to the company are sold before the period of five years has elapsed as from the date of transfer of the assets.

The following table presents the formula for the calculation of the taxable income on the basis of the annual income tax return (Form M/10 Annex A1) <sup>1</sup>, referring to some brief notes to assist the reader to better understand the issues regulated in the IRPC Code which, as previously noted, will be addressed in detail in the IRPC manual.

Assessment of the taxable income		
	Income of the years assessed in accordance with the General Chart of Accounting	
To be added back	Capital gains not reflected in the taxable income	Note 1
	Capital losses not reflected in the taxable income	Note 2
	Expenses relating to travel, trips of the taxable person or family member in the portion exceeding 10% of the income	
	Expenses relating to immovable property in the portion exceeding 25% of the income	
	Remuneration and other expenses of the taxable person and family members in the portion exceeding 10% of the income	
	Depreciation not accepted as a tax deduction	Note 3
	Illicit expenses, insurance premiums and leasing rentals in the portion destined for the repayment of the principal	Note 4
	Non deductible provisions or provisions exceeding the legally established limits	Note 5
	Social utility realizations granted individually and representing income from employment, medical aid and costs with pensioners	Note 6
	Donations exceeding the legally established limits or not deductible	Note 7
	Taxes and other costs of third parties	
	Fines, compensation interest and costs incurred as a result of offences	
	Compensation for damages which are insurable	
	50% of expense allowances and other costs not invoiced to clients	
	80% of entertainment expenses irrespective of the manner in which they are accounted for	Note 8
	Confidential or / and not documented expenses	
	Amounts due for the rental of light or multipurpose vehicles without driver in the portion correspondent to the depreciation of the vehicle which is not accepted as a tax cost (exceeding 800.000 MT)	
	Fuel consumed in excess or in vehicles that are not proven to be allocated to the activity	
	50% of costs incurred with respect to light passenger vehicles	Note 9
	Accounting capital losses	Note 10
Tax capital gains		
Prior years adjustments		
To be deducted	Restatement or reduction of taxed provisions	
	Accounting capital gains	Note 10
	Tax capital losses	
	Reinstatement of non deductible taxes	
	Update of forestry costs with a duration greater than one year	
	Tax benefits	Note 11
=	<b>Profit or loss</b>	

<sup>1</sup> It should be noted that the Form 10 Annex A1 does not incorporate amendments to the Corporate Income Tax Code and Regulation (Law No. 20/2009 of 10 September and Decree No. 68/2009 of 11 December, respectively) which provisions also apply to individual taxable persons earning income from the 2nd category. Therefore, in the event, for example, of unrealized foreign exchange differences which are not tax deductible, these exchange differences should be added to net income of the year in the blank lines contained in the form (field 225 to 229).

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-	Deduction of losses	
-	Tax benefits	Note 12
=	<b>Taxable income</b>	

**Note 1:** Capital gains reflected in the net profit for the year, such as gains resulting from the sale of own capital and allowances received which are not directly related to the assets, are added back.

Art. 21 of the IRPC Code

**Note 2:** Capital losses not reflected in the net profit for the year such as gratuities and other remuneration earned by members of corporate bodies and employees of the company in the form of participation in the profits are added back, provided that:

Art. 24 of the IRPC Code

- The amounts are paid until the end of the following financial year and when
- The beneficiaries hold at least 1% of the share capital; the referred amounts do not exceed double the monthly remuneration earned in the year to which the profits relate, with the excess being considered as distributed profits for tax purposes.

**Note 3:** For example, depreciation of light passenger or multipurpose vehicles is not accepted as a tax cost in the part corresponding to the acquisition or revaluation value which exceeds 800.000 MT, provided that the vehicles are not designated for rental.

Art. 27 of the IRPC Code

**Note 4:** Illicit expenses are those which result from behavior that reveal the violation of the Mozambican legislation (e.g.: bribery). Regarding insurance premiums which not accepted as a tax cost they are for example those considered as income from employment.

Art. 23 of the IIRPC Code

**Note 5:** For example, provisions for doubtful debts which exceed 1.5% of the debtor balances related to the normal activities of the company at the year-end, up to an accumulated limit of 6% are not accepted as a tax cost.

Art. 28 & 29 of the IRPC Code

**Note 6:** Expenses of a welfare nature for example those incurred in connection with voluntary maintenance of kinder-gardens, canteens, schools, medical and medication assistance to HIV+ persons and medical aid.

Art. 31 & 33 of the IRPC Code

Expenses related to medical aid, disability and life insurances, as well as pension funds are added to the net profit/loss for the year when:

- It does not exclusively cover the benefit of retirement, complement to retirement, disability or subsistence in favor of the employee;
- Exceeds 10% or 20% of the staff expenses in the case of employees who do not have the right to a social security pension;
- Are not granted to all the employees.

**Note 7:** Donations which:

- are not granted to the associations or other entities foreseen in the law and

Art. 34 & 35 of the IRPC Code

- exceed 5% of the taxable income of the prior year (except for donations to the State which have no limit) <sup>1</sup>

are added to the taxable income.

**Note 8:** Entertainment costs are those incurred regarding meals, travel, trips and concerts/shows offered in the national territory or abroad to clients or other persons or entities.

Art. 36 of the IRPC Code

**Note 9:** 50% of costs incurred regarding light passenger vehicles, namely, rentals, repairs, fuel and depreciation are added to the net profit, except for those vehicles are to be rented within the normal scope of activities of the taxable person.

Art. 36 of the IRPC Code

**Note 10:** Given that sometimes there are differences in the assessment of the capital gains and losses for accounting purposes and those for tax purposes, the assessment of the taxable income must be made on the basis of the net profits/loss without the accounting capital gains and losses, i.e., deducting the accounting capital gains and adding the capital losses and afterwards consider the tax capital gains and losses.

One of the differences to highlight is, for example, the assessment of the accounting capital gains obtained from the sale of fixed assets, when the funds obtained are reinvested in the acquisition, manufacturing or construction of tangible fixed assets until the end of the third financial year subsequent to the year of sale. In this case, for tax purposes, such capital gains do not concur for the formation of the taxable profit.

Therefore, from an accounting point of view there are capital gains, but for tax purposes they are not considered as such and not taxed. Therefore, only the accounting capital gain would be deducted from the net profit.

**Note 11:** Investments authorized within the scope of the Investment Law (Law n.º 3/93, dated the 24<sup>th</sup> of June) before January 2009 may benefit from the following tax incentives:

Art. 16 & 19 of the CFB

- In case of undertakings in the City of Maputo, 120% of the expenses incurred relating to the construction and rehabilitation of roads, railways, airports, post offices, telecommunications, water and electricity supply, schools, hospitals and other works considered to be of public utility by the respective authorities and confirmed by the Tax Authorities are considered as tax deductible;
- The same as above applies to the remaining provinces, where 150% of the expenses are considered as a tax deduction;
- In the event of acquisition, as own assets, of works and other objects considered as representing the Mozambican culture, as well as actions that contribute for its development, in terms of the Law on Protection of the Cultural Heritage, Law no. 10/88 dated the 22<sup>nd</sup> of December, only 50% of the expenses regarding the acquisition will be considered as tax deductible;
- Depreciation of new immovable property can be accelerated, i.e. the assets can be depreciated by using double the normal rates established by law<sup>1</sup> and accepted for tax

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<sup>1</sup> Official Document (*Portaria*) 20 817, dated 27th of January of 1968 - This is the table of annual rates of depreciation referred in p. 5, article 26 of IRPC Code.

purposes or, by using triple the normal rates when those assets are allocated to the hotel and tourism activities.

According to the new Code of Tax Benefits, approved by Law 4 / 2009 dated January 12, for investments authorized as of January 2009, the following benefits will apply:

Art.16 an 19 of CTB

- Depreciation and amortization of property used in new investment projects, regardless of the activity in which they are assigned, may be accelerated, ie, incremented by 50% when compared to the legally established standard rates to calculate depreciation and amortization costs;
- Expenses that may be considered for tax purposes:
  - 110% or 120% of the costs taken place with the construction or rehabilitation works considered of public interest (eg roads, airports, water supply, schools, hospitals ...), depending on the location of the investment is in Maputo City and in the other provinces, respectively;
  - 50% of expenditure on art and other objects that are representative of the Mozambican culture for its own assets as well as actions for the development of this culture (benefit which remains unchanged).

**Note 12:** Investments authorized within the scope of the Investment Law (Law n.º 3/93, dated the 24<sup>th</sup> of June) before January 2009 may benefit from the following tax incentives:

Art. 17, 18 & 42 of the CFB

- The amount invested in specialized equipment considered state-of-the-art for the development of the activities of the undertakings authorized under the investment law, is deductible from the taxable income (= taxable profit – tax losses), up to the maximum limit of 15% of the taxable income, during the first five years as from commencement of activities;
- Costs incurred with the Professional training of Mozambican employees are deductible from taxable income (= taxable income – tax losses), related to undertakings approved by the Investment Law, during the first five years as from commencement of activities, up to the maximum limit of:
  - 5% of the taxable income, or
  - 10% of the taxable income, when the professional training is performed using state-of-the-art equipment.

According to the new Code of Tax Benefits, approved by Law 4 / 2009 dated January 12, for investments authorized as of January 2009, the following benefits will apply:

Art.16 an 19 of CTB

- The cost of modernization and introduction of new technologies can be deducted up to 10% (instead of 15%) of taxable income, the amount invested in specialized equipment during the first five years of the investment project;
- The benefits with the costs of training of Mozambican workers remain.

**Example:**

Emídio is an independent lawyer. During 2007 he invoiced 3.000.000 MT to his clients and therefore he compulsively falls under the organized accounting scheme. During 2008 he presented the following income and costs:

		Amounts in MT
A	Invoicing	3.000.000
B	Office rental	600.000
C	Expenses with water, electricity, telephones	65.000
D	Stationery	48.000
E	Salaries and contributions for the INSS of the cleaning lady, secretary and general office worker	310.000
F	Depreciation of the light vehicle acquired in 2007 for the price of 850.000 MT	212.500
G	Insurance and repairs of the above mentioned vehicle	1.800
H	Fuel of the vehicle used in the business	5.000
I	Entertainment costs (lunch with clients)	50.000
J	Travelling and accommodation for Emídio	310.000
K	Transport for the general office worker	15.000
L	Fines	10.000
	Total costs accounted	1.627.300
	Net profit for the year (A-B-C-D-E-F-G-H-I-J-K-L)	1.372.700



...Example:

Assessment of the taxable income:

A	Net profit for the year			1.372.700
	Expenses:	Accepted as a tax deduction	Non accepted as a tax deduction	Additions to the net profit
B	Office rental	600.000		0
C	Expenses with water, electricity, telephones	65.000		0
D	Stationery	48.000		0
E	Salaries and contributions for the INSS of the cleaning lady, secretary and general office worker	310.000		0
F	Depreciation of the light vehicle acquired in 2007 for the price of 850.000	100.000	112.500	112.500
G	Insurance and repairs of the referred vehicle	900	900	900
H	Fuel of the vehicle allocated to the activity	2.500	2.500	2.500
I	Entertainment costs (lunch with clients)	10.000	40.000	40.000
J	Traveling and accommodation for Emidio	300.000	10.000	10.000
K	Transport for the general office worker	15.000		0
L	Fines		10.000	10.000
M	Total of costs not accepted for tax purposes			175.900
Taxable income = (A) - (M)				1.548.600

Notes:

F – Only 50% of the depreciation of light vehicles is accepted as tax cost in the part referent to the acquisition cost and up to 800.000MT, i.e.: 50% x (0,25 x 800.000).

G & H – Only 50% of costs relating to light vehicles are accepted as tax deduction.

I – Only 20% of entertainment expenses are accepted as a tax deduction.

J – Traveling and accommodation of the taxpayer are only accepted as a tax deduction up to a limit of 10% of the income 10% x 3.000.000 = 300.000 MT.

L – Fines are not accepted as a tax deduction.

5.2.2.2 Simplified accounting scheme

Art. 73 of the IRPS Code

Which taxable persons are included under this scheme?

The simplified accounting scheme includes the taxable persons who undertake a commercial or industrial activity and meet the following requirements:

- Have registered in the year prior to the application of the scheme an annual turnover less than or equal to 2.500.000 MT, and
- Have elected this scheme (in the declaration of commencement of activities or in the declaration of alteration return).

### How is net income assessed?

The net income is assessed according to the rules established for the organized accounting scheme (see section 6.2.2.1).

Art. 34 of the IRPS Code



It is important to note that the difference in this scheme is the simplification of the accounting requirements compared to the organized accounting scheme where instead of the use of the compulsory books General Ledger, Balance sheet and Journal, simpler books are used (see section 9.4.2 on accounting obligations).

The following table contains the formula for the assessment of the net profit/loss based on the income return:

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<b>Expenses:</b>		
<b>Sum</b>	Remuneration	
	Trips, travelling and accommodation of the taxable person and family members	
	Trips, travelling and accommodation of employees	
	Costs of light passenger vehicles, including depreciation	
	Depreciation of fixed assets (except for light passenger vehicles)	
	Insurances	
	Fuel	
	Water and electricity	
	Repairs, except for light passenger vehicles	
	Rentals	
	Membership to organizations representing the sector of activity (unions)	
	Finance costs	
	Other expenses	
<b>(1) Total expenses</b>		
<b>Sum</b>	Costs of immovable property portion that exceeds 25% of the profits	See 6.2.2.1
	Costs of trips, travelling of the taxable person or family members portion that exceeds 10% of the profit	
	50% of costs incurred with light passenger vehicles, motorbikes	
	Remunerations and other costs of the taxable person and family portion exceeding 10% of the profits	
	Other expenses not accepted as tax deductible	
<b>(2) Total expenses not accepted as tax deductible</b>		
<b>(3) Total expenses accepted as tax deductible = (1) - (2)</b>		
<b>Assessment of net profit / loss (= net income)</b>		
<b>Costs:</b>		
<b>Sum</b>	Cost of stocks	Note 1
	Negative variation of production or cost of sale	Note 2
	Tax deductible expenses = (3)	
<b>(4) Total tax deduction</b>		
<b>Income:</b>		
<b>Sum</b>	Sale of goods	
	Sale of manufactured products	
	Services Rendered	
	Positive variation of production	Note 2
	Other income	
<b>(5) Total income</b>		
<b>(6) Net profit / loss for the year = (5) – (4)</b>		

**Note 1:** Stocks comprise all the means that contribute for the normal activity of the company and include, according to the type of organization, the acquisitions adjusted by the opening and

closing balances. The formula for the assessment of the cost of stocks consumed and sold is: = Opening balance + Acquisitions ± Stock's adjustments – Closing balance.

**Note 2:** The positive or negative variation of the finished products or under production results from the following formula is: = Opening balance ± Stock's adjustments – Closing balance.

### 5.2.2.3 Simplified scheme for assessment of the taxable income

#### Which taxable persons are included under this scheme?

Art. 33 of the IRPS Code

The simplified scheme for assessment of the taxable income applies to taxable persons with income of the second category and who meet the following conditions:

- Not having elected the organized accounting scheme or the simplified accounting scheme, and
- Have registered in the year prior to the application of the scheme an annual turnover of less or equal to 2.500.000 MT<sup>1</sup>.

However, shareholders or members of entities subject to the tax transparency scheme are excluded (see glossary).

#### How is net income assessed?

The net income is assessed by applying the following percentages to the income:

20%	x	Sale of merchandise and products
20%	x	Sale of merchandise and rendering of accommodation, restaurant and beverage services
30%	x	Other income

Note that under this scheme no deductions are allowed.

#### Example:

Carla has a hairdressing and beauty salon and in the previous year recorded a turnover of 800.000 MT. Carla did not elect for the organized accounting scheme or the simplified accounting scheme. During 2008 she generated the following income:

- Hairdressing and beauty services: 810.000 MT
- Sale of hair and beauty products: 90.000 MT

Carla's **net income** during 2008 is:  
 = (30% x 810.000) + (20% x 90.000) = **261.000 MT**

<sup>1</sup> In the year of commencement of activities, the estimated annual turnover included in the return on commencement of activities is taken into account for the inclusion of the taxpayer in this regime.

### When does the application of this scheme cease?

The application of the simplified scheme ceases:

- When the annual turnover exceeds the 2.500.000 MT. Then the taxable person will be taxed under the organized accounting scheme as from the year subsequent to the occurrence of this fact;
- The Tax Authorities verify through indirect methods (see section 6.2.2.6) that the total annual turnover declared under the 2.500.000 MT does not represent the actual income and therefore the scheme stated in the previous paragraph shall apply.

#### 5.2.2.4 Rules for the income from employment

Art. 30 of the IRPS Code

The net income of the second category may, **by election**, be assessed according to the rules established for the first category whenever the income generated as an independent professional relates to a single entity. Once this option is adopted, the rules must be kept for a period of 3 years.

#### 5.2.2.5 Rules applicable to once-off transactions

Art. 32 of the IRPS Code

For the assessment of the net income from once-off transactions, the expenses necessary for its generation are deductible, provided that:

- Are duly supported, and
- Represent costs that are deductible for tax purposes (see non deductible costs in section 6.2.2.1).

#### 5.2.2.6 Indirect methods for the assessment of the taxable profit

Art. 38 of the IRPS Code

### When is the indirect method applied?

Indirect methods are applied for the assessment of the taxable profit whenever one of the following conditions is met:

- Non existence or organized accounts or the accounting books required under the simplified accounting scheme, as well as the lack of, delay or irregularities in the execution, filling in or organization of the accounting books;
- Failure to present the accounting records, books and other supporting documents requested under the law as well as their hiding, destruction, turning them useless, faked or corrupted;
- Existence of several accounting records or groups of books with the objective of distorting the reality behind the Tax Authorities;
- Errors or inaccuracies in the recording of the transactions or founded indication that the accounting records or the books do not reflect the exact asset position and the income effectively generated.

whenever:

- The delay in the accounting entries as well as the disclosure of the same is not regularized or presented after the established deadline (between 15 to 30 days);
- It is not possible to prove the indispensable elements for the correct assessment of the taxable profit in the case of abnormalities or inaccuracies in the accounting records.

#### How does the indirect method of assessment works?

The assessment of the taxable profit by indirect methods is based on all elements available to the Tax Authorities, as well as on the following:

Art. 48 of the IRPC Code

- Average margins of the sales and services rendered or acquisitions and supplies and services by third parties<sup>1</sup>;
- Average profitability rates of the capital invested, for the sector<sup>1</sup>;
- Technical coefficients of consumption and use of raw materials and other direct costs<sup>1</sup>;
- Elements and information disclosed to the Tax Authorities, including those related to other taxes, as well as the ones related to companies or entities that maintain business relationships with the taxable person;
- Location and dimension of the production unit;
- Average costs according to the particular conditions of the activity;
- Taxable income of the closest year or years which had been assessed by the Tax Authorities.

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<sup>1</sup> Not yet regulated up to the publication of this manual

## 5.3 Third category

### 5.3.1 What income does the third category comprise?

Art. 10 of the IRPS Code

This category comprises **income from a capital** source and income resulting from **capital gains**, defined in the following sections.

#### 5.3.1.1 Income from a capital source

Income from a capital source are all economic advantages, irrespective of their nature or denomination, whether they are cash or in kind, resulting, directly or indirectly, from assets, goods, rights or legal situations movable in nature, as well as the respective modification, transfer or cessation, except for the gains and other income taxed under other categories.

In summary, income from a capital source is:

#### Income of the third category – Capital income

##### Interest:

- Resulting from loan agreements, opening credit lines, repossessions and others which provide, for a consideration, and the temporary availability of cash or other fungible goods;
- Fixed deposits in financial institutions;
- Shareholders loans, guarantees or capital advancements made by the shareholders to the company;
- Due to the fact that the shareholders have not collected their profits or remuneration placed at their disposal;
- Assessed (balance) in the current account;
- Resulting from the postponement of the respective maturity or delay in payment, except for interest due to the State for the delay in the assessment of any contributions, taxes or rates;
- Public debt titles and bonds, participation titles (amongst others) issued by private or public

##### Income from the participation in companies:

- Dividends, including advancements on profits, distributed to the associated or beneficiaries, except for those attributable to income resulting from transparent companies or death of the beneficiary;
- Resulting from the division allocated to the shareholders which is considered income from a capital application;
- Value attributed to the associated in the redemption of shares without reduction of share capital;
- Earned by the associated in the association in participation and in the association to the shares.

##### Other income resulting from:

- Participation in unit trusts;
- Contracts of assignment or temporary use of copyrights, industrial property or *know how*, when not earned by the respective author or original beneficiary, as well as those resulting from technical assistance;
- Use or concession of use of equipment, when this does not represent income from immovable property;
- Cession of equipment and information systems networks, including data transfer or availability of installed information technologies capacity in any of the possible forms;
- Public debt titles, bonds, participation titles issued by public or private entities;
- Mere application of capital;
- *Swaps*.

### When does income from capital generate a tax liability?

Art. 12 of the IRPS Code

Interest from loans, deposits and opening of credit are subject to taxation on the date determined for their maturity or, in the absence of this, on the date of reimbursement of the principal, except when the interest is deemed in total, in which case it will be subject to taxation at the end of the taxation period or on the reimbursement date, whichever occurs first.

In the case of other income from capital, these become taxable as from:

- The moment the same mature or are deemed to have matured, which is the case of: interest under contracts that provide remunerated temporary availability of cash; interest from bank deposits, bonds, bills, promissory notes; interest on shareholders loans or capital advances, made by shareholders to the company or interest for the non collection of profits; interest for late payment or extension of the maturity period;
- The moment that they are made available to the beneficiary, which is the case of: dividends distributed to shareholders, income resulting from divisions, income resulting from participation units in investment funds, association to shares, or association in participation;
- The moment that they are paid (e.g.: swaps);
- The moment that they are the amount is assessed, which is the case of: income from repossessions, anticipated reimbursement of bank deposits, balance of interest assessed or posted in current accounts; temporary cession of industrial or intellectual property, experience acquired and technical assistance; cession of use of industrial equipment, information systems networks; income resulting from the mere application of capital.

### How to assess the net income from capital?

The net income from capital is equal to the gross income, as there are no deductions.

Art. 39 of the IRPS Code

#### 5.3.1.2 Income from capital gains

Art. 13 of the IRPS Code

#### Income from the third category – Capital gains

Gains which are not considered as commercial, industrial or agricultural income or capital or immovable property income are considered to be capital gains when resulting from:

- Selling of real rights on immovable property and allocation of the private assets by the individual to the entrepreneurial or professional activity;
  - Selling of shares, including their redemption and amortization with the reduction of share capital and other securities;
  - Selling of intellectual or industrial property or experience acquired in the commercial, industrial or scientific sectors, when the transferor is not the original beneficiary;
  - Cession, for a consideration, of contracts or other rights inherent to contracts attributable to immovable property;
  - Positive net gains, assessed in each year and resulting from operations relative to derivative financial instruments, except for gains resulting from *swaps*.
-



### When capital gains tax is payable?

The gains are considered to have been obtained:

- In the event of promise of purchase and sale or exchange: when the purchaser takes possession of the rights on goods under the contract;
- Where private assets are allocated to the activities (entrepreneurial or professional): at the time the assets in question are subsequently sold or when other fact occurs that would determine the assessment of income in similar conditions.

#### Example:

Amadeu is a civil engineer and works as an engineer on his own. He allocated his personal computer to the activities.

In this case there will be a deferment of the taxation and any capital gains will only be taxed in the financial year the computer is sold, if this occurs.

### How to assess the net income of the capital gains?

The value of the income that qualifies as capital gains is equal to the balance assessed between the capital gains and the capital losses in the same year. However, depending on their nature, the capital gains are assessed in a different manner as explained below:

- **Sale of real rights on immovable property and allocation of private assets to the activities of the own entrepreneur or professional:**

Art. 13, 40 & 44 & 47 of the IRPS Code

The capital gain is assessed as follows:

$$\text{Capital gain or loss} = \text{VR} - [(\text{VA} \times \text{CM}) + \text{EV} + \text{DAA}]$$

**VR:** Realization value, i.e.:

- in the event of exchange – the value allocated to the assets or rights received under the contract<sup>1</sup>, or the market value, when the first does not exist or the latter is higher, added or reduced as the case may be, from the amount of cash receivable or payable;
- In the event of expropriation – the amount of the compensation;
- In the event of allocation of private assets – the market value at the time of allocation;
- In the remaining events – the value of the respective consideration.

In the event of real rights on immovable property, the value that is or should have been considered for purposes of the property transfer tax (SISA) shall prevail, if higher.

<sup>1</sup> In the event of exchange of future assets, the values to be considered are those that refer to the date of signature of the contract.

Note that whenever differences between the real value and the value declared for the transfer occur, the Tax Authorities can make the necessary corrections.

**VA:** Acquisition value, i.e.:

- In the event of assets acquired as a donation – the value considered for purposes of payment of the donations or successions tax or that it should have been considered in the event that such tax was due;
- In the event of assets acquired for a consideration – the value considered for purposes of payment of the property transfer tax (SISA) or that it should have been considered, in the event that such tax was due;
- In the event of assets built by taxable persons themselves – the value of the construction cost duly proven when it is higher than the asset value reported for tax purposes;
- In the case of transfer of assets allocated to the entrepreneurial or professional activity of the taxable person to his private assets – the market value at the date of transfer.

**CM:** Coefficient of monetary correction approved by Dispatch of the Minister who supervises the area of finance, whenever more than 24 months have elapsed between the acquisition, sale or allocation date.

Art. 7 of the IRPS Code

As of the date of preparation of this manual such dispatch had not yet been approved. Therefore, this coefficient cannot be applied.

**EV:** Costs with the valuation of assets, which are proven to have been undertaken in the last 5 years.

**DAA:** Necessary and effectively incurred expenses, inherent to the acquisition and sale.

Once the capital gains and losses are determined, the positive or negative balance is assessed, which will be **included at 50%** for taxation purposes.

**Example:**

During 2005 Cristina purchased an apartment which she refurbished. The cost of the refurbishment amounted to 750.000 MT. During 2008 Cristina decided to sell the apartment for 2.500.000 MT which was reported for tax purposes by the amount of 1.000.000 MT.

Assessment of the capital gains:

VA = 1.000.000 MT

VR = 2.500.000 MT

EV = 750.000 MT (= amount of the refurbishment work duly proven)

DAA = 50.000 MT (property transfer tax (SISA) and expenses with registration and other duties)

Capital gains = 2.500.000 – (1.000.000 + 750.000 + 50.000) = 700.000 MT

Given that during 2008 there were no other capital gains or losses, for taxation purposes only 50% will be considered 50% x 700.000, i.e., 350.000 MT, which will be added to the remaining income from the other categories assessed in the year and taxed according to a sliding scale established in the IRPS table (see table in section 7.5).

■ **Sale of shares for a consideration, including their redemption and amortization with reduction of share capital and other movable assets**

Art. 13, 40 & 45 of the  
IRPS Code

The capital gain is calculated as follows:

$$\text{Capital gain or loss} = \text{VR} - (\text{VA} + \text{DA})$$

**VR:** Realization value (same rules as for the capital gains from the sale of real rights on immovable property, with respect to the values of exchange, expropriation or consideration)

Note that whenever there are differences between the real value and the value declared for the transfer of the shares or other securities, duly supported, the Tax Authorities can proceed with the due corrections according with the following:

- If they are listed on the stock exchange, the realization value is of the respective listing at the date of transfer or, in case this is not known, the higher listing in the year to which they refers;
- If not listed on the stock exchange, the realization value is the one assessed on the basis of the last balance sheet.

**VA:** Acquisition value, i.e.:

- In the event of acquisition for a consideration:
  - Of securities listed on the stock exchange – the cost supported by documents or, in its absence, the value of the lower certified listing in the two years prior to the sale, if a lower value is not declared;
  - Of shares or other securities not listed on the stock exchange – the cost duly supported by documents or, in its absence, the respective nominal value;
- In the event of assets or rights acquired gratuitously – the value considered for purposes of payment of the tax on successions or donations or the value that would be considered if such tax was due;
- In the event of transfer of assets allocated to the entrepreneurial or professional activities of the taxable person as his private assets – the market value at the date of transfer.

**DA:** Relevant expenses actually incurred with the sale.

Once the capital gains or losses are determined, the positive or negative balance is assessed, which will be considered, for taxation purposes, as:

- 75% of their value, when the shares or other movable assets have been held for less than 12 months;
- 60% of their value, when the shares or other movable assets have been held for a period between 12 and 24 months;
- 40% of their value, when the shares or other movable assets have been held for a period between 24 and 60 months;

- 30% of their value, when the shares or other movable assets have been held for a period exceeding 60 months.

For purposes of assessment of the period during which they were held, the following is considered:

- In the acquisition of shares by means of the incorporation of reserves or by the their substitution (namely by amendment of the nominal value or eminent change in the object of the company), the date of acquisition of the originated securities.

**Example:**

The company Alfa, SARL, with a share capital of 100.000 MT was incorporated in June 2003. In October 2008 it incorporated revaluation reserves relating to its fixed assets amounting to 50.000 MT. Each of the shareholders received additional shares proportionate to the initial share capital subscribed.

In this case the acquisition date of such shares will be June 2003, given that the old shares gave rise to the new shares.

- In the sale of shares of the same nature and which confer the same rights, the date of acquisition of those that were held for a longer period (criteria FIFO – First In First Out);
- In the exchange of shares, the period during which these were held corresponds to the sum of the periods during which the shares received in exchange were held;
- In the acquisition of shares or *quotas* through merger or unbundling processes of resident companies, the period during which the shares of the merged or unbundled companies were held.

Art. 14 of the IRPS Code  
Art. 57 of the IRPC Code



In the case of exchange of shares, shares in mergers and unbundling which have been transferred for their nominal or book value will not attract tax provided that they are between resident shareholders in resident companies.

- **Sale of intellectual or industrial property or experience acquired in the commercial, industrial or scientific sectors when the transferor is not the original holder**

Art. 13, 46 & 47 of the  
IRPS Code

The capital gain is calculated as follows:

$$\text{Capital gain or loss} = \text{VR} - (\text{VA} + \text{DA})$$

**VR:** Realization value (same rules as for the capital gains resulting from the sale for a consideration of real rights on immovable property, with respect to the values of the exchange, expropriation or consideration)

**VA:** Acquisition value, i.e.:

- In the case of acquisition for a consideration – the price paid by the seller at the time of acquisition (supported by documents);
- In the case of rights acquired gratuitously – the value considered for purposes of assessment of the tax on succession or donations or the value that should have been considered should such tax have been due.

**DA:** Relevant and expenses actually incurred to the sale.

Once the capital gains and losses are determined, the positive or negative balance is assessed, which will only be **included at 50%** for taxation purposes.

- **Assignment of contract or other rights for a consideration inherent to contracts related to immovable property**

Art. 13 & 40 of the IRPS Code

The capital gain is calculated as follows:

$$\text{Capital gain or loss} = \text{VR} - \text{VA}$$

**VR:** Realization value (same rules as for the capital gains resulting from the sale of real rights on immovable property, with respect to the values of the exchange or consideration)

**VA:** Acquisition value, i.e., the price paid for the assigned rights

Once the capital gains and losses are determined, the positive or negative balance is assessed, which will be **included at 50%** for taxation purposes.

- **The net positive income, assessed in each year and resulting from derivative financial instruments, except for swaps**

Art. 13 & 40 & 46 of the IRPS Code

The capital gain is assessed as follows:

$$\text{Capital gain or loss} = \text{VR} - \text{VA}$$

**VR:** Realization value (same rules for the for the capital gains resulting from the sale of real rights of immovable property, with respect to the values of the exchange or consideration)

**VA:** Acquisition value, i.e., the price paid by the seller at the time of acquisition (supported by documents);

Once the capital gains and losses are determined, the positive or negative balance is assessed, which will be **considered in full** for taxation purposes.

## Limitations to the deduction of capital losses

Art. 50 of the IRPS Code

Capital losses can only be deducted:

- In the event of transfer of shares – in the 2 years subsequent to which they refer, to the net income of the third category or to the percentage of the positive balance assessed between the capital gains and losses realized in the year in question;
- In the remaining cases – in the 5 years subsequent to the ones to which they stand, to the 50% of the positive balance assessed between the capital gains and losses realized in the year in question.

## 5.4 Fourth category

### 5.4.1 What income does the fourth category comprise?

Art. 15 of the IRPS Code

#### Income of the fourth category – Income from immovable property

The following rentals placed at the disposal of the respective beneficiaries are considered income from immovable property:

- Amounts referring to the cession of the use of a building or a portion of it and the services related to such cession (e.g. security and maintenance services);
- Amounts due referring to the rental of machinery and furniture installed in the rented building;
- The difference earned by the lessee between the rental received from the sub-lessee and that paid to the landlord;
- The amounts referring to the total or partial cession of use of immovable property for advertising or other special purposes;
- Amounts referring to the cession of use of common areas of buildings under sectional title;
- Amounts referring to the constitution, for a consideration, of temporary real rights of enjoyment, even if for life, on rural or urban immovable property.

### 5.4.2 How to assess the net income of the 4<sup>th</sup> category?

Art. 48 of the IRPS Code  
Art. 8 of the RIRPS Code

The following is deducted from the gross income:

- 30% of the income for maintenance and repairs or more if there are supporting documents supplied by the taxable person;
- The interest paid to Mozambican financial institutions, duly documented, resulting from loans for the construction of a personal residence, up to the limit of the rentals received, when combined in the total income;
- The municipal tax on immovable property which is levied on the value of the immovable property or part of it, which income has been combined in the total income;

- Compulsory costs which have been confirmed by the condominium<sup>1</sup> in the case of sectional title ownership.

To refer that in the case of subletting no deduction applies.

## 5.5 Fifth category

### 5.5.1 What income does the 5th category comprise?

Art. 16 of the IRPS Code

#### Income of the fifth category – Gains from gambling and increased asset

The following are considered to be income of this category:

- Gains in cash effectively paid or placed at the disposal, resulting from gambling (ex: lotteries, raffles, mutual bets, lotto, bingo, draws...);
- Asset increases, provided that the same are not considered income from other categories, namely:
  - compensation aiming to remedy not proven emerging damages or loss of profits, i.e., those destined to compensate the net benefits which ceased to be obtained as a consequence of the damage;
  - amounts attributed as a result of the undertaking of an obligation of non competition, irrespective of the respective source or title;
  - non justifiable asset increases, which had been indirectly determined.

### 5.5.2 How to assess the net income of the 5<sup>th</sup> category?

Art. 9 of the RIRPS

The net income of the 5<sup>th</sup> category is equal to the gross income as there are no deductions.

## 5.6 Frequently Asked Questions

1

Are professional training courses paid for by the company to its employees considered income?

Professional training courses do not represent a taxable income provided that they are exclusively for professional training, whether these are coached by the employer, public organizations or other entities recognized by the respective ministries.

Academic education paid for by the employer is considered income from employment (1<sup>st</sup> category).

<sup>1</sup> Only compulsory expenses in the terms of the civil law, as for example: cost with the common areas of the buildings

**2** Does the payment that an advertising company makes to an individual on a monthly basis to display advertisement on the wall of his house represent a taxable income?

Yes, it represents income from immovable property included in the fourth category.

**3** The employer paid medical expenses to the employee up to the limit of 5.000 MT/year. Are those amounts considered as income?

Costs borne by the company for the benefit of the employees, which payment is made on an individual bases or as allowances are considered as fringe benefits and must be included in the 1<sup>st</sup> category.

Assuming that instead of establishing an allowance or directly paying the medical expenses of the employees, the company enters into an agreement with a medical clinic where the employees can use for medical care whenever they need and the clinic receives a fixed monthly fee irrespective of the employees taking benefit of the services, given that it is not possible to separate the benefits for each of the employees, it will not represent a taxable income.

**4** A businessman who sells fresh products sells his car. If he earns a capital gain will he be taxed?

If the car is not allocated to his business activities, the gains generated by the sale of his car will not be subject to IRPS. However, if the car belongs to the assets allocated to the business, then the gain will be reflected in the income of second category.

**5** In which category is the income earned by temporary employees employed for occasional work included?

The understanding is that when the work is rendered under the authority and management of the employer, such income forms part of the income of the 1<sup>st</sup> category and in this case the employer has to withhold the tax at source as per the monthly withholding tables for IRPS.

If the work is not rendered under the authority and management of the company, it will be considered as income from independent work and therefore included in the 2<sup>nd</sup> category, in which case the employer shall withhold the tax at source at the rate of 20%.

When such temporary employees are not registered as independent workers at the respective Tax Department, such income will be considered as resulting from one-off transaction (2<sup>nd</sup> category), without prejudice of the application of the 20% withholding tax.

Please note that withholding tax is addressed in chapter 9.1.1.

**6** Are expenses relating to fuel and meals deductible?

Fuel and meal expenses are only deductible to the income of the 2<sup>nd</sup> category under the organized accounting scheme or the scheme of simplified accounting, as well as for those taxable persons who undertake one-off transactions, provided that such expenses are necessary for the generation of the income.



However, such expenses with travel and accommodation may not exceed 10% of the recorded income.

Please note that fuel expenses related to a light passenger vehicle are deductible just to a limit of 50%.

**7** Must the acquisition of shares be declared?

The acquisition of shares does not represent a taxable income and therefore the same is not declared in the income return. However, if the shares generate dividends, these are taxed at 20% withholding tax (as a final tax) but the taxable person has the option to choose whether to combine the income in the annual income tax return (M/10 – Annexure C).

**8** Does the use of a house provided by the employer represent taxable income?

Yes, except when the houses are located at the place of business.

The use of a house supplied by the employer represents a fringe benefit which is equal to the difference between the value of use and the amount that might be payable by the beneficiary for such use (see section 6.1.2)

In addition it must be noted that this fringe benefit is not subject to the withholding tax under IRPS, provided that it is not certain and regular.

**6. ASSESSMENT OF IRPS**

This chapter explains how to assess the total net income and all intermediary steps up to the determination of the tax payable or receivable. Remember that the steps are the following:

Formula for the assessment of the IRPS	
	Married taxable persons
=	Total net income
-	Rebates
=	Taxable income - Minimum not taxable
÷	2
×	Rate
-	Amount of rebate
×	2
=	Tax
-	Deductions to the tax
=	IRPS due
-	Withholding tax and provisional payments
=	IRPS payable or receivable

**6.1 Total net income - combined**

Art. 26 of the IRPS Code

The total net income results from the sum of the net income earned in each category, taking the following into account:

- In the situations of co-ownership (see 5.1.2.1), each of the co-owners combines the income in the proportion of the respective *quotas*;
- The following are not combined for taxation purposes:
  - Income subject to withholding tax as a final tax (see section 9.1.1.3), without prejudice of the possibility of electing for combination;

Please note that whenever the taxable person elects for combining income subject to withholding tax as a final tax, he must combine all income under the same circumstances. This combination can be advantageous when the IRPS rate applicable is lower than the rate of the withholding tax.

- Exempt income.



Although not combined for purposes of taxation, exempt income, which is the case of pensions, is always included for purposes of determining the IRPS rate to be applied to the remaining income.

The income and costs combined must be expressed in *meticals*. When income in a different currency is earned, the translation must be done at the official exchange rate in Mozambique for the respective currency, according to the following rules:

Art. 27 of the IRPS Code

Type of income:	Applicable Exchange rate:	
Income transferred abroad	The sell rate at the date of effective transfer or withholding at source	<p>In instances where it is not possible to prove any of the referred dates, the exchange date of the 31<sup>st</sup> of December will apply.</p> <p>If there is no exchange rate on the referred dates the last quotation available will apply.</p>
Income from abroad	The buy rate at the date on which it was paid	
Income obtained and paid abroad which is not transferred to Mozambique until the end of the year	The buy rate at the date on which it was paid	
Costs	The sell rate of the date of effective transfer or withholding at source	

## 6.2 Rebates

These are costs relating to pensions which the taxable person is incurring as a result of a court decision or agreement confirmed in the terms of the civil law and which are proven to have been borne and not refunded are deductible from the total net income.

Art. 26 of the IRPS Code

## 6.3 Minimum not taxable

Once the taxable income is assessed (Total net income – rebates) an amount established by law as the minimum not taxable will be deducted **for each taxable person**, which is equal to:

Art. 56 of the IRPS Code

36 x the highest minimum salary at 31<sup>st</sup> of December of the year to which the income refers

As of 2011, the highest minimum salary was 5.320,00 MT<sup>1</sup> and therefore the minimum not taxable equals 191.520,00 MT.

## 6.4 Marital coefficient

Art. 55 of the IRPS Code

The coefficient applies to the taxable income of married taxable persons who are not legally separated. Thus, the IRPS rate applicable will be the one corresponding to the taxable income divided by 2.

<sup>1</sup> Ministerial Diploma n.º 175/2011, dated 6<sup>th</sup> of July

6.5 Rates

Art. 54 of the IRPS Code

The IRPS rates are:

Annual taxable income in MT	Rates	Rebates
Up to 42.000	10%	-
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
Exceeding 1.512.000	32%	141.540

The applicable tax rate will apply to the annual taxable income less the minimum income not taxable and the amount of the rebate.

Remember that in the case of married persons and not separated, the tax rate applies to the annual taxable income less the minimum income not taxable, divided by 2.

Example:

The Matsinhe couple obtained the following income and had the following costs in year 2008.

	Income in MT:	Mr. Matsinhe	Mrs. Matsinhe
A	Salary	600.000,00	
B	Pension		250.000,00
C	Housing allowance	300.000,00	
D	Profits received		900.000,00
<b>Costs MT:</b>			
E	Union costs	6.000,00	
F	Alimony payments determined by a court of law	210.000,00	
<b>Net income of the family unit:</b>			
G	1 <sup>st</sup> category (A + C - E)		894.000,00
H	3 <sup>rd</sup> category (D)		900.000,00
I	<b>Total net income:</b>		<b>1.794.000,00</b>
J	Rebates (F)		210.000,00
K	Taxable income (I - J)		1.584.000,00
L	Minimum not taxable for 2008 (2 x 77.022)		154.044,00
M	Taxable income – Minimum not taxable (K-L)		1.429.956,00
N	Combining of exempt income for purposes of assessment of the tax rate (M + B = 1.679.956,00 )		
O	Application of marital coefficient – for purposes of assessment of the tax rate (N / 2= 839.978,00)		
P	Application of marital coefficient – quotient for taxation purposes (M / 2)		714.978,00
Q	Rate – rebate (P x 25% - 35.700,00)		(a) 143.044,50

- (a) For the assessment of the rate, the income of 839.978,00 MT that comprises exempt income is considered. According to the rates table, this amount falls under tax bracket 4 in which the applicable rate is 25% and the rebate amount is 35.700,00 MT. The rate applies to the quotient for taxations purposes, i.e. the 714.978,00 MT.

The IRPS Code further allows a **10% reduced tax rate**, which is applicable until December 2010 to the income of the second category, resulting from agriculture or cattle breeding, provided that this is the only income obtained by the taxable persons. To date of this manual the reduced rate was not extended and should therefore apply the general rates of IRPS for income derived from January 2011.

However, under the Fiscal Benefits Code, approved by Law 4 / 2009 of January 12, reduced rates of IRPC to taxable persons of IRPS may apply, since the investment projects have been undertaken and approved, as of January 2009, under the Investment Law:

Art. 22, 28, 35 of the current Tax Incentives Code

- Creation of basic infrastructure of public utility: IRPC rate reduction by 80% during the first five fiscal years, by 60% from the 6th up to the 10th tax year and by 25% from the 11th up to the 15th fiscal year;
- Investments in agriculture and aquaculture: IRPC rate reduction by 80% up to 2015 and by 50% up to 2025;
- Investments in the areas of scientific research, development of information and communication technologies, carried out in parks of Science and Technology: IRPC exemption during the first five years, rate reduction by 50%, from the 6th up to the 10th year tax and by 25% from 11th up to the 15th tax year.

However, this only applies to the taxable income of agriculture comprised in the second category<sup>1</sup>.

It is further noted that the IRPS taxable persons with approved investment projects and located in industrial free zones or special economic zones may qualify for exemptions or reductions of rates for certain periods.

## 6.6 Tax and respective deductions

Art. 59 of the IRPS Code

The calculation of the tax for married and not legally separated taxable persons is as follows:

Tax amount
<b>Single taxable persons</b>
= (Taxable income - Minimum not taxable) × Rate - Rebate amount
<b>Married taxable persons</b>
= [(Taxable income - Minimum not taxable) ÷ 2 × Rate - Rebate amount] × 2

For purposes of assessment of the IRPS due, the following deductions will apply:

- Deductions relevant to the personal and family situation of the taxable persons;
- Deductions relevant to international double taxation.

Deductions only applicable to residents

<sup>1</sup> Only applicable to taxable persons with organized accounts

- Tax benefits for taxable persons of the second category, as explained in point 7.6.3.

Further **provisional payments** of the tax and **tax withheld at source** related to the taxation period will be deducted from tax due. Provisional payments and withholdings at source are dealt with in sections 9.1.2 and 9.1.1, respectively.



The deductions to the tax will be made in the presented order. When the provisional payments and withholdings at source are higher than the tax due, the taxpayer has the right of reimbursement for the credit (see chapter 11).

#### 6.6.1 Deductions relevant to the personal and family situation of the taxable persons

Art. 60 of the IRPS Code

The tax payable by taxable persons resident in the Mozambican territory and up to the limit of the tax payable will deduct each year the following amounts:

Personal and family situation	Deductions
Single or legally separated	1.800 MT for each taxable person
Married and not legally separated	1.500 MT for each taxable person
One dependent <sup>1</sup>	600 MT
Two dependants <sup>1</sup>	900 MT
Three dependants <sup>1</sup>	1.200 MT
Four or more dependants <sup>1</sup>	1.800 MT

#### 6.6.2 Deductions for international double taxation avoidance.

Art. 61 of the IRPS Code

Taxable persons resident in Mozambique obtaining income and subject to taxation abroad, have the right to a tax credit for international double taxation avoidance, provided that the amount of the income before tax has been combined in their tax return.

The tax credit is deductible up to the amount of the tax proportional to such net income, which corresponds to the lesser of the following amounts:

- Income tax paid abroad;
- Portion of the tax, calculated before the deduction, corresponding to the income taxed abroad.

The instances where there is a treaty for the avoidance of double taxation signed with Mozambique, the tax credit to be deducted cannot be higher than the tax paid abroad, as per the treaty.

<sup>1</sup> Provided not a taxable person under this tax



If there is not enough tax to absorb the total of the tax credit in the year in which the income obtained abroad is combined, the difference may be deducted to the part of the tax proportional to the net income of the respective category, until the end of the subsequent five years.

**Example:**

Fabio is an information systems expert resident in Mozambique and he was invited a company with head office in Malawi to train their staff in Malawi. Fabio received the equivalent of 500.000 MT for the services rendered and paid tax in the amount of 100.000 abroad.

Assuming that in that year Fabio received a total net income of 2.000.000 MT, including the income obtained abroad and that the tax amount was 450.000 MT, in order to determine the amount of the tax credit, the fraction of the tax has to be calculated.

Portion of tax:  $500.000 \times (450.000/2.000.000) = 112.500$  MT

As the tax paid abroad is less than the portion of the IRPS, the tax credit to deduct from the payable tax will be 100.000 MT.

### 6.6.3 Tax benefits

Investments approved within the scope of the Investment Law (Law n.º 3/93, dated 24<sup>th</sup> of June) **before January 2009** may benefit, during 5 years, from a 5% tax credit for investment undertaken, to be deducted from the tax payable which would result only when combining income from the activities which benefit from the incentive and comprising the 2<sup>nd</sup> category.

Art. 15, 27 & 35 of the CFB

Depending on the province where the investment is undertaken, the credit for investment can reach up to 15% of the total investment realized or even 20%, if the investment project is located in a geographical area classified as Rapid Development Zone.

For investments authorized **as of January 2009**, according to the new Code of Fiscal Benefits, approved by Law 4 / 2009 of January 12, the investment tax credit remains, but the percentages are now as follows:

Art. 15 of the current CFB

- 5% or 10%, depending on whether the investment is located in Maputo or in other provinces, respectively,
- 20% in case of investment in areas of rapid development.

**Example for the assessment of the IRPS:**

Mr. Almeida's family comprises of his wife and 4 dependent children. In 2008, the couple presented the following income and costs:

Income in MT:	Mr. Almeida	Mrs. Almeida
Salaries	1.050.000,00	630.000,00
Translation work as independent service provider (a)		350.000,00
Meals allowances (b)		72.600,00
Dividends (c)	38.000,00,00	
Rentals from own property		525.000,00
Capital gains on shares (held for 15 months)		35.000,00
<b>Withholdings and other deductible costs:</b>		
Withholdings at source	203.700,00	104.580,00
Compensation paid for the unilateral termination of employment contract without notice (confirmed by court)	250.000,00	
Union	10.500,00	6.000,00
Alimony payments determined by a court of law	60.000,00	

Categories of income	Gross income		Deductions	Net income
	Mr. Almeida	Mrs. Almeida		
	(1)	(2)	(3)	(1)+(2)-(3)
1 <sup>st</sup> category	1.050.000,00	(a) 688.135,00	(b) 266.500,00	1.471.635,00
2 <sup>nd</sup> category		350.000,00		(c) 105.000,00
3 <sup>rd</sup> category	(d)	35.000,00		(e) 21.000,00
4 <sup>th</sup> category		525.000,00	(f) 157.500,00	367.500,00
<b>A – Total net income</b>				<b>1.965.135,00</b>
B – Rebates (Alimony payments)				60.000,00
C- Taxable income – Minimum not taxable [A – B – (2 x 77.022,00)]				1.751.091,00
D – Application of marital coefficient (C/2)				875.545,50
E – Application of rate – Rebate amount (D x 25% - 35.700,00)				183.186,38
F – Tax (E x 2)				366.372,75
G – Deductions to tax:				
G1 – Referring to personal and family situation (1.500,00 x 2 + 1.800,00)				4.800,00
G2 – Withholdings at source (203.700,00 + 104.580,00)				308.280,00
<b>IRPS payable (F – G1-G2):</b>				<b>53.292,75</b>

- (a) Mrs. Almeida's income = salary + part of the meals allowance  
The meal allowance is considered income in the part exceeding the minimum salary (1.315,00 MT in 2008). Thus, the following is considered income: 630.000 + [72.600,00 – (1.315,00 x 11)] = 688.135,00 MT
- (b) Deductions of the 1<sup>st</sup> category = 250.000,00 + 10.500,00 + 6.000,00 = 266.500,00 MT
- (c) To determine the net income of the 2<sup>nd</sup> category the rules on the simplified taxation regime apply, i.e.: 30% x 350.000,00 = 105.000,00 MT
- (d) Dividends are not considered because Mr. Almeida did not choose to combine income.
- (e) The net income of the shares: 60% x 35.000,00 = 21.000,00 MT
- (f) Deductible costs referring to income from immovable property: 30% x 525.000,00 = 157.500,00 MT



## 6.7 Frequently Asked Questions

- 1 Does the fact that a company is operating in an industrial free zone benefit the employees with respect to the assessment of the IRPS?

There is no different treatment established under the IRPS Code for assessment of the tax with respect to employees whose employer is operating in an industrial free zone. The tax benefits defined in the Code of Tax Benefits are granted to companies or individual entrepreneurs to promote investment and do not impact on the IRPS due by the employees.

- 2 In case a taxable person becomes a widow / widower, will the marital coefficient still apply?

When one of the spouses dies during the year to which the income refers, the surviving spouse must still submit the annual income tax return with the total income earned by the couple.

Thus, the marital coefficient continues to apply for purposes of assessment of the IRPS and the taxable income is divided by two for the determination of the tax rate if and only if the death occurs during the second semester.

- 3 Is it compulsory to declare the interest on fixed term accounts?

Income subject to withholding tax which is the case of interest on fixed term deposits is only combined to the remaining income and declared in the income tax return M/10 – Annexure C if this option is selected by the taxable person.

However, if the taxable person elects to combine the interest earned on fixed term deposits to the remaining income he / she must also combine all other income that was subject to withholding tax (as a final tax).

- 4 Must alimony payments be declared?

Although being exempt from tax, alimony payments must be declared for purposes of determining the rate applicable to the remaining income.

It is further important to note that from the perspective of the person who provides the alimony, the respective amount is deductible from the total net income if it results from a court ruling or judicial agreement.

## 7. ASSESSMENT

### 7.1 Who is responsible for the assessment of the tax?

Art. 58 of the IRPS Code

The assessment of the tax is done by:

- The Tax Authorities;
- The taxable person, where the self-assessment is:
  - Compulsory, when the taxable person has earned income from the 2<sup>nd</sup> category, and
  - Optional, in the remaining cases (so if this is not chosen the assessment is made by the Tax Authorities).



The self-assessment is made in the annual income tax return (M/10) and respective annexure, i.e.:

- Form M/10V – only for taxable persons who earn income from the 1<sup>st</sup> category;
- Form M/10V1 – for taxable persons who also earn income from other categories.

### 7.2 What is the basis for assessment of the tax?

Art. 20 of the RIRPS

The tax is assessed on the basis of:

- The income tax return (M/10), when this is submitted within the legally established period, compulsory or optional, without prejudice of the correction by the Tax Authorities;
- The taxable income determined in the basis of the elements contained in the income tax return, submitted within the legally established period, if no self-assessment was undertaken, whether this is compulsory or optional.

Whenever the income tax return is not submitted within the legally prescribed period, the assessment of the tax will be based on:

- When self-assessment is compulsory:
  - The total taxable income of the closest year in which income from the second category was included, if no cessation of activities has been declared; or
  - On the basis of a tax return submitted at a later stage, whenever possible.
- In the remaining cases: the elements that the Tax Authorities have available or the elements contained in the tax return even if submitted after the legal prescribed deadline.

### 7.3 What is the period for assessment?

Art. 21 of the RIRPS Code

The IRPS assessment processed by the Tax Authorities in the year following the one to which the income refers, before the:

- 30<sup>th</sup> of April on the basis of the tax return submitted before the 21<sup>st</sup> of March by the taxable person who earns income from the 1<sup>st</sup> category;
- 30<sup>th</sup> of May, on the basis of the tax return submitted before the 30<sup>th</sup> of April by the taxable person who also earns income from other categories;
- 31<sup>st</sup> of July, should the tax return was submitted after the legally prescribed deadline.

### 7.4 In which cases do corrections to the assessment occur?

Art. 22, 23 & 26 of the RIRPS Code

The Tax Authorities proceed with an **additional assessment** whenever, after the tax has been assessed, it is verified that a tax higher than the tax assessed is owed, as a consequence of:

- Examination to the accounting records of the taxable person;
- Errors or omissions verified in any assessment and which have resulted losses of the State.

Whenever the Tax Authorities proceed with a correction to the taxable income of entities subject to the tax transparency scheme which have a direct bearing on the amounts attributable to the respective shareholders or members, there will be an **amendment to the assessment** made, by collecting or cancelling the differences assessed.



The corrections to the assessment may be made within the **five years** subsequent to those to which the income refers, by means of notification of the taxable person. However, in case of income in litigation, the counting of this period is suspended as from the date the case for assessment of the tax is submitted to court until the final decision of the court. To refer that if a net negative result is reported, the suspension period is the period for the exercise of such right.

When due to reasons ascertained by the Tax Authorities or due to duplication of the tax, has resulted IRPS paid higher than the assessed tax, it will be subject to the total or partial **review by the Tax Authorities**.

Once the assessment has been revoked, the corresponding credit note is issued which may be used for payment or for compensation of any tax debt.

## 7.5 When does compensation or indemnity interest apply?

### 7.5.1 Compensation interest

Art. 24 of the RIRPS Code

Compensation interest is payable due to reasons attributable to the taxable person, namely:

- There is a delay in:
  - The assessment of the IRPS, namely when the tax returns are submitted after the legally prescribed period (see section 9.2.2.2);
  - The payment of IRPS which should be paid in advance (provisional payments);
  - The payment of tax withheld or which should have been withheld within the scope of the tax substitute;
  - The payment of the IRPS which should have been autonomously assessed and paid to the State;
- Reimbursement received higher than the amount due.

**Compensation interest accrues on daily basis** from the term of the period for submission of the tax return or the term of the period for payment of the tax withheld or autonomously assessed or which should have been assessed until the correction of the fault which resulted in the delay of assessment.

Compensation interest is assessed together with the tax due and according to the following rate:

Rate of compensation interest = Interbank rate (MAIBOR 12 months)\* + 2 percentage points

\* interbank rate in force on the date of payment of the tax withheld or that that should have been withheld or the payment of the tax which has to be autonomously assessed and paid to the State.

### 7.5.2 Indemnity interest

Art. 27 of the RIRPS Code

Indemnity interest is due to the taxable person whenever tax in excess has been paid and it is confirmed within the scope of a complaint process to the Tax Authorities or by a court that the Tax Authorities have committed an error in the assessment.

Interest accrues on a daily basis as from the date of payment of the tax up to the date on which the credit note is issued and is calculated according to the following rate:

Indemnity interest rate = Interbank rate (MAIBOR 12 months) + 2 percent points

Note that the indemnity interest rate is the same as the compensation interest rate.

## 8. OBLIGATIONS OF THE TAXABLE PERSONS

### 8.1 Obligation to pay

In this section on payment obligations we look at the various forms of payment of the tax, i.e., when the tax is paid as:

- Advance payment, namely:
  - The tax withheld at source, or
  - A provisional payment;
- Final payment, in the case of:
  - Payment of the withholding tax as final tax without the option of combining the same with the net total income;
  - Payment of the annual IRPS assessed on the basis of the annual income tax return or assessed by the Tax Authorities.

#### 8.1.1 Withholding Tax

Art. 29 of the RIRPS Code

Withholding at source of the tax consists of a deduction to the income paid or placed at the disposal of the beneficiary and it is done by the entity paying the income. Thus, the paying entity plays the role of a tax substitute by withholding an amount (corresponding to a certain rate) and paying it to the State on behalf of the beneficiary of the income.

The tax can be withheld as a provisional tax or as a final tax. In the first case, the tax withheld is deducted from the annual tax due, calculated on the basis of the annual income tax return. In the second case, the withholding of the tax releases the taxable person from the declarative obligations or the subsequent payment as it represents a final taxation, except for the cases in which the law allows for the option of combining.

##### 8.1.1.1 Who has the obligation to withhold the tax and on what income?

Art. 65 of the IRPS Code  
Art. 30 to 32 of the RIRPS Code

Withholding at source must be done by the following entities:

- Entities owing income from employment, fixed or variable, except for income resulting from:
  - Pensions;
  - Housing allowances or equivalent, the use of a house provided by the employer, when these are not certain and regular<sup>1</sup>;

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<sup>1</sup> It is important to recall that the provision of housing owned by the employer located at the premises of the undertaking, to employees or members of corporate bodies is not qualified as income for tax purposes.

- Use of a motor vehicle which generates costs for the employer, when there is a written agreement between the employee or member of a corporate body and the employer, provided that it is not certain and regular;
- Income earned for the rendering of the work or by virtue of the rendering of the work, when not granted by the respective employer.



The withholding tax rates for the income from employment paid in 2011 are those contained in the tables published by Ministerial Diploma n°221/2010 dated the 16<sup>th</sup> of December. For different years should be subject to the withholding tables in effect at the date of payment of income. The procedures for withholding the tax at source are addressed in section 9.1.1.2.

- Entities who keep or must keep organized accounts and must pay of income from:
  - Capital;
  - Immovable property;
  - Intellectual or industrial property or rendering of information referent to an experience in the industrial, commercial or scientific sectors, earned by the original beneficiaries;
  - Independent work<sup>1</sup> or from commissions for the brokerage in the entering of any contracts.



The withholding tax rate is 20%, is applied to the gross income. In the case of income from immovable property, before withholding the tax a percentage of 30% may be deducted to cover repair and maintenance expenses.

- The entities owing income subject to the withholding tax as a final tax (see rates in section 9.1.1.3);



Note that the entities that pay income from nominal and bearer securities to beneficiaries that are resident in the Mozambican territory on behalf of nonresident entities to whom payment can be charged must also withhold the tax at source. This income is subject to the 20% withholding tax as a final tax.

<sup>1</sup> Income from independent work is the income paid as remuneration of technical or scientific work, undertaken under a free regime, including services such as consulting, studies, opinions, and other work or activities of the same nature, when the same are mainly performed with a scientific, technical or artistic character inherent to the respective profession.

#### 8.1.1.2 How does the withholding tax calculated for income of the 1<sup>st</sup> category?

For withholding purposes, the employer must request the taxable person to provide, at the beginning of his/her employment or before the first payment is made or made available, the compulsory data referring to his/her personal and family situation, by means of filling the form M/11. This form must be filled in duplicate, one copy destined to the employer and the other to be submitted at the respective tax department.

Ministerial Diploma 109/2008, dated the 27<sup>th</sup> of November which comes into force on the 1<sup>st</sup> of January 2009 approves the withholdings system for the IRPS and publishes the new tables of rates.

With respect to the withholding tables it needs to be highlighted that there is no longer a distinction between public and private sectors.

The withholding regime further clarified some issues with respect to:

- The payment of the tax;
- Personal and family situation;
- Scope of application of the tables;
- Withholding mechanism.

#### ■ Payment of the tax:

The minimum limit of assessment referred to in 9.1.3.2 does not apply in the determination of the monthly withholdings, but only to the global assessment of the income. Therefore, if the application of the rates contained in the tables results in a tax lower than 100 MT, such tax must be not paid to the State.

#### ■ Personal and family situation:

The tables referring to “married” taxable persons apply to the income earned by married and not legally separated taxable persons. The tables related to “not married” apply to the remaining, including the taxable persons who are separated *de facto*.

#### ■ Scope of application of the tables:

- The withholding tax rate must be applied to the gross monthly remuneration paid or placed at the disposal of the beneficiaries;
- The monthly remunerations include fixed remuneration, plus any other amounts which have the nature of income from employment;
- In the case of fixed remuneration related to periods shorter than a month, the monthly remuneration will consist of the sum of the amounts paid or made available in each month;
- Leave allowances and other similar allowances, as well as the 13<sup>th</sup> and 14<sup>th</sup> cheques are subject to autonomous withholding, i.e. they are not added to the monthly remuneration.

Note that if the above mentioned allowances are paid in fractions, the tax must be withheld proportionally to each payment.

■ Scope of application of the tables:

- When the beneficiaries of the income do not provide the employer with the elements regarding their personal and family situation, the employer must apply the rates contained in the table “not married”, without dependents;
- The tax resulting from the application of the withholding tax rates is rounded to the nearest hundred.

8.1.1.3 Which income is subject to the withholding tax as a final tax?

Art. 57 of the IRPS Code

As previously noted, the withholding tax as a final tax represents a final payment of the tax and therefore it releases the taxable person - the beneficiary of the income - from the obligation to account for the same before the State.

However, in some instances, the law allows for the taxable person to elect for the combining of the income subject to withholding tax as a final tax provided that the following conditions are met:

- It was earned outside the scope of entrepreneurial and professional activities, and
- Is due from resident entities.

Thus, whenever the taxable person elects to combine the income, the tax withheld becomes a provisional tax which will be later deducted from the “final” IRPS due. For purposes of combining the income, the taxable person must request the owing entity to issue a statement of the income paid and related withholdings.

The following table contains the income that is subject to the withholding tax (final tax) and the income that the taxable person can elect to combine with its total income:

Income resulting from:	Residents	Non residents
Shares (dividends)	20% with option to combine	20%
Income from employment	NFT	20%
Services rendered on his own (self-employment)	NFT	20%
Indemnity connected to entrepreneurial or professional activities	NFT	20%
Temporary cession of the exploration of a commercial establishment	NFT	20%
Allowances and grants connected to the entrepreneurial or professional activity	NFT	20%
Profit made available to the associated or beneficiaries, including profit advances.	NFT	20%
Swaps	20% with	20%



**MANUAL ON INDIVIDUAL INCOME TAX**

Income resulting from:	Residents	Non residents
	option to combine	
Capital (not expressly taxed by a different rate)	NFT	20%
Contracts for the cession or temporary use of industrial or intellectual property rights or the rendering of information related to an experience acquired in the industrial, commercial or scientific sectors, technical assistance.	NFT	20%
Use / concession of use of agricultural, industrial, commercial or scientific equipment, when this does not represent income from immovable property and those resulting from the cession of equipment and information systems networks, including data transfer or provision of installed information systems capacity.	NFT	20%
Commissions for the brokerage of any contracts	NFT	20%
Rendering of services realized or used in Mozambique	NFT	20%
Debt titles, nominative or bearer, including bonds, as well as income from repossession operations, assignment of credit, price guarantee accounts or other similar transactions	20%, with option to combine	20%
Interest from term deposits	10% with option to combine	10%
Securities listed at the Mozambique Stock Exchange	10%	10%
Social recreation games, such as: lotteries, raffles, mutual bets, lotto, bingo, draws, competitions	10%	10%
Artistic or sporting professions and other similar professions (e.g.: theatre players, dancers, shows and circus artists, movie actors and walker-on, musicians, singers), except for when the remuneration is granted on regular basis for the undertaking of the activities on behalf of a third party	10%	10%

**Legend:**

NFT: Withholding tax at source (Not as Final Tax)

As it can be noted, the income earned by non residents, except for income from immovable property, is always subject to the withholding tax as a final tax.

**8.1.1.4 When must the tax be withheld?**

Art. 65 of the IRPS Code

The tax must be withheld at source at the time of payment of the income, its maturity, even if deemed, when it is made available to the beneficiary, assessed or the related amount is determined, as the case may be.

#### 8.1.1.5 Where and when must the tax withheld be paid?

The tax withheld at source must be paid at the Respective Tax Department of the taxable person who withhold the tax, before the 20<sup>th</sup> day of the month subsequent to the month in which it was deducted, together with the payment form M/19.

#### 8.1.1.6 How to proceed in case of inaccuracies in the amounts withheld?

Art. 55 of the RIRPS Code

Whenever there are misstatements found out in the amounts withheld due to mistake chargeable to the entity owing the income, it shall proceed with the correction of the amounts in the first subsequent withholding after the error was found, without however going beyond the last period of annual withholding.

If correction is not possible, the taxable person, the tax substitute or its representative can place a claim in the terms and on the grounds established by the Regulations of the Litigation of Contributions and Taxes and Law no. 2/2006, dated the 22<sup>nd</sup> of March.

#### 8.1.1.7 What are the responsibilities of the tax substitute?

Art. 67 of the IRPS Code

As previously noted, the tax substitute is defined as who withhold the tax and pays it over to the State and therefore responsible for the amounts withheld and not paid, in which case the substituted (taxable person beneficiary of the income) is released from any obligation to pay the tax.

However, if the tax is not withheld as a provisional payment the responsibilities are as follows:

- Originally, of the substituted (beneficiary of the income) for the tax not withheld;
- Jointly and severally, the substitute, who is liable for paying compensation interest from the term of the payment period of the tax withheld until the term of the period for submission of the tax return by the original entity responsible or until the date the tax is paid, whichever occurs first.

In the remaining cases, the substitute is only jointly and severally responsible for the payment of the difference between the amounts that should have been withheld at source and those amounts which were effectively withheld.

#### 8.1.2 Provisional payments

Taxable persons with income of the 2<sup>nd</sup> category have the obligation to make 3 provisional payments of the final tax due. The provisional payments represent in total 80% of the tax paid in the prior year, proportional to the weight of the income of the 2<sup>nd</sup> category in the combined income, as per the following formula:

Art. 66 of the IRPS Code  
Art. 33 of the RIRPS

$$\text{Provisional payments} = 80\% \times \frac{(\text{income of 2}^{\text{nd}} \text{ category} \times 100)}{\text{total of combined income}} \times \text{IRPS due in previous year}$$

The provisional payments must be done in equal installments.

#### 8.1.2.1 Where and when provisional payments must be made?

Provisional payments must be made to the Respective Tax Department of the taxable person before the 20<sup>th</sup> day of each of the months of June, September and November, together with the payment Form M/19.

#### 8.1.2.2 Can provisional payments be reduced or not made?

Taxable persons may reduce the provisional payments or not make them when it can be forecasted that these, together with the tax withheld on the income of the 2<sup>nd</sup> category, are equal or higher than the final tax to be assessed.

However, whenever it is found out, based on the tax return of the year to which the tax relates, that the taxable person failed to pay an amount higher than 20% of the amount that would have been paid under normal conditions, compensation interest will be due.

Compensation interest accrues on daily basis as from the term of the period established for each payment until the date the tax is assessed (see formula in section 8.5.1).

#### 8.1.3 Payment of the annual IRPS assessed

##### 8.1.3.1 When must the tax be paid?

Art. 28 & 34 of the RIRPS

IRPS must be paid before the **31<sup>st</sup> of May** of the year subsequent to that to which the income relates, except for in the following cases:

- When the tax is assessed before the 30<sup>th</sup> of May based on the annual income tax return (M/ 10) submitted before the 30<sup>th</sup> of April by a taxable person who earns other income besides income of the 1<sup>st</sup> category, the tax due must be paid until the 30<sup>th</sup> of June;
- When the tax return is not submitted within the legally established period, the tax assessed shall be paid before the 31<sup>st</sup> of August, plus the compensation interest due.

As summarized in the following table:

Taxable persons	Period for the submission of Form M/10	Assessment period	Payment period
Only with income of the 1 <sup>st</sup> category	From January to 31 <sup>st</sup> of March	30 of April	31 of May
With other income besides the 1 <sup>st</sup> category	From January to 30 of April	30 of May	30 of June
In the case M/10 has not been submitted		31 of July	31 of August

When, for any reason, the assessment periods are not complied with by the tax authorities, the taxable person is notified to pay the tax within **30 days as from notification**.

8.1.3.2 Is there any minimum threshold for payment?

Art. 62 of the IRPS Code

Tax will not be payable if lower than 100 MT, even if it results from an additional assessment, reform or cancellation of the assessment.

8.1.3.3 Which return must be submitted for the payment of the tax?

For payment of the tax Payment Form M/19 must be submitted.

8.1.3.4 Where the tax must be paid?

Art. 35 of the RIRPS Code

The tax must be paid at the Respective Tax Department or at authorized banks.

In the case of compulsory collections (see section 9.1.3.6), the tax must be paid at the tax department where the execution process is pending or at authorized banks.

8.1.3.5 Which are the authorized means of payment?

Art. 36 of the RIRPS Code

The tax must be paid in cash (*meticaís*) or by cheque, direct debit, bank transfer, postal order or other means used by the services or by credit institutions, when expressly authorized by law.

In instances where payment is made by cheque, the tax is considered to have been paid with the receipt of the respective amounts. No interest for late payment will be chargeable for the time between the delivery of the cheque and the receipt of the amount, except if it is a dishonored cheque.

8.1.3.6 When does compulsory collection take place?

Art. 37 of the RIRPS Code

Whenever the taxable person fails to pay the tax within the legally established period, the Tax Authorities proceed with the compulsory collection of the tax by issuing a certificate of compulsory collection of overdue tax based on the data that they have available.

In the case of tax substitution, as well as in the cases in which the tax must be autonomously assessed and paid, irrespective of the criminal or contravention procedures that may apply, the Tax Authorities notify the owing entity to proceed with payment of the tax due plus compensation interest, within a period of 30 days.

## 8.2 Declarative obligations

### 8.2.1 Return for the registration of an individual or natural person

All individuals who earn income subject to any tax, even if exempt from tax, have the obligation to register for tax purposes at the Respective Tax Department by means of submitting return (Form - M/05)<sup>1</sup> in duplicate.

With registration a Unique Tax Identification Number (NUIT) is allocated to the individual by the Tax Authorities, which must be used by them with respect to all taxes.

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<sup>1</sup> Art. 2 of Decree 52/2003, dated the 24<sup>th</sup> of December – Regulations on the NUIT

Whenever there is a change in the personal or family situation of the taxable person it must be communicated:

- In the income tax return related to the year in which the changes occurred; Art. 60 of the RIRPS Code
- In a return of the official model to be submitted during the month of January of the subsequent year to the change, in the case where the taxable person has the obligation to submit a tax return.

The cancellation of the registration referent to nonresident entities is made by means of the return on cessation of activities in the Mozambican territory or a statement for disposal of its sources of taxable income in this territory, which must be submitted before the end of the month following the month in which the fact had occurred.

### 8.2.2 Income return

Art. 10 of the RIRPS Code

For purposes of assessment of the IRPS, the taxable persons must annually submit a single tax return (Form – M/10) related to the income earned in the previous year, to be accompanied by the following:

- Annexure and supporting documents for the income and withholdings at source (see section 10);
- In the case of exchange of shares where there is no taxation:
  - a. A statement containing the description of the transaction of exchange of shares, the date of exchange, identification of the parties, number, nominal and acquisition value of the shares delivered and received, book value of the shares delivered, amount in cash that may have been received, the amount that would have been included in the taxable base if it was to be taxed and the disclosure of its calculation;
  - b. A statement by the acquiring company confirming that as a result of the exchange of the shares it became the holder of the majority of the voting rights in the acquired company.

The tax return and its annexes must be submitted in duplicate or triplicate in the case of taxable persons with income from the 2<sup>nd</sup> category.



The annexure of the tax return (Form M/10) are the following:

- Annexure A1 – Income of 2<sup>nd</sup> category – Organized accounting scheme
- Annexure A2 – Income of 2<sup>nd</sup> category – Simplified accounting scheme
- Annexure A3 – Income of 2<sup>nd</sup> category – Simplified scheme for determination of the taxable income
- Annexure B – Income of 2<sup>nd</sup> category – Income attributable – Fiscal Transparency scheme / Heritage undivided
- Annexure C – Income of 3<sup>rd</sup> category – Capital income and capital gains
- Annexure D – Income of 4<sup>th</sup> category – Income from immovable property
- Annexure E – Income of 5<sup>th</sup> category – Other income and income obtained abroad
- Annexure F – Statement of the head of family or administrator co-ownership of the heritage undivided

As referred in section 5.1.7, in the case of married and not legally separated taxable persons, a single statement must be submitted by both spouses or by one of them if the other is incapable or absent, combining:

Art. 16 & 17 of the RIRPS Code

- Total of all income of each of the spouses;
- The common income;
- Income of the dependents.

In the instance where taxable person are not married or separated *de facto*, each one of the spouses can submit an income return for his / hers income and part of the common income, if any, as well as the income of the dependents under their care. However, for the purposes of IRPS assessment of *de facto* separated taxable persons, the following must be complied with:

Art. 12 of the RIRPS Code

- Each of the spouses has the right to deduct 1.500 MT regarding their personal situation;
- The marital quotient does not apply.

In instance of death of one of the spouses during the year to which the tax relates, the surviving spouse must combine the income earned by the household and must apply, for the purposes of tax assessment, the regime applicable to married and not legally separated taxable persons in the case death has occurred during the second semester of the year.

Whenever a person dies, the income related to the assets transferred and correspondent to the period after the date of death is combined by the individuals who receive them. If no division of the estate has taken place, the income is allocated to the heirs according to the ideal quota in the referred assets.

#### 8.2.2.1 When is the submission of the tax return not required?

Art. 11 of the RIRPS Code

Taxable persons who in the year to which the income refers have only earned income:

- Taxed by withholding taxes (as a final tax), except for the income from shares when they have not elected to combine the income in the cases allowed by law;
- Of the 1<sup>st</sup> category in an amount equal or lower than 100.000 MT, provided that IRPS has been withheld on the total income amount.

are not required to submit a tax return.

#### 8.2.2.2 When must the tax return be submitted?

The following are the periods for the submission of the income tax return:

Art. 13 & 15 of the RIRPS

Taxable persons	Submission of Modelo 10
Only with income of the 1 <sup>st</sup> category	From January to 31 <sup>st</sup> of March
With other income besides the 1 <sup>st</sup> category	From January to 30 <sup>th</sup> April
All	30 days after occurrence of any fact that determines the amendment of the income already declared (1)

(1) Example: When a court ruling determines the allocation of certain income to the taxable person or the determination of the respective value, a new return must be submitted in case the original return was already submitted, within 30 days as from the court decision.

#### 8.2.2.3 Where is the tax return submitted?

Art. 14 & 60 of the RIRPS

Tax returns and other documents must be submitted at the Respective Tax Department of the taxable person.

The code further details that compliance with the declarative obligations can be made through the means available under the electronic data transmission system.

#### 8.2.3 Returns on registration, alteration and cessation of activity

Art. 38 of the RIRPS Code

Individuals who commence an activity susceptible of generating income of the 2<sup>nd</sup> category must submit the following registration, alterations and cessation of activity returns.

##### 8.2.3.1 What is the purpose of the Declaration of Commencement of Activity and when it must be submitted?

This return comprises an official form (M/01) which must be completed in by the taxable person, with the objective of informing the Tax Authorities on the starting up activity.

Form M/01 must be submitted in triplicate within 15 days as from commencement of activities, at the Respective Tax Department of the location of the head office, effective management or permanent establishment where the accounts are maintained.

##### 8.2.3.2 What is the purpose of the Declaration of alterations and when must the same be submitted?

This declaration comprises an official form (M/03) to be filled in by the taxable person with the objective of informing the Tax Authorities of any amendments to the elements contained in the declaration of commencement of activity, namely:

- Fiscal domicile and other contacts;
- Activity;
- Option for the accounting scheme.

Form M/03 must be submitted within 15 days as from the amendment, at the Respective Tax Department of the location of the head office, effective management or permanent establishment where the accounts are maintained.

#### 8.2.3.3 What is the purpose of the Return on Cessation of Activities and when must the same be submitted?

Art. 40 of the RIRPS Code

This return comprises an official form (M/04) to be filled in by the taxable person with the objective of informing the Tax Authorities of the cessation or non commencement of the activity.

Form M/04 must be submitted within 30 days as from cessation of the activity, at the Respective Tax Department of the location of the head office, effective management or permanent establishment where the accounts are kept.

For these purposes, cessation of activity is regarded as:

- In the case of commercial or industrial activities, when:
  - The taxable person ceases to perform acts of commercial or industrial nature on regular basis, if there is no immovable property allocated to the activity;
  - The completion of sale of the stock and equipment, if the immovable property allocated to the activity is owned by the owner of the commercial establishment;
  - The right of use and enjoyment of the immovable property allocated to the activity is terminated or the immovable property is allocated for other purpose, when they are not owned by the taxable person;
  - The estate of which the commercial establishment forms part is divided, but without prejudice to the previous situations;
  - The ownership or exploration of the commercial establishment is transferred by any title;
- In the event of agricultural, forestry or cattle breeding activities, with the ceasing of the activity and the end of the selling of the stock and equipment or the allocation of it to a different activity.

#### 8.2.4 Annual return on accounting and fiscal information

Art. 39 of the RIRPS Code

Taxable persons with income of the second category must also submit an annual return on accounting and fiscal information (Form - M/20) related to the previous year, when:

- They keep or have the obligation to keep organized accounts; or
- Have the obligation to present any of the annexure which form an integral part of it.

The return of accounting and fiscal information must be submitted together with the following documents, which may be submitted in electronic format:

- Certification by the accountant certified by the Director of the Respective Tax Department;



- Trial balances before and after the assessment of the profits of the year;
- Balance sheet as per the format prescribed in the General Chart of Accounts;
- List of beneficiaries of any donations granted;
- A table showing the assessment of the profits with respect to works which duration exceeds the period of one year, as defined in article 19 of the IRPC Code;
- Detail of depreciation in the official form;
- Detail of provisions in the official form.

Form M/20 must be submitted before the last business day of the month of June, in triplicate, at the Respective Tax Department of the taxable person.

#### 8.2.5 Appointment of representatives

Art. 51 of the RIRPS Code

A representative is an individual or a corporation with residence or head offices in Mozambique, whose role is to represent certain taxable person before the Tax Authorities and guarantee the compliance with its tax obligations.

Representatives must be appointed:

- By non residents who obtain income subject to IRPS, and
- By resident taxable persons who are absent from Mozambique for a period exceeding six months.

The appointment is made at the declaration of commencement of activities or tax registration and must expressly contain the acceptance of the representative.

#### 8.2.6 Requirements for the submission of the returns

Art. 58 to 60 of the RIRPS Code

Tax returns must always be signed by the taxable persons or by their legal representatives or by a business manager, duly identified, without prejudice of being rejected.

Whenever the returns or other documents are submitted in more than one copy, one must be returned to the submitting entity, with confirmation of receipt.

If the returns or other documents are submitted in a single copy, the submitting entity can present a copy of the same to be stamped as proof of receipt.

The returns or other documents can be presented via post, under postal registration, accompanied by an envelope duly addressed at Respective Tax Department for the immediate return of the duplicates. In this case, the date of submission will be the date of the stamp of the *Correios de Moçambique* or the date of registration.

### 8.3 Obligation to present proof of the information contained in the returns

Art. 50 of the RIRPS Code

Whenever requested by the Tax Authorities, the taxable persons or their representatives must submit the supporting documents for the income earned, deductions and rebates and other facts or situations included in the returns.

This obligation remains for the five years subsequent to the year to which the documents refer.

The misplacement of supporting documents by a reason not attributable to the taxable person does not prevent them from using other elements to prove the facts.

### 8.4 Accounting obligations

Taxable persons included in the 2<sup>nd</sup> category must keep their accounting records organized in order to allow for the clear and unequivocal acknowledgement of the necessary elements, namely:

- The calculation of the tax;
- Its control;
- The completion in of the tax return and return on accounting and tax information.

Regarding the accounting records and assessment of the taxable income, the IRPS Code establishes that:

Art. 33 & 72 to 74 of the IRPS Code

- The beneficiaries of income of the 2<sup>nd</sup> category, whose turnover in the previous year was higher than 2.500.000 MT, have the obligation to keep **organized accounts**. Note that irrespective of the turnover the taxable person can choose this scheme;
- Taxable persons who undertake any commercial or industrial activity and do not have the obligation to keep organized accounts can choose for the **simplified accounting scheme**;
- Beneficiaries of income of the 2<sup>nd</sup> category who have not chosen the organized accounting scheme or the simplified accounting scheme of and have had a turnover lower or equal to 2.500.000 MT during the previous financial year are included in the **simplified scheme for the assessment of the taxable income**.

#### 8.4.1 Organized accounting scheme

Under this accounting scheme taxable persons have the obligation to apply the General Chart of Accounts - PGC-PE or PGC-NIRF<sup>1</sup> and the provisions contained in the same.

Under this scheme taxable persons have the obligation to keep the following books of accounts:

<sup>1</sup> PGC-PE – General Chart of Accounts which is applied to Small sized companies approved by Decree no. 70/2009, dated of 22<sup>nd</sup> December (in force since January 1<sup>st</sup> of 2011).  
PGC-NIRF – General Chart of Accounts based on International Financial Reporting Standards which is applied to Large and Medium sized companies approved by Decree no. 70/2009, dated of 22<sup>nd</sup> December (in force since January 1<sup>st</sup> of 2010 for Large sized companies and January 1<sup>st</sup> of 2011 for Medium sized companies.

- Journal and inventory and balance

A dispatch was published on the 9<sup>th</sup> of March 2011 which regulates the processing of the referred mandatory accounting books through electronic means. To adopt the system of accounting for electronic processing, tax payers should communicate this intention to the tax authorities **within 90 days** before the beginning of the tax year, except for tax payers who initiate the activity, where the deadline is 30 days from the date of commencement of business.

- Minute books for the general meeting, board of directors and fiscal council, when applicable;
- Registry of liabilities and guarantees.

The maintenance of the accounting records shall comply with the following:

- All accounting entries must be supported by documents, dated and ensured that they can be presented whenever necessary;
- Transactions must be registered in chronological order, without changes, omissions and any misstatements must be corrected as soon as acknowledged;
- Delays in the accounting entries for more than 90 days as from the last day of the month to which the transactions refer are not permitted.

#### 8.4.2 Simplified accounting scheme

Under this scheme, taxable persons have the obligation to keep the following accounting books:

- Book for recording acquisition of merchandise and/or raw materials and consumables;
- Book for recording sale of merchandise and/or books for the registration of manufactured products;
- Book for recording services rendered;
- Book for recording expenses and operations related to investment assets;
- Book for recording merchandise, raw materials and consumables, products manufactured and other stock at the 31<sup>st</sup> of December of each year.

The entries in the records must comply with the following rules:

- The entries of the operations must be made within a maximum period of 60 days;
- Amounts received as provision, advances or any other, with the purpose to cover expenses that are the responsibility of clients must be recorded in a current account and entries made in the respective books and considered as income in the year following to the year of receipt, without however exceeding the presentation of the final account referent to the work rendered;
- The accounting entries must always be supported by documents;

- The expenses may be recorded globally, when supported by individual current accounts of the clients, in which the expenses are duly detailed and documented;
- Before the taxable person commences using the books, their pages must be duly numbered and the books presented to the Respective Tax Department to be signed and the terms of opening and closing signed and the pages initialed, which can be made by means of a rubber stamp.

#### 8.4.3 Simplified scheme for the assessment of the taxable income

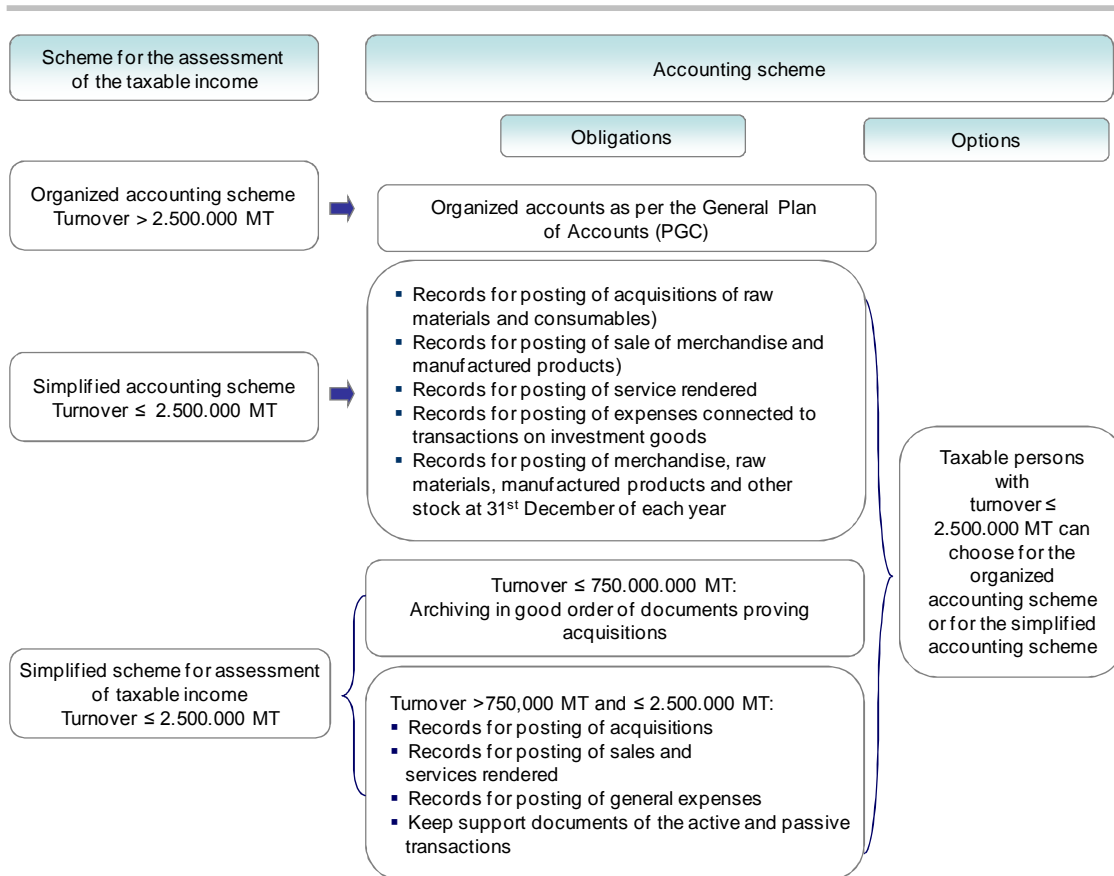
Regarding this scheme, the IRPS Code does not make any provision about the accounting obligations; however, the provisions of the VAT Code must be followed.

According to the VAT Code, taxable persons whose turnover is lower or equal to 2.500.000 MT, are included in the following Special Schemes of Taxation, with the accounting obligations differentiated for each scheme:

- **Exemption scheme** - for taxable persons whose annual turnover is equal or lower than 750.000 MT – obligation to keep in good order and present to the Tax Authorities documents proving their acquisitions, whenever this is requested;
- **Simplified taxation scheme** – for an annual turnover higher than 750.000 MT and equal or lower than 2.500.000 MT – obligation to keep certain books and respective support documentation. Note that the referred books are similar to those required for the Simplified Accounting Scheme under the IRPS Code.

A scheme is presented below on the obligations and accounting options available to the taxable person for the assessment of the taxable income.

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### 8.4.4 Centralization of the accounting records

Art. 43 of the RIRPS Code

The accounting records and books must be kept at the fiscal domicile or permanent establishment or premises of the taxable persons, located in the Mozambican territory. In the case of premises the location of the same must be included in the registration return or in the income return.



Accounting books as well as all documents related to the activities of the taxpayer must be kept in good order during the following **ten calendar years**.

### 8.4.5 Issuing of receipts and invoices

Art. 41 of the RIRPS Code

Irrespective of the scheme for assessment of the taxable income, the beneficiaries of income of the second category have the obligation to:

- **Issue a receipt**, in an official form, of all amounts received from their clients;

- **Issue an invoice or equivalent document** for each transfer of goods, rendering of services or other transactions undertaken and issue a document of all amounts received. However, the IRPS Code allows the release from the obligation to issue invoices in the conditions established in the VAT Code, in which case the taxable persons must comply with the respective provisions.

Taxable persons who earn income from once-off transactions related to a commercial, industrial, forestry, agricultural or cattle breeding activity are released from this obligation, without prejudice of having to issue a receipt for the amounts received.

## 8.5 Frequently Asked Questions

### 1 How to correct withholdings made on the basis of outdated withholding tax tables?

The tax must be withheld on the basis of the tables that are in force in the year in which the income is paid or placed at the disposal of the beneficiaries. Any inaccuracies in the assessment of the tax attributable to the entity owing the income must be corrected in the subsequent withholding after the inaccuracy is detected, without however going beyond the last withholding period of the year.

### 2 Must an annual tax return – M/10 be submitted by taxable persons who have not been subject to the withholding tax due to the fact that they did not reach the minimum amounts taxable?

Yes. Whenever the income earned is subject to IRPS, even if no tax was withheld, such income must be declared. To remind that the submission of the annual income tax return is not required when in the year to which the income relates to the taxable persons only attributable income:

- Taxed under withholding taxes (as a final tax), except for income from shares and do not choose to combine the income in the cases this is allowed by law;
- The 1<sup>st</sup> category in an amount equal or lesser than 100.000 MT, provided that the total of this income has been subject to the withholding tax under IRPS.

### 3 In a household where one of the family member's works for an employer and the other is independent (self-employed) when does the income tax return has to be submitted?

Whenever the income is not exclusively of the 1<sup>st</sup> category, the income tax return must be submitted until the 30<sup>th</sup> of April.

### 4 In 2008 I only earned income of the 1<sup>st</sup> category, but I'm also registered in the 2<sup>nd</sup> category. In this case, when must I submit the income tax return?

The fact that you are registered for the 2<sup>nd</sup> category and have not earned any income of this category in a certain year, does not release you from submitting the respective annexure (A1, A2, A3 or B) to the income tax return. Thus, if the taxable person does not expect to continue that

activity, he / she must formally cease the activity by means of submitting the return on cessation of activity (M/04).

Thus, the period for submission of the annual income tax return is from January to the 30<sup>th</sup> of April.

## 9. OBLIGATIONS OF INCOME OWING ENTITIES AND OTHER

Entities that owe income and have the obligation to partially or in total withhold the tax, except for the withholding of the tax which has the nature of final tax (releasing the beneficiary), have the obligation to:

Art. 44 of the RIRPS Code

- Keep updated records of the creditors of the income containing names, tax numbers and respective code, as well as the date and amount of each payment whatever the income paid was or was not subject to withholding tax, including fringe benefits;
- Deliver to the taxable persons, **before the 20<sup>th</sup> of January of each year**, a statement of the income paid, including fringe benefits, if applicable and withholdings, as well as deductions that may have been made, referring to the previous year;
- Submit to the Tax Authorities a return in a form to be approved or in electronic format referent to that income, in triplicate, during the months of January to March of each year<sup>1</sup>.

Note that for purposes of compliance with these obligations the income due that in terms of the law was not subject to withholding tax must be separated.

In the event of payments of income subject to the withholding tax as a final tax, the entities owing such income have the obligation to:

Art. 44 & 45 of the RIRPS Code

- Deliver to the resident taxable persons and whenever this is requested by them for combining purposes, a statement of the income paid, **before the 20<sup>th</sup> of January of each year**. In this case, the entities owing the income have the obligation to comply with the above provisions with respect to the registry of the creditors and the submission of the return referent to that income to the Tax Authorities.
- Submit to the Tax Authorities, **during the months of January and March** of each year, a return in triplicate, referring to the income paid to non resident taxable persons, in a form to be approved or in electronic format<sup>2</sup>.
- Submit to the Tax Authorities, **during the months of January to March** of each year, a return in triplicate, referring to income paid where the beneficiaries are exempt from the tax, not subject to the withholding tax or subject to a reduced rate. In this case, the entities owing the income have the obligation to keep updated records of the beneficiaries of such income as per the tax scheme, as well as the documents proving such exemption, non application of the withholding tax or reduced tax rate.



Entities owing income subject to IRPS, paid to non residents can only make transfers abroad once the tax due has been paid.

Entities that receive any amounts subject to deduction or rebate from taxable person in their income have the obligation to submit a document before the **30<sup>th</sup> of January of the following year** proving that payment has been made (e.g.: interest paid to financial institutions).

Art. 46 of the RIRPS Code

<sup>1</sup> Form M/20H was approved by Official Document dated 5 August 2009

<sup>2</sup> The return in force at the date of this manual is Form - M/20-I approved by Ministerial Diploma n. °113/2006, dated 31<sup>st</sup> of May.



The following entities have the obligation to provide information to the Tax Authorities:

- Insurance companies;
- Notaries and registrars;
- Brokers and financial brokerage companies;

■ **Insurance companies:**

Art. 46 of the RIRPS Code

Insurance companies must provide information to the Tax Authorities **before the 30<sup>th</sup> of June of each year** in a form officially approved or electronic format, referring to the previous year.

The information must include life insurance, redemption of group insurance policies and redemption or advances of individual insurance policies made before a period of five years as from their constitution having elapsed, making mention of:

- The number of the policies and dates of commencement of the insurance, redemption or advancements;
- The tax identification of the entity that instituted the insurance and the entity that took benefit of the redemption or advancement;
- The total amount of the premium paid during the duration of the policy.

■ **Notaries and registrars:**

Art. 47 of the RIRPS Code

Notaries and registrars have the obligation to send to the Tax Authorities, **before the 15<sup>th</sup> day of each month and by means of a form officially approved or electronic format, the list of:**

- acts undertaken in their offices;
- Final decisions on the processes under their responsibility of the previous month.

Generating income susceptible to be taxed under IRPS

■ **Brokers and financial brokerage companies:**

Art. 48 of the RIRPS Code

Brokers companies and financial brokerage companies and other financial institutions must communicate to the Tax Authorities **before the end of the month of February** of each year and with respect to each taxable person, by means of a form officially approved or electronic format:

- The total number of shares and other movable assets sold with their intervention, as well as the respective value;
- The number of contracts on derivative financial instruments, as well as their respective value, acquired or sold with their intervention and those where there are situations of maturity or other forms of extinction of the contract.

## 9.1 Frequently asked questions

1

Must employers issue a statement for each of the employees?

Yes. Employers must issue a statement to each of their employees before the 20<sup>th</sup> day of January of each year, which shall include all income paid, including fringe benefits, if applicable, and the withholdings at source, as well as any deductions which may apply, referent to the previous year. This statement must be attached to the annual income tax return of the taxable person.

2

In 2008, Ricardo rented a house to a bank that withheld the tax on the rentals paid to him. Must the bank issue a statement on the income paid and tax withheld?

Yes. As for the other categories of income, entities owing income from immovable property and that keep organized accounts, must issue a statement to Ricardo making reference to the income paid and tax withheld, up to the 20<sup>th</sup> of January of each year. Ricardo must submit this statement together with his annual income tax return.

## 10. REIMBURSEMENT OF THE IRPS

The IRPS reimbursement consists in the refund by the State to the taxable person of the excess tax paid.

The reimbursement of the IRPS is regulated by the IRPS Code and Regulations of the Reimbursement of the IRPS and IRPC approved by Ministerial Diploma no. 82/2005, dated the 20<sup>th</sup> of April and Ministerial Diploma no. 80/2008, dated the 10<sup>th</sup> of September.

### 10.1 Tax Credit

#### 10.1.1 When is the taxable person entitled to reimbursement?

Art 63 of the IRPS Code and  
Art 1 & 9 of the RR

Whenever with the assessment of tax results in a difference in favor of the taxable person (credit), calculated between the final tax due and the tax paid to the State as a result of the withholding of the tax at source or provisional payments and such difference is greater than 100 MT (minimum limit).

#### 10.1.2 What are the options available to the taxable person with respect to the credit amount?

Once the credit is assessed the taxable person has two options:

- **Reimbursement of the amount of the credit**, by means of indication in the income return (M/10) or by a note addressed to the Tax Authorities stating the intention to receive the reimbursement, or
- **Report of the amount of the credit for the subsequent years**, this option is implicit provided that the taxable person does not expressly elects to receive the reimbursement.

#### 10.1.3 How to proceed in the case the taxable person chooses for reimbursement?

The Tax Department recommend to the taxable person that besides making an election for a reimbursement in the income tax return (M/10), they also expressly request the reimbursement to the Tax Authorities, by means of an application addressed to the Director of the *Serviços de Gestão Tributária, Cobrança e Reembolsos da Direcção Geral de Impostos*, to be submitted at the Respective Tax Department.

The application must contain the following information:

- Identification of the taxable person: name, NUIT, marital status and composition of the household at their charge (with indication of respective names and NUIT);
- Identification of the bank account: Bank, Branch, No. of account, NIB (bank identification number), name of account (in case the means of payment is bank transfer).

Accompanied by copies of the following documents referent to the year to which the reimbursement applies:

- Income tax return (M/10) and its annexure, namely the following;

- Statement of the entity(ies)<sup>1</sup> who withheld the tax at source on the income paid to the taxable person, correspondent to the income in cash and / or in kind that has been paid to the taxable person during the year to which the income tax return refers;
- In addition to the statement, the Tax Authorities also use to request copy of return M/20H<sup>2</sup>;
- Proof of provisional payments (Payment Notes M/19 IRPS) and other payments made to the State if this is the case.

**10.1.4 Official refund of tax:**

Art. 63 of the IRPS Code

The refund of a tax credit to the taxable person must be made before the end of the third month following the term of the period determined in the IRPS Regulations for the payment referent to the previous year, i.e.

Taxable persons	Term of the period for payment of the tax	Term of the period for payment of the reimbursement
Only income of the 1 <sup>st</sup> category	31 <sup>st</sup> of May	31 <sup>st</sup> of August
With other income besides the 1 <sup>st</sup> category	30 <sup>th</sup> of June	30 <sup>th</sup> of September
In the case that Form - M/10 has not been submitted	31 <sup>st</sup> of August	30 <sup>th</sup> of November

Interest is due if these periods are not complied with due to the errors of to the Tax Authorities.

**10.2 Preliminary procedures by the Tax Authorities**

Art. 2 of the RR

In the preliminary phase of the reimbursement process, applications are reviewed and verified by the Tax Authorities in order to confirm the legitimacy of the payments declared by the taxable persons and if there are any doubts referent to the IRPS, namely:

- Withholdings at source declared by the taxable person;
- Payment of the provisional tax and any other payments to the State;
- The existence of any IRPS owing to the State with respect to previous years;
- Existence of amounts withheld and not paid to the State. In case there are debts of this nature, verify if the same are in the phase of compulsive collection or are paid in installments.

In instances where there is IRPS owing by the State, the taxable person will be notified of the reimbursement amount to which they are entitled and the total amount of the tax owing.

<sup>1</sup> A statement to be issued to the taxable persons of the IRPS, until the 20<sup>th</sup> of January of each year, confirming the income obtained in the previous year, issued by taxable persons owing such income and who have the obligation to withhold the tax at source as per paragraph b) of no. 1 of article 44 of the Regulations to the IRPS Code.

<sup>2</sup> M/20H contains information referent to the type of income and withholdings of the provisional tax on the account of the final tax, as well as the identification of the beneficiaries.

Reimbursement cannot be made without being first applied for the total or partial payment of the tax due and any additional amounts imposed by law.

In case the amount of the reimbursement is higher than the amount of the tax owing, the difference will be reimbursed to the taxable person.

### 10.3 Reasons for rejection

Art. 10 of the RR

Reimbursement applications will be rejected in instances where the proof of payment referred to in 11.1.2 and 11.1.3 has not been supplied by the taxable person when requested.

However and due to the slow moving pace encountered in dealing with reimbursement processed, Ministerial Diploma no. 80/2008, dated the 10<sup>th</sup> of September, established a expeditious process for the review and decision on the applications submitted in years 2005, 2006 and 2007, which consists of taking as basis of proof the statement issued by the entities who had withheld the tax at source, when the remaining requirements are met and when the Tax Authorities do not have access to M/20H in conditions that would allow the speedy assessment of the legitimacy of the reimbursement application.

### 10.4 Forms of payment of the reimbursements

Art. 3 of the RR

Reimbursements can be made by the following means:

- Bank transfer, whenever the taxable person has indicated the necessary details in the annual income tax return, or
- By cheque issued in the current account of the Central Services of the General Directorate of Taxes. Cheques will be payable to a specific beneficiaries, crossed and valid for a period of 60 days.

### 10.5 Reimbursements after the expiry of the legally established period

Art. 6 of the RR

Once the period of validity of the cheques has expired without them having been cashed or returned by courier, the taxable person shall, within a period of 5 years as from the date of assessment, apply to the General Director of the Tax Administration for the reimbursement to which they are entitled and indicate the preferred form of payment.

In these conditions reimbursements will be processed within a period of 90 days as from the date the application was submitted. There will no interest payable for the delay in payment.

## 11. INSPECTION AND GUARANTEES OF THE TAXABLE PERSONS

The inspection of the compliance by the taxable person of his / hers tax obligations as well as the general guarantees are regulated by Law n°2/2006, dated the 22<sup>nd</sup> of March, which establishes the general principles and norms of the tax legal framework of the Republic of Mozambique.

The procedure for tax inspection is contained in the Regulations of the Procedure of Tax Inspection, approved by Decree n.º 19/2005, dated 22<sup>nd</sup> of June, including the checking of the tax reality, compliance with tax obligations and prevention of tax infractions.

Art. 53 of the RIRPS Code

In terms of article 50 of Law no. 2/2006 dated the 22<sup>nd</sup> of March the following are the general guarantees available to taxable persons:

“....

1. Not to pay taxes that have not been established in harmony with the Constitution;
2. To present claims or hierarchical appeals, request reviews or appeal to court on any acts or omissions of the Tax Authorities which are offensive of their rights or legitimate interests legally protected, within the periods and in the terms and on grounds foreseen in this law (Law 2/2006 dated 22<sup>nd</sup> of March), in the process law and other tax legislation;
3. To obtain clarity from the competent tax service, about the interpretation of the tax laws and the most convenient and safest way to comply with the same;
4. To be informed about their correct tax situation.”

The right to present a complaint or challenge the assessment is one of the legal guarantees of the taxable persons.

Art. 55 of the RIRPS Code

With respect to the IRPS, not only the taxable persons but also their representatives and people jointly and severally responsible with them for the payment of the tax have the right to complain against the respective assessment or challenge the same in the terms and on the grounds established in the Regulation of the Litigation of Contributions and Taxes and Law no. 2/2006 dated the 22<sup>nd</sup> of March.

The objective of the court appeal is to obtain the total or partial cancellation of the taxation act.

## 12. GENERAL SCHEME OF TAX INFRACTIONS

The General Scheme of Tax Infractions establishes the penalties applicable to transgressions to the tax norms, which include transgressions to the IRPS Code.

Dc 46/2006 dated 26 December

Transgressions are formal tax infractions which are divided into simple and serious, with the amount of the fines graduated according to:

- The seriousness of the infraction;
- The guilt of the agent;
- The economic situation of the agent;
- The amount of the tax payable, and
- Whenever possible, exceeds the economic benefit that resulted for the agent from practicing the transaction.

With respect to serious transgressions, besides fines the General Regime foresees the following penalties, namely:

- Prohibition of the right to receive subsidies granted by public entities;
- Suspension of fiscal benefits granted by the Tax Authorities;
- Temporary suspension from participating in fairs, markets, auctions or public sales and public works tenders, amongst others;
- Closing of commercial establishment;
- Repossession of licenses or concessions and suspension of authorizations;
- Publication of the condemnation decision at the cost of the infractor.

Complementing the above, the norms of the Criminal Code, Code of Criminal Procedure and other complementary legislation, the provisions of the Civil Code and the norms foreseen in the criminal and tax legislation in the execution of the fines apply.

It is also important to refer the following:

- Except for any International Treaty or Convention to the contrary, the provisions of the referred Decree are applicable to any infractor irrespective of nationality, whenever the infraction is practiced in the national territory or on board of Mozambican ships or aircraft;
- With respect to responsibility:
  - Corporate entities are responsible for infractions committed by their corporate bodies or representatives in their name and in the interest of the corporation;

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- The directors, managers and other people who undertake management functions have subsidiary responsibility for the fines when, due to their fault, the company assets become insufficient for the payment;
- The application of the penalty does not discharge from the payment of the tax due and respective legal additions;
- Tax transgressions are always punished even if negligent.

The table below shows the amounts – maximum and minimum limits – of the fines applicable according to the nature of the tax infraction committed:

Infraction	Limits		Obs	Decree 46/2002 dated 26 <sup>th</sup> of December
	Minimum	Maximum		Articles
Failure to present the accounting records when required to do so by the tax authorities	3,000	1,000,000	The offence is considered has having occurred on the deadline established by Revenue Authorities	23
Failure to pay the tax due	Value of the tax due	two times the value of the tax due	The fine shall not be an amount superior to the maximum limit of 1,250,000 MT	24
Payment of the tax through a manner other than that which is legally established	2,000	10,000		24
Failure to submit or delayed submission of a declaration or/and payment	3,000	65,000		25
Failure or delay to submit supporting documents for the facts, values or situations included in the declaration	3,000	65,000		26
Failure or delay to submit the declaration for commencement, alteration or cessation of activities, autonomous declarations of cessation of alteration of the assumptions made for tax benefits purposes and declarations of company registration	6,000	130,000		26
Failure or delay to submit the declaration of taxpayer registration (NUIT) or related updates	1,500	7,000		26
Omissions or inaccuracies in the presentation or exhibition of documents or declarations other than tax fraud and when <b>there is tax</b> to assess	6,500	350,000		27
Omissions or inaccuracies in the presentation or exhibition of documents or declarations other than tax fraud and when <b>there is no tax</b> to assess	3,250	175,000		27
Omissions or inaccuracies in the declarations for registration or updating registration purposes (NUIT)	500	15,000		27
Failure to keep compulsory accounting books as well as related accounting records and supporting documents	3,000	300,000	The taxpayer must be organize the accounting books, records and supporting documents not later than 30 days (see art. 23)	28





**MANUAL ON INDIVIDUAL INCOME TAX**

*Cont.....*

Infraction	Limits		Obs	Decree 46/2002 dated 26 <sup>th</sup> of December
	Minimum	Maximum		Articles
Failure or delay in the accounting execution books before > 90 days (art. 75 IRPS Code)	3,000	50,000	The taxpayer must be organize the accounts not later than 30 days ( see art. 28)	29
Failure or delay to submit compulsory accounting books before they have been utilized	1,500	15,000		30
Failure to maintain books, accounting records and related supporting documents during the legal period of time (10 years - art. 46 of the Regulations on the IRPC Code)	1,500	15,000		30
Failure or delay to issue receipts and invoices within time limits	5,000	70,000	The invoice must be issue not later than the fifth business day after the time when the goods were made available to the purchaser or the services were finalized (Art. 21 VATR)	31
Failure to request issuance of invoices or receipts and do not maintain them during the legal period of time	2,000	30,000		31
Failure to designate representatives to the tax administration with residence, headquarters or effective management in national territory by non-residents entities or that are absent for periods longer than six months (art. 43 of the Regulations on the IRPC Code)	3,000	100,000		32
Failure by the tax representative of the non-resident to submit to the tax administration the identification of the manager of the assets or rights when requested	2,000	60,000		32
Payment subject to IRPS thought withholding at source to an individual person without a NUIIT	1,500	15,000		33
Lack of reporting of revenues or gains derived from securities without the intervention of a notary, registry officials and insurance company (art. 46 & 47 of the Regulations on the IRPS Code)	6,500	650,000		34
Non existence of proof of declaration (art. 46 & 47 of the Regulations on the IRPS Code)	6,500	650,000		35
Transfer to a foreign country of taxable revenues occurred in the national territory without having paid or ensured the payment of the applicable taxes (see art. 48 of the Regulations on the IRPC Code)	6,500	650,000		36
Printing tax relevant documents on typography which is not authorized by the Minister of Finance, as well as their acquisition (see art. 21 VATR)	25,000	1,000,000	Invoices or equivalent documents (other than processed by computer) must be printed by authorized printers shall contain information by which to identify the printer, namely the trading name, address information, NUIIT, number of the license issued by the MF	37
The supply of tax-relevant documents by authorized entities without observance of the legal formalities, as well as their acquisition	25,000	1,000,000		37

### 13. LIST OF APPLICABLE LEGISLATION

**Law no. 33/2007, dated 31<sup>st</sup> of December**

Approves the new Code on Individual Income Tax applicable to income obtained during fiscal year 2008 and subsequent, whilst Decree no. 20/2002, 30<sup>th</sup> July, its changes and remaining complementary legislation against it is revoked.

**Decree no. 8/2008, dated 16<sup>th</sup> of 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.

**Law no. 34/2007, dated 31<sup>st</sup> of 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<sup>th</sup> July is revoked.

**Law no. 20/2009, dated 10<sup>th</sup> September**

Amends the IRPC Code approved by Law no. 34/2007, dated of 31<sup>th</sup> of December

**Decree no. 9/2008, dated 16<sup>th</sup> of April**

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

**Decree no. 68/2009, de 11<sup>th</sup> of December**

Amends the Regulation of IRPC Code approved by Decree no. 9/2008, dated 16<sup>th</sup> April

**Law no. 32/2007, dated 31<sup>st</sup> of December**

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

**Decree no. 7/2008, dated 16<sup>th</sup> of April**

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

**Decree no. 52/2003, dated 24<sup>th</sup> of December**

Approves the Regulation of NUIT

**Ministerial Diploma no. 113/2006, dated 31<sup>st</sup> of May**

Establishes an annual declarative obligation referring income paid and the tax withheld at source of the Individual Income Tax for non-resident taxable persons

**Ministerial Diploma no. 221/2010, dated 16<sup>th</sup> December**

Approves the table of withholding at source of the Individual Income Tax regarding income from employment and pension (in force since January 1<sup>st</sup> of 2011)

**Ministerial Diploma no. 1/2007, dated 3<sup>rd</sup> of January**

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

**Ministerial Diploma no. 109/2008 dated 27<sup>th</sup> of November**

Approves the procedure and tables of withholding at source of the Individual Income Tax applicable from 1<sup>st</sup> of January 2009.

**Ministerial Diploma no. 82/2005, dated 20<sup>th</sup> of April**

Approves the Regulation on IRPS and IRPC's Refund.

**Ministerial Diploma no. 80/2008, dated 10<sup>th</sup> of September**

Establishes administrative procedures to streamline the IRPS refunding procedure for IRPS reimbursement claims between years 2005 and 2007.

**Decree no. 19/2005, dated 22<sup>nd</sup> of June**

Approves the Regulation of Tax Inspection Procedure.

**Decree no. 46/2002, dated 26<sup>th</sup> of December**

Approves the General Scheme of Non-Adherence to Tax Legislation.

**Deliberation dated 1<sup>st</sup> of March 1999 of the Minister of Plan and Finances**

Relates to the requirements for authorization of printing by typographies

**Deliberation dated 15<sup>th</sup> of June 1999 of the Minister of Plan and Finances**

Approves the formats of the compulsory accounting books prescribed at the VAT Code.

**Deliberation dated 9<sup>th</sup> of March 2011 of the Minister of Finances**

Regulates the processing of the compulsory accounting books through electronic means

**Official Document (*Portaria*) no. 20 817, dated 27<sup>th</sup> of January of 1968**

Table of annual rates of depreciation referred in p. 5, article 26<sup>th</sup> of IRPC Code.

## 14. REFERENCES

Besides the legislation listed in the previous chapter:

### **Constitution of Republic of Mozambique**

Approved on 16<sup>th</sup> of November 2004 published on the I Series, BR (Government Gazette) 51 dated 22<sup>nd</sup> December 2004.

### **Decree Law no. 47344, dated 25<sup>th</sup> of November 1966**

Approves Civil Code

### **Law no. 15/2002, dated 26<sup>th</sup> of June (Law on the Basis of the Tax System)**

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, taxable persons' 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 no. 2/2006 dated 22<sup>nd</sup> March, considering as revoked all that is not in conformity with the latter.

### **Law no. 2/2006, dated 22<sup>nd</sup> of March (Law on General Taxation)**

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

### **Law no. 1/2006, dated 22<sup>nd</sup> of March**

Creates the Tax Authority of Mozambique.

### **Decree no. 49/2004, dated 17<sup>th</sup> of December**

Regulation Licensing Commercial Activity.

### **Decree no. 70/2009, dated 22nd December**

Approves the Accounting System for the Business Sector in Mozambique, aimed at the adoption of a Chart of Accounts based on International Financial Reporting Standards, and the introduction of certain adjustments in the Chart of Accounts in force approved by Decree no. 36/2006 of 25 July

### **Decree no. 16/2002, dated 27<sup>th</sup> of June**

Approves the current Code on Tax Benefits.

### **Law no. 4/2009, dated 12<sup>th</sup> of January**

Approves the current Code on Tax incentives and revokes Decree no. 16/2002, dated 27<sup>th</sup> June

### **Decree no. 56/2009, dated 7<sup>th</sup> October**

Approves the Regulation of Tax Incentives Code approved by Law no. 4/2009, dated 12<sup>th</sup> of January

### **Ministerial Diploma no. 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 no. 14/2002, dated 30<sup>th</sup> January.

### **Law no. 11/2007, dated 27<sup>th</sup> of June**

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

**Law no. 12/2007, dated 27<sup>th</sup> of June**

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

**Law no. 13/2007, dated 27<sup>th</sup> of June**

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

**Law no. 14/2002, dated 26<sup>th</sup> of June**

Mining Law.

**Law no. 3/2001, dated 21<sup>st</sup> of February**

Oil Law.

**Law no. 3/1993, dated 24<sup>th</sup> of June**

Law of Investments.

**Ministerial Diploma no. 175/2010, dated 6th July**

Adjusts the minimum wage for workers who develop activities in the sector 8.

**Double Tax Agreements (DTA):**

**Resolution for Ratification of DTA no. 10/2004, dated 14<sup>th</sup> of April**

Agreement between the government of Mozambique and the government of United Arabs Emirates to avoid double taxation and to prevent fiscal evasion.

**Resolution for Ratification of DTA no. 27/1999, dated 8<sup>th</sup> of September**

Agreement between the government of Mozambique and the government of Italy to avoid double taxation and to prevent fiscal evasion.

**Resolution for Ratification of DTA no. 54/1998, dated 12<sup>th</sup> of November**

Agreement between the government of Mozambique and the government of Mauritius to avoid double taxation and to prevent fiscal evasion.

**Resolution for Ratification of DTA no. 09/1991, dated 20<sup>th</sup> of December**

Agreement between the government of Mozambique and the government of Portugal to avoid double taxation and to prevent fiscal evasion.

**Resolution for Ratification of DTA no. 34/2008, dated 16<sup>th</sup> of October**

Ratify and review the agreement between the government of Mozambique and the government of Portugal to avoid double taxation and to prevent fiscal evasion.

**Resolution for Ratification of DTA no. 33/2008, dated 16<sup>th</sup> of October**

Agreement between the government of Mozambique and the special administrative region of Macau of Popular China Government to avoid double taxation and to prevent fiscal evasion.

**Resolution for Ratification of DTA no. 35/2008, dated 30<sup>th</sup> of December**

Agreement between the government of Mozambique and the government of South Africa to avoid double taxation and to prevent fiscal evasion.

**Resolution for Ratification of DTA no. 22/2011, dated 9<sup>th</sup> of June**

Agreement between the government of Mozambique and the government of Vietnam to avoid double taxation and to prevent fiscal evasion.

**Resolution for Ratification of DTA no. 23/2011, dated 10<sup>th</sup> of June**

Agreement between the government of Mozambique and the government of India to avoid double taxation and to prevent fiscal evasion.

**Resolution for Ratification of DTA no. 24/2011, dated 10<sup>th</sup> of June**

Agreement between the government of Mozambique and the government of Botswana to avoid double taxation and to prevent fiscal evasion.

**Código Comercial** – Commercial Code approved by Law 10/2005 dated 23<sup>rd</sup> of December – Maputo, 2005

**Ministério do Plano e Finanças – URTI** – *Manual de Formação em Imposto Sobre o Rendimento das Pessoas Singulares – IRPS* – Maputo, April 2003

**Ministério do Plano e Finanças – URTI** – *Manual de Formação em Imposto Sobre o Rendimento das Pessoas Colectivas – IRPC* – Maputo, April 2003

**Ministério das Finanças – Autoridade Tributária de Moçambique – DGI** – *Perguntas Mais Frequentes em sede do IRPS, IRPC e IVA* – Maputo

**Vida Económica** – *Guia Prático do IRS 2008* – Porto, February 2008

**Valada, Rui** – *Breve Guia das Obrigações Fiscais (Pessoas Singulares)* – Editorial Presença 1<sup>a</sup> edição – Lisboa, 1995

**Valada, Rui** – *Breve Guia do IRC* – Editorial Presença 1<sup>a</sup> edição – Lisboa, 1995.