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Taxation of capital gains earned in Mozambique by non-residents

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In this article we briefly discuss the taxation of capital gains earned in Mozambique by non-resident taxpayers, with specific focus on the petroleum and mining sectors and the legislation regulating these sectors.

Firstly, one should note that the former law did not provide for the taxation of capital gains acquired by transmission of participatory interests between non-resident companies, although such transmission involved assets located in Mozambican territory.

The taxation of capital gains earned in Mozambique by non-resident entities is a sensitive issue today. Taking account of the dynamics of the sector and the volatility and complexity of the transactions, the tax authority has adopted an energetic approach to ensure the payment of capital gains, in a joint, coordinated effort with the Ministry of Mineral Resources and Energy and the Bank of Mozambique.

Under Article 37 of the IRPC Code, capital gains (or losses) are the gains (or losses) derived from fixed assets when these are financially transacted, regardless of the title under which they exist, and also, deriving from claims on, or resulting from the permanent use of, those assets for purposes not related to the activity undertaken.

Capital gains and losses arise from the difference between the net realisable value, and the acquisition cost less depreciation or amortisation.

Tax rate

Gains obtained in Mozambique are those arising from direct or indirect, free or paid, transmission, between non-residents, of shares or other securities in the capital of entities with petroleum or mining rights, involving petroleum or mining assets located in Mozambican territory, regardless of where the transaction takes place. The gains are taxable at the rate of 32%, and calculated based on the rules in the Income Tax Codes (note that the new tax scheme does not alter the rate of 32% as previously predicted).

With respect to the taxation of taxpayers who are nonresident in Mozambique for tax purposes, paragraph 2 of Article 5 of the Corporate Income Tax Code (CIRPC) provides that it 'focuses only on income obtained in Mozambique', establishing in turn, in paragraph 3 of the same article, which yields that are considered to have been obtained in said territory. The principle of territoriality therefore applies. The aforementioned provision also indicates that the determination of the taxable income of non-resident taxpayers is not calculated in the same manner as the taxable income of resident taxpayers.

The amount of income classified as capital gains corresponds to the difference between gains and losses in a given year, according to Article 40 of the CIRPC, which also applies to legal persons under clause (d) of paragraph 1 of Article 45 of the CIRPC. Accordingly, any remaining balance related to the paid transmission of shares is considered in its entirety, regardless of how long the shares have been held for (the previous rule, which was repealed in January 2014, provided a relief mechanism through which the tax calculation would reduce depending on the period of time for which the shares had been held, which meant that despite the nominal rate being 32%, the actual rate could be reduced to a minimum of 9.6% when the holding period was equal to or higher than 60 months).

Withholding tax

Capital gains earned by non-residents are not subject to withholding tax in accordance the provisions of Article 67 of the IRPC Code. Capital gains earned by non-resident entities which have registered offices and/or effective management in a country with which Mozambique has ratified a Convention for the Avoidance of Double Taxation and Prevention of Fiscal Evasion (CDT), will be taxed in accordance with said treaty. Mozambique has ratified CDTs with South Africa, Botswana, United Arab Emirates, Italy, India, Portugal, Mauritius, Macau and Vietnam.

Given the nature of the transaction, non-resident entities that obtain income from the sale of petroleum or mineral rights have thirty days from the date of the disposal of said rights to pay the tax due. To this end, the non-resident entities must appoint a representative with residence, office or effective management in Mozambique to meet their tax obligations, in accordance with Article 43 of CIRPC regulation.

Last but not least, the responsibility to pay tax on capital gains earned by non-resident entities is jointly attributable to the acquiring entity and the holder of the petroleum or mining title.

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