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TAX RULES FOR THE PROPERTY SECTOR IN MOZAMBIQUE

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1. GENERAL RULES AND CONCEPTS

The tax rules applicable to the property sector are analysed in this newsletter from the perspective of the owner of the building or property (seller or tenant), which is a legal entity, subject to corporate income tax – referred to here by its initials “IRPC”, and also VAT. These tax rules are contained in a number of pieces of legislation on VAT, IRPC, municipal taxes and stamp duty.

In the case of the sale and purchase of property, on the seller’s side, the determination of the taxes applicable to this type of transaction and the method of calculating them depend on the situation of the taxable person in relation to the transaction and the tax charge that the event itself generates. The determination of the taxes will also depend on some other specific issues inherent to the transaction itself, which we will address below.

The tax rules applicable to residential tenancy agreements and commercial leases (referred to in this newsletter jointly as “rental agreements”) currently in force in Mozambique contain specific provisions applicable to the tenancy or lease that depend on the type of agreement in question and the location of the property. This means that it is necessary to establish whether:

- (a) The property is being rented for commercial or residential purposes;
- (b) The property is located in a rural or an urban area;
- (c) The landlord and the tenant:
 - (i) are a legal entity and an individual, respectively, and vice-versa; or
 - (ii) are both individuals; or
 - (iii) are both legal entities.

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However, according to academic doctrine and the accepted meaning of the provisions of article 1086 of the Civil Code, read together with the principles established in article 4(1) and (2) and article 72 (1) of Decree 43 525 of 1961, it is understood that residential letting is when the purposes is to provide accommodation for a household and commercial letting is when the purpose is directly related to some form of economic activity.

The concept of “Assignment of Operation of a Commercial Establishment” (*Cessão de Exploração de Estabelecimento Comercial*), is defined by doctrine as “an agreement by which a commercial establishment as a whole, including all the material and non-material components which make up the business organisation (movable and immovable assets, clientele, patents, licences, permits, etc.) is assigned against payment on a temporary basis”.

Under this definition, the income earned from the assignment of the operation is deemed to be “rent”, and will be subject to the same tax treatment as income earned from letting.



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Jorge Dias (detail)
DNA 2008-10

*Separador de página, papel picado,
insectos em pasta de papel, linhas e
cochicos s/ capulana
7 x 90 x 120 cm*
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2. TAXATION IN RESPECT OF CONTRACTS FOR THE SALE AND PURCHASE OF REAL PROPERTY

(i) SISA – Municipal Property Tax

The transfer for value of the right of ownership of real property, or of other equivalent rights, is subject to the municipal tax SISA, as provided for in article 94(1) of the CTA.

Article 102 of the CTA establishes that the rate of the SISA is 2% (two per cent) and is charged on the value declared for the purposes of the sale and purchase or on the official taxable value of the property, whichever is the higher.

SISA is payable by the person who acquires the right of ownership of the property and must be paid prior to the signing of the deed of sale and purchase or other act equivalent to it or leading to an eventual sale and purchase transaction.

(ii) VAT

Sale and purchase transactions in respect of real property are exempt from VAT, under article 9(12)(d) of the VAT Code.

(iii) Stamp Duty

Stamp duty is payable on the execution of contracts to transfer the right of ownership of real property and the rate applicable is 0.2% (zero point two per cent) on the value of the transaction, under item 3.1 of the Stamp Duty Table annexed to the Stamp Duty Code ("CIS").

Stamp duty is payable by the person acquiring the right of ownership, under article 2(3)(b) of the CIS.

(iv) Taxation of Income – IRPC/ Corporate Income Tax

The taxation of capital gains made by a commercial company that transfers the right of ownership of a property (seller), and which is subject to IRPC, is done

by determining the taxable profit of the company in question under article 17(1) of the IRPC Code. This article provides that:

"The profit is the mathematical sum of the net results for the financial year and any positive and negative changes in asset value occurring in the same period and not reflected in those results, determined on the basis of the accounting and any corrections made (for tax purposes) under the terms of the law".

The general rate of IRPC is currently 32% (thirty-two per cent).

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(v) Registration of the Sale and Purchase Contract

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3. TAXATION IN RESPECT OF RENTAL CONTRACTS

(i) VAT

Under article 4(1) of the VAT Code, the letting of real property is treated as a "provision of services" that is subject to VAT at the rate of 17% (seventeen per cent), as established in article 1(1) of the said Code.

However, article 9(5) of the VAT Code provides that both residential letting and commercial and industrial letting, as well the provision of services in rural areas are exempt from VAT.

The VAT paid by tenant to the landlord must be passed on by the latter to the appropriate tax office by the 30th day of the month following the one to which it relates.

(ii) IRPC / Corporate Income Tax

The general principle of the law relating to the payment of rent by a legal entity (tenant) to another legal entity (landlord), is based on the assumption that these payments are subject to withholding tax at the rate of 20% (twenty per cent) under article 62(1) read with article 67(1)(c) of the IRPC Code. However, if the corporate object of the landlord company is the management of its own real property, the said withholding tax will not apply. This is because the law establishes an exemption from this obligation under article 68(f) of the IRPC Code.

The income earned by virtue of the execution of rental agreements or agreements for the assignment of operation are entered into the accounts as profits or gains of the financial year under article 20(1)(b) of the IRPC Code and taxed as part of the total calculation of the tax base of the company.

(iii) Stamp Duty

Any rental agreement made in the Republic of Mozambique is subject to stamp duty at the rate of 2 % (two per cent), applicable on the value of the highest rent agreed between the parties for one month.

(iv) Registration of the Rental Agreement

Rental agreements made for any period greater than six months must be registered at the Land Registry.

(v) Municipal Property Tax – (*Imposto Predial Autárquico - IPRA*)

IPRA is charged on the official taxable value of urban properties located in the municipal area. The tax is payable by whoever is the owner of the property as at 31 December of the previous year, under article 35(1) read with article 45 of the CTA.

The owners of newly-built urban properties - but only in respect of the part of the property destined for residential use – may ask the municipal council for a temporary exemption from payment of the IPRA. The exemption is granted for a period of five years from the date of issue of the residential licence.

The rates of IPRA applicable to the official taxable value of the property are as follows:

- (a) 0.4% (zero point four per cent) for residential properties; and
- (b) 0.7% (zero point seven per cent) for commercial or industrial properties or properties for use by independent professionals as well as for other purposes.

The IPRA must be paid in two equal instalments in January and June of each year, except in the case of any legally established exceptions.

(vi) Other Municipal Taxes

Article 139 of the CTA establishes a set of rates to be paid for licences granted and for economic activity, which must be paid by the taxable person under the terms established by decision of the municipal council.

This newsletter was prepared by a multidisciplinary team made up of mozambican lawyers from GLM – Gabinete Legal Moçambique and Portuguese lawyers from PLMJ. This team was brought together under an agreement for international cooperation and membership of PLMJ International Legal Network, in strict compliance with applicable rules of professional ethics.
