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FLASH NEWS

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Mozambique – Regulations of the Petroleum Taxation Law

Decree Nr. 32/2015, of December 28, has just been enacted, approving the new Regulations applicable to the Tax Regime of the Petroleum activities, as approved by Law Nr. 27/2014, of 23 September 2014 ("the new Petroleum Tax Regime"). The Decree sets forth the applicable rules for the assessment and payment of the taxes foreseen in the Petroleum Tax Regime, the tax incentives, the definition of the taxable base, the applicable tax rates and the ancillary obligations to be complied by taxpayers involved in Petroleum activities. The new Statute has entered into force in January 1st 2016.

Please find below a brief summary of some of the most important provisions of the new Regulations.

1. Petroleum Production Tax

Netback Mechanism

The Petroleum Production Tax taxable base is the value of the petroleum produced, including quantities of lost petroleum as a result of negligence or operational failures. The quantities of lost petroleum must be assessed through a netback mechanism, from the delivery point up to the wellhead.

Rates

Petroleum is subject to a 10% rate, whilst natural gas and NLG are subject to a 6% rate.

Assessment and payment

The holders of petroleum titles should submit to the tax authorities, on a monthly basis, information on the production and sale of petroleum. The assessment of the Petroleum Production Tax must be concluded on a monthly basis, until the 10th day following the month of production. The tax return must detail the quantities of petroleum produced, stored, sold, lost, burned, as well as the petroleum produced over which the tax is assessed, and the amount of tax to be paid on a monthly basis. The tax due must be paid until the 20th day following the month of production.

As a general rule, the payment of the tax is made in cash, unless otherwise decided by the Government, whereas payment can be made in kind, through the delivery of produced petroleum. The option of payment in kind must be served to the taxpayer with a 12 months pre-notice.

The amount of petroleum delivered by the Concessionaire at the delivery point cannot be less than the amount that would be due if paid in cash taking into account the prevailing price at the assessment date.

2. Corporate Income Tax

Taxable basis

Mozambique adopts a strict ring-fencing principle, and as such concessionaires must report the annual profits per area of the Concession Contract. The taxable income of the holders of petroleum titles is assessed autonomously between each Concession Area/Contract. Accordingly, costs and profits must be allocated individually and each Concession Contract will have its own tax identification number (NUIT) and separate accounting records for each co-holder. Losses obtained in a given Concession Area cannot be offset against profits obtained in a different Concession Area.

This notwithstanding, general costs (such as general administrative costs and assets depreciation used in several concessions) which cannot be attributed directly to a given concession, can be allocated proportionally to several concessions pertaining to the same company.

Costs beyond the delivery point

Costs incurred by the concessionaire beyond the delivery point take the form of a tariff to be agreed between the tax authorities and the Ministry of Petroleum according to the arm's length principle. These costs need to be accounted for separately from the petroleum operations.

Obligations of the concessionaire

Entities resident in Mozambique must keep updated information of the shareholders co-owning petroleum rights. Any change to the shareholding structure must be reported to the tax authorities. The concessionaires must also inform the tax authorities of the gains obtained by resident and non-resident entities in Mozambique for purposes of taxation of the capital gains.

3. Production Sharing Mechanisms

Production sharing

The production share mechanisms are set forth in Articles 31 and 32 of the Petroleum Taxation Law, notably provisions regarding cost recovery and share of profit oil. R Factor cost oil and profit oil must be calculated over the whole area of the Concession Contract. The quantity of cost oil available in a given tax year is calculated over the petroleum produced in such tax year. Estimations based on work programs and budgets can be used when the real quantities of oil produced and expenditure incurred are not yet fully known.

4. Tax benefits

Importation of goods and equipment

For purposes of application of the tax benefits foreseen in Article 35 of the Petroleum Taxation Law, taxpayers must submit an exemption request with the following elements: (i) identification of the importer, (ii) legal grounds of the exemption, (iii) quantity and value of the goods to be imported, (iv) calculation of the customs duties/charges, (v) copy of the invoices, and (vi) any other relevant documents.

Failure to comply with some of the new obligations set forth in these regulations may lead to the suspension or cancelation of the applicable tax benefits.