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The International Comparative Legal Guide to:

Corporate Tax 2018

14th Edition

A practical cross-border insight into corporate tax work

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Global Legal Group Ltd.
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Email: info@glgroup.co.uk
URL: www.glgroup.co.uk

GLG Cover Design
F&F Studio Design

GLG Cover Image Source
iStockphoto

Printed by
Ashford Colour Press Ltd
November 2017

ISBN 978-1-911367-83-3
ISSN 1743-3371

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EUROPEAN COMPANY LAWYERS ASSOCIATION

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Country Question and Answer Chapters:

Chapter 28

Mozambique

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1 Tax Treaties and Residence

1.1 How many income tax treaties are currently in force in your jurisdiction?

Mozambique has entered into nine double tax treaties ("DTTs") with Portugal, the United Arab Emirates, Italy, Mauritius, Macao, Botswana, Vietnam, India and South Africa.

1.2 Do they generally follow the OECD Model Convention or another model?

Mozambican DTTs follow the OECD Model and the United Nations Model Double Taxation Convention.

1.3 Do treaties have to be incorporated into domestic law before they take effect?

Mozambican DTTs do not have to be incorporated into domestic law but they must be approved, ratified and published in Mozambique.

1.4 Do they generally incorporate anti-treaty shopping rules (or "limitation on benefits" articles)?

Apart from the DTT with India, treaties signed by Mozambique do not include a limitation on benefits clause. This notwithstanding, Mozambican domestic law has a treaty shopping provision according to which the benefits arising from tax treaties shall not be applicable in the event of a third party, not resident in the relevant Contracting States, using the DTT for the sole purpose of taking advantage of its provisions.

1.5 Are treaties overridden by any rules of domestic law (whether existing when the treaty takes effect or introduced subsequently)?

Pursuant to the Mozambican Constitution, international tax treaties have the same value as infra-constitutional domestic law. Additionally, the general tax code sets the prevalence of international treaties over domestic law.

1.6 What is the test in domestic law for determining the residence of a company?

According to domestic law, a company is deemed to be resident for tax purposes in Mozambique if it has its head office or effective place of management in Mozambique.

2 Transaction Taxes

2.1 Are there any documentary taxes in your jurisdiction?

Yes. Stamp Duty ("SD") is a tax levied on acts, contracts, agreements and financing operations entered into in Mozambican territory. For contracts entered into outside Mozambique, SD will still be due, provided that the contract/agreement is submitted therein for any legal purpose. Loans and guarantees are always subject to SD in Mozambique, provided that the beneficiary (i.e. the borrower and/or the entity which requested the guarantee) is a resident entity in Mozambique or with a permanent establishment therein.

2.2 Do you have Value Added Tax (or a similar tax)? If so, at what rate or rates?

Yes. The standard VAT rate is 17%.

2.3 Is VAT (or any similar tax) charged on all transactions or are there any relevant exclusions?

VAT is levied on the supply of goods and services that are deemed located in Mozambican territory. VAT is also due on the import of goods. Certain exemptions are available, such as the supply of goods and services deemed essential (e.g. essential food, medical services, educational services and agricultural exploration), banking and financial activity, etc.

2.4 Is it always fully recoverable by all businesses? If not, what are the relevant restrictions?

As a general rule, VAT-taxable persons are entitled to deduct input VAT (i.e. VAT incurred in the acquisition of goods and services) from VAT payable on their taxable transactions. Entities that carry out taxable and non-taxable/exempt activities may partially deduct VAT borne in their inputs, either using a direct allocation method or by reference to a deductible proportion, or *pro rata*.

There are also some restrictions to VAT deduction related, *inter alia*, to VAT on vehicles, fuel, and travel and accommodation expenses.

2.5 Does your jurisdiction permit "establishment only" VAT grouping, such as that applied by Sweden in the *Skandia* case?

No. To date, Mozambique does not allow for VAT grouping.

2.6 Are there any other transaction taxes payable by companies?

A 2% Property Transfer Tax (locally known as "SISA"), along with a 0.2% Stamp Duty, are levied on the transfer of real estate located in Mozambique.

2.7 Are there any other indirect taxes of which we should be aware?

Excise Tax applies on the consumption of certain non-essential goods (tobaccos, spirits, wine, diamonds and other luxury goods). The rates vary according to the nature of the goods – from 15% up to 75%.

3 Cross-border Payments

3.1 Is any withholding tax imposed on dividends paid by a locally resident company to a non-resident?

Dividends paid by a Mozambican company to its foreign shareholder without a permanent establishment in Mozambique are subject to a 20% withholding tax, which is the final tax liability of the beneficiary in Mozambique. The withholding tax may be avoided or reduced under an applicable DTT.

3.2 Would there be any withholding tax on royalties paid by a local company to a non-resident?

Royalties – which, under Mozambican internal law, also encompasses payments in connection with the right to use industrial or commercial equipment – paid by a local company to a non-resident entity without a permanent establishment in Mozambique are subject to a 20% withholding tax, which is the final tax liability of the beneficiary in Mozambique. The withholding tax may be reduced under an applicable DTT.

3.3 Would there be any withholding tax on interest paid by a local company to a non-resident?

Interest paid by a local company to a non-resident entity without a permanent establishment in Mozambique is subject to a 20% withholding tax, which is the final tax liability of the beneficiary in Mozambique. The withholding tax may be avoided or reduced under an applicable DTT. Under the DTT entered into with Portugal, interest and royalties charged in excess, i.e. not complying with the "arm's length" principle, cannot benefit from (the excess of) the reduced withholding tax rate foreseen in the Treaty Convention.

3.4 Would relief for interest so paid be restricted by reference to "thin capitalisation" rules?

Thin capitalisation rules are generally applicable to credits and loans granted by a related non-resident entity to a Mozambican taxpayer. Entities are deemed to be related, provided that one of the following requirements is met:

a) The non-resident entity directly or indirectly holds at least 25% of the share capital of the debtor.

b) Both parties are (directly or indirectly) controlled by the same entity.

c) The non-resident entity, although not holding a 25% stake, exercises a significant influence in the management of the Mozambican subsidiary.

In the situations above, the rule is that interest on financing in excess of a 2:1 debt-to-equity ratio is not deductible by the Mozambican company for Corporate Income Tax ("CIT") purposes.

3.5 If so, is there a "safe harbour" by reference to which tax relief is assured?

Yes. Interest on financing below the 2:1 debt-to-equity ratio can still be deducted by the Mozambican company.

3.6 Would any such rules extend to debt advanced by a third party but guaranteed by a parent company?

Yes. The aforementioned rule would apply to a third-party financing secured by a related entity.

3.7 Are there any other restrictions on tax relief for interest payments by a local company to a non-resident?

Interest charged in connection with shareholder loans (i.e. the excess) is not eligible as a deductible cost for CIT purposes whenever the interest rate exceeds the MAIBOR 12-month reference rate, accrued by 2%.

In addition, the Corporate Income Tax Code foresees a specific anti-avoidance rule applicable to payments – which should include interest payments – made to entities resident in tax havens, whereby such amounts cannot be deemed as a tax cost (unless the taxpayer can prove that the payments correspond to operations effectively carried out, which are not abnormal or of an exaggerated amount).

3.8 Is there any withholding tax on property rental payments made to non-residents?

Rents paid by a local company to a non-resident entity without a permanent establishment in Mozambique are subject to a 20% withholding tax whenever the debtor is a CIT taxpayer or the payments are related to the business activity of a Personal Income Tax taxpayer with an organised accounting system.

3.9 Does your jurisdiction have transfer pricing rules?

Yes. Transactions between related parties must comply with the "arm's length" principle. Entities are deemed to be related when one of such entities has the power to, directly or indirectly, exercise a significant influence in the management of the other.

Mozambican transfer pricing provisions are modelled on the OECD principles but, up to now, have still been quite incipient. Reportedly, Mozambique's Council of Ministers has recently approved regulations aimed at introducing new rules and procedures regarding transfer pricing. These regulations are still to be published.

4 Tax on Business Operations: General

4.1 What is the headline rate of tax on corporate profits?

The CIT rate is 32%.

4.2 Is the tax base accounting profit subject to adjustments, or something else?

Yes. Mozambican CIT is based on the taxpayer's annual profits as computed for accounting purposes with specific tax adjustments.

4.3 If the tax base is accounting profit subject to adjustments, what are the main adjustments?

When computing the taxable profits for CIT purposes, taxpayers should bear in mind some specific tax adjustments; notably, among others:

i) Loss computation.
ii) Provisions.
iii) Depreciation and amortisation of fixed assets.
iv) Transfer pricing.
v) Thin capitalisation rules.
vi) Limitation on deduction of payment made to low-tax jurisdictions.
vii) CFC provisions.

Additionally, some costs are not deductible for CIT purposes, such as:

i) Undocumented costs.
ii) Taxes that shall be borne by third parties.
iii) Taxes on mining and petroleum activities.
iv) Penalties and expenses regarding infringement procedures.
v) Indemnities paid for events whose risk is insurable.
vi) Interest from related parties' loans deemed as excessive (see question 3.4 above).
vii) Interest from shareholder loans above the fixed limit (see question 3.7 above).
viii) Part of the travel (*per diems*) and representation expenses and certain expenses related to vehicles and fuel.

4.4 Are there any tax grouping rules? Do these allow for relief in your jurisdiction for losses of overseas subsidiaries?

Mozambican law has no tax grouping rules or relief for losses of overseas subsidiaries.

4.5 Do tax losses survive a change of ownership?

Yes. Tax losses of merged or demerged companies can be deducted and carried forward by the new or acquiring company for five years, subject to prior authorisation from the Minister of Finance.

4.6 Is tax imposed at a different rate upon distributed, as opposed to retained, profits?

There is no tax regime for retained profits in Mozambique. Dividends paid to a Mozambican entity are subject to 20% withholding tax.

Dividends distributed by a resident entity to a resident corporate shareholder may be exempt from CIT provided that the parent company holds a 20% share for a minimum holding period of two years.

4.7 Are companies subject to any significant taxes not covered elsewhere in this chapter – e.g. tax on the occupation of property?

Urban Property Tax applies on real estate owned: 0.4% for residential buildings; and 0.7% for real estate used for commercial purposes.

A 20% withholding tax (a 10% rate applies in certain situations) is also applicable to amounts paid in consideration of services rendered by non-resident entities whenever such services are carried out or used in Mozambique. The tax may be avoided under an applicable DTT.

5 Capital Gains

5.1 Is there a special set of rules for taxing capital gains and losses?

No. Capital gains are included in the company's annual taxable income and subject to 32% CIT.

5.2 Is there a participation exemption for capital gains?

No, there is no such exemption.

5.3 Is there any special relief for reinvestment?

Yes. Capital gains resulting from the sale of tangible fixed assets shall not be computed as taxable profits provided that the proceeds of the sale are reinvested in the acquisition, production or construction of tangible fixed assets within the following three years after the disposal.

5.4 Does your jurisdiction impose withholding tax on the proceeds of selling a direct or indirect interest in local assets/shares?

There is no withholding tax on the proceeds of selling a direct or indirect interest in Mozambican assets/shares. Nevertheless, capital gains obtained from the disposal of quotas/shares held in a Mozambican company – including the direct and indirect transfer of rights and participating rights involving assets located in Mozambique – by a non-resident entity are subject to 32% CIT, to be reported in Mozambique through the submission of an annual tax return.

6 Local Branch or Subsidiary?

6.1 What taxes (e.g. capital duty) would be imposed upon the formation of a subsidiary?

The incorporation of a local company in Mozambique could be subject to 2% SISA in cases where the shareholders contribute with real estate to the share capital.

6.2 Is there a difference between the taxation of a local subsidiary and a local branch of a non-resident company (for example, a branch profits tax)?

Local companies are subject to 32% CIT on profits obtained on a worldwide basis. Local branches are subject to 32% CIT on profits attributable to the PE located in the country.

6.3 How would the taxable profits of a local branch be determined in its jurisdiction?

Foreign companies operating in Mozambique through a PE (such as a local branch) are subject to 32% CIT on profits attributable to their activity in the country.

6.4 Would a branch benefit from double tax relief in its jurisdiction?

No, it would not.

6.5 Would any withholding tax or other similar tax be imposed as the result of a remittance of profits by the branch?

There is no branch remittance tax in Mozambique.

7 Overseas Profits

7.1 Does your jurisdiction tax profits earned in overseas branches?

Yes, resident corporations are subject to 32% CIT on their worldwide annual profits.

7.2 Is tax imposed on the receipt of dividends by a local company from a non-resident company?

Yes. Dividends paid by a non-resident entity to a Mozambican company are included in the company's annual taxable income and subject to 32% CIT on profits.

7.3 Does your jurisdiction have "controlled foreign company" rules and, if so, when do these apply?

Yes. Profits obtained by a foreign company resident in a tax haven shall be allocated to its Mozambican shareholders whenever these hold, directly or indirectly: (i) at least 25% of the share capital; or (ii) 10% of the share capital when more than 50% of the company is owned by Mozambican residents.

8 Taxation of Commercial Real Estate

8.1 Are non-residents taxed on the disposal of commercial real estate in your jurisdiction?

Yes. Capital gains obtained from the disposal of real estate in Mozambique by a non-resident entity are subject to 32% CIT.

8.2 Does your jurisdiction impose tax on the transfer of an indirect interest in commercial real estate in your jurisdiction?

Please see question 5.4 above. Capital gains obtained from the disposal of quotas/shares held in a Mozambican company (including the direct and indirect transfer of rights and participating rights involving assets located in Mozambique) by a non-resident entity are subject to 32% CIT.

8.3 Does your jurisdiction have a special tax regime for Real Estate Investment Trusts (REITs) or their equivalent?

No, there is no such regime in Mozambique.

9 Anti-avoidance and Compliance

9.1 Does your jurisdiction have a general anti-avoidance or anti-abuse rule?

There is no general anti-abuse rule in Mozambique, although there is a treaty shopping provision.

9.2 Is there a requirement to make special disclosure of avoidance schemes?

No, there is no such requirement.

9.3 Does your jurisdiction have rules which target not only taxpayers engaging in tax avoidance but also anyone who promotes, enables or facilitates the tax avoidance?

No, it does not.

9.4 Does your jurisdiction encourage "co-operative compliance" and, if so, does this provide procedural benefits only or result in a reduction of tax?

No, this is not encouraged.

10 BEPS and Tax Competition

10.1 Has your jurisdiction introduced any legislation in response to the OECD's project targeting Base Erosion and Profit Shifting (BEPS)?

Although not directly related to BEPS, new regulations on transfer pricing will reportedly be enacted in 2018 and new rules regarding VAT on electronic services were also recently introduced into the VAT Code, which could have been encouraged by OECD BEPS Action 1 ("Challenges of the Digital Economy").

10.2 Does your jurisdiction intend to adopt any legislation to tackle BEPS which goes beyond what is recommended in the OECD's BEPS reports?

No, such legislation is not foreseen in Mozambique.

10.3 Does your jurisdiction support public Country-by-Country Reporting (CBCR)?

No, CBCR is not supported in Mozambique.

10.4 Does your jurisdiction maintain any preferential tax regimes such as a patent box?

No such regimes are maintained in Mozambique.

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- 'Portugal – Law & Practice', in *Chambers and Partners*, 2016;
- 'Breves notas introdutórias sobre a reforma do IRC', in *A Reforma do IRC*, Vida Económica, October 2014;
- 'Breve Enquadramento do Regime de Preços de Transferência nos Países de Língua Oficial Portuguesa', in *Cadernos Preços de Transferência 2013*, Almedina, 2013;
- 'Primeiras Reflexões sobre a Lei de Arbitragem em Matéria Tributária', in *Estudos em Memória do Prof. Doutor J. L. Saldanha Sanches*, Vol. V, Coimbra Editora, 2011;
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- 'Portugal: New Transfer Pricing Regime', co-authored by Paulino Brilhante Santos, in *Tax Planning International Transfer Pricing*, Volume 3, Number 2, BNA International, February 2002.

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