

Newsletter

Year 2015 | N.º 10 | Monthly

Publication run 500 | Free Distribution

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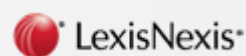
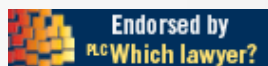
We wish you a Happy
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Technical Information:

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Waiving of Submission of Annual Income Statement for Individuals



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In order to simplify procedures, improve taxpayer compliance and broaden the tax base, two legal instruments were approved in 2013, namely: Law No. 20/2013 of 23 September (Law 20 / 2013), and Decree No. 56/2013 of 27 November (Decree No. 56/2013). These respectively amended certain provisions in the Income Tax Code (approved by Law No. 33 / 2007 of 31 December – CIRPS) and in the Regulation of the Income tax Code (approved by Decree No. 08/2008 of 16 April – RCIRPS), and both took effect from January 1, 2014.

One of the amendments to Law No 20/2013 and Decree No. 56/2013 relates to waiving submission of Annual Income Statements for Individuals (the Model 10 form), and applies to certain income tax (“IRPS”) payers.

This article aims to explain the practical aspects of said waiver.

IRPS taxpayers comprise all natural persons residing in Mozambique, and those that do not reside but who receive income from the country. This includes the taxpayer’s family and any others for which he is responsible.

The provisions of Article 52 of Law 20/2013, in conjunction with Article 11 of Decree 56/2013, establish that taxpayers who only derive income subject to withholding tax, under Article 57 of the IRPS Code, are exempted from submitting an Annual Income Statement.

Under Article 57 of Law 20/2013 income subject to withholding tax includes i) income from employment (category one); ii) business and professional income deriving from self-employment in any activity which provides services; iii) compensation related to the activity carried out, including reduction, suspension and termination of the activity, as well as resulting from a change of location occurring within the financial year; iv) amounts arising from the temporary leasing of establishments as well as subsidies or grants arising from activity covered in (ii); all when earned by non-residents.

All other income, not listed in Article 57 of CIRPS in conjunction with Law No 20/2013, remains subject to the requirement to submit an Annual Income Statement. In other words, according to Article 57, and in our opinion, income earned by residents as a result of employment is still subject to submission of an Annual Income Statement. This view is reinforced by the information that has been broadcast on the radio about the need for resident taxpayers receiving income from employment to submit the Model 10 form.

Those entities not covered by the provision in question are required to withhold tax at source in accordance with the applicable rules and procedures, under which the taxpayer must submit a declaration at the relevant tax office by 31st March 2015 (taxpayers who have only received category one income) or by 30th April (in other cases), after which an additional payment or refund may be required.

Income subject to withholding tax is not included with other income since the tax is withheld at source. However not including it with category one income raises some doubts, namely.

a) where the same taxpayer derives income from more than one employer;

b) whether despite waiving the Model 10 requirement for non-residents earning category one income, residents are covered by that provision, since Law No. 20/2013 stipulates that the deduction of tax from income at source (without limitation) shall be definitive.

Definitive deduction at source means no entitlement to reimbursement or requirement for additional payment of tax. This differs from previous practice, whereby tax deducted at source was treated as an advance payment and at the end of the financial year taxpayers’ liability was assessed based on submission of the Annual Income Statement on the Model 10 form.

To this end, Law No. 20/2013 introduces a new monthly calculation method for withholding tax which is provided for in Article 65-A and the table annexed to the Law (Annex A).

Based on the new method, only those earning income will be able to submit an Income Statement, and if both spouses are earners, each must submit their own statement, subject to the specific tax rate applicable to each. Dependents shall be only be included in the income statement of one taxpayer.

Please note that all employers are still responsible for issuing a letter by 20th January, containing information about the salaries of employees and the tax withheld, so that employees can file their Income Statements for income earned in 2014.

Also note that the non-taxable minimum is 225.000,00MT (two hundred and twenty-five thousand Meticaís) annually, and those who have earned less than this are not required to submit the Annual Income Statement - Model 10.

In view of the foregoing, we note that the Tax Authority is aiming to improve the process of submission of Annual Income Statements and to facilitate the handling of taxation by establishing a fixed IRPS value for certain types of income. We alert readers about the need for taxpayers to timely complete and submit their income tax returns, thus avoiding possible penalties for late submission.





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Consolidated statistics on road accidents show that in Mozambique between 1999 and 2012, there were 68,913 claiming the lives of around 18,938 people¹. This is undoubtedly a problem that affects and concerns government and society in general since the number of road accident fatalities is growing. As the regulator of society the law cannot be indifferent and oblivious to this reality, and must view this as a sad social fact with major legal significance.

We propose to reflect here on the legal regime for road accident fatalities and to seek to understand how the rights of the family and the victim's spouse are protected.

A road accident is understood to be any external injury, nervous or mental disorder or property or moral damage resulting from sudden external violence produced by any vehicle or means of transport on public roads (paragraph 1 of Article 151 of the Highway Code "CE").

The recently revoked Highway Code (Decree No. 39: 672, of November 6, 1959) was in force for almost half a century during which both academics and individuals expressed views, provided legal opinions and sought jurisprudence to clarify and establish the meaning and scope of "death in a road accident".

The current Highway Code, approved by Decree-Law No. 1/2011 of 23 March ("CE") seeks to better take account of legal developments and to adjust to the current Mozambican social reality, meaning that death in road accidents are now covered by a specific legal provision.

Thus, under the CE death in a road accident is defined as that which occurs within thirty days following the accident². However this definition does not solve all the problems, and may even lead to difficulty in interpretation especially in cases where the victim incurs injuries or death after thirty days.

Our view is that where an accident is registered and the victim loses his life thirty days or more thereafter, thus not fulfilling the statutory requirements for death in a road accident, the effect is homicide (voluntary or involuntary) under the Penal Code.

Questions remain as to whether the thirty days the law provides for in the case of death in a road accident is an upper limit, meaning that after this period the death should not be considered as having occurred in a road accident, but instead fall under the general rules of the Penal Code thus constituting voluntary or involuntary homicide.

It is important to determine whether or not the death arises from a road accident because of the need to establish civil liability and criminal responsibility.

Death in a road accident confers the right to compensation for personal injury on the spouse (not legally separated in person and property) and the children or other descendants, or failing these, the parents or other ascendants, or finally, siblings or nephews and nieces³.

Driving a vehicle is considered a risky activity, meaning that whoever who has driven, or is driving a vehicle accepts the possibility of an accident or incident. This is why Article 503 of the Civil Code provides that a person responsible for the operation any land-based vehicle used for their own purpose, even if through an intermediary, is liable for damages arising from the risk of using the vehicle, even if it is not moving.

However this does not address cases where the victim is at fault. Imagine the hypothetical case someone who rushes across Eduardo Mondlane Avenue when it is busy, and through lack of care does not look both ways, and as a result is hit by a car resulting in immediate death. What does the law say given that the driver is not at fault?

As noted above, drivers assume the risk of driving, and that the risk of an accident exists, so there is a general obligation to pay compensation whether or not the injured party is at fault. However the responsibility must be fair and be divided between the parties. Responsibility for risk is one form of strict liability⁴.

As Judge Américo⁵ concludes, the existence of typical danger, or in the absence of this, the mere fact that the activity infringes third party rights, provides sufficient justification for the obligation to pay compensation which is not dependent on proof of fault

Analyzing criminal responsibility in fatal road accidents, Article 153 of CE establishes a special rule which envisages a custodial sentence of one to three years and corresponding fine for a driver, who, through gross negligence, kills someone. The attribution of fault corresponds to violation of mandatory standards, such as speeding, right of way, giving way, overtaking, reversing, stopping and parking.

Apart from the foregoing instances which constitute serious misconduct, the driver involved in a fatal accident shall simply submit insurance documents, thus being exempted from detention because the liability is transferred to the insurer. If no insurance is available the driver is subject to arrest.

According to the principle of sufficiency of prosecution, if the same circumstances simultaneously constitute a crime and a misdemeanour, they shall always be punished as a crime, and subject to the relevant penalty for the contravention.

¹ CIP: Newsletter Edition 04/2014 – May, p. 1.

² Nº 2 of article 151 of CE.

³ Nº 2 of article 496 of Civil Code.

⁴ Nº 1 of article 503 of the Civil Code.

⁵ MARCELINO, Américo (2001) *Road Accidents and Civil Responsibility*, 5th Edition, Revised & Expanded, Livraria Petrony, Lda.





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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.

The concept of capital gains

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 realizable value, and the acquisition cost less depreciation or amortization.

On the taxation of capital gains earned by non-residents¹

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 non-resident in Mozambique for tax purposes, paragraph 2 of Article 5 of the Corporate Income Tax Code (CIRPC- approved by Law No. 34 / 2007 of December 31) provides that 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.

Calculation of capital gains

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 Personal Income Tax Code (CIRPS - approved by Law 33/2007, of December 31), which also applies to legal persons under clause d) of paragraph 1 of Article 45 of 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).

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.

Joint Responsibility

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.

¹Specific Taxation and Fiscal Benefits Regime for Petroleum and Mining Operators, Laws 27 & 28/2014 of 23 September, respectively.

