

**DECREE N° 4/2008
OF 9 APRIL**

Considering the need to regulate the specific tax on petroleum activity provided for in Law n.º 12/2007, of 27 June, using the power vested in it by article 12 of the said Law, the Council of Ministers hereby decrees:

Article 1. The Regulation on Petroleum Production Tax provided for in Law no. 12/2007 of 27 June, appended hereto, and forming an integral part of this decree, is hereby approved.

Art. 2. Decree no. 19/2004 of 2 June, its respective supplementary legislation and all other legislation contrary to this instrument are hereby repealed.

Approved by the Council of Ministers.

Let it be published.

The Prime Minister, *Lúisa Dias Diogo*.

REGULATION ON PETROLEUM PRODUCTION TAX

**CHAPTER I
GENERAL PRINCIPLES**

**ARTICLE 1
DEFINITIONS**

For the purposes of this Regulation, the terms and expressions used herein shall have same meaning as in Law no. 3/2001 of 21 February, the Petroleum Law, as well as in Law no. 12/2007 of 27 June and the respective supplementary legislation.

**ARTICLE 2
SCOPE OF APPLICATION**

This Regulation applies to all holders of the right to engage in petroleum operations, and that produce petroleum, in Mozambican territory, including its territorial waters, its exclusive economic zone and continental shelf, in respect of which, pursuant to international law, Mozambique has sovereign rights for the purposes of exploration, use and extraction of its mineral resources.

**ARTICLE 3
PETROLEUM PRODUCTION TAX**

1. Petroleum production tax shall be charged on petroleum produced in Mozambican territory, from the development and production area.
2. Petroleum production tax is chargeable from the moment at which the petroleum produced is extracted from a petroleum reservoir.
3. The petroleum production tax rates set forth in Law n.º 12/2007 of 27 June are as follows:

- a) 10% for crude oil;
- b) 6% for natural gas.

CHAPTER II
DETERMINATION OF THE TAX BASIS

ARTICLE 4
TAX BASIS

- 1. The tax basis of the petroleum production tax is the value of the petroleum produced, including the quantities of petroleum lost as a result of petroleum operation deficiency or negligence.
- 2. The value of the produced petroleum is determined on the basis of the average weighted prices at which it has been sold by the producer or its contractors in the month to which the tax to be determined corresponds.
- 3. The prices referred to in the preceding paragraph shall have as a benchmark the international prices of the main international petroleum exporting centers.

ARTICLE 5
CORRECTION OF THE TAX BASIS

- 1. Without prejudice to the applicable penalties, the Directorate of the Tax Area of the domicile of the taxpayer may make corrections, amending the taxable amount declared in accordance with the provisions of article 7, whenever it turns out that the prices used by the taxpayer are not in conformity with the provisions of the preceding article or that such prices deviate from the normal market prices between independent buyers and sellers, as well as if the rules provided for in this article have not been followed.
- 2. To determine the normal market prices referred to in paragraph 1 above, the following elements must be considered:
 - a) the petroleum sales prices carried out between independent buyers and sellers in the period concerned;
 - b) the selling prices, quantity, quality, petroleum density and comparable grade in the main international petroleum exporting centers during the period concerned;
 - c) and any other data or information relevant for determining the normal market price between independent buyers and sellers.
- 3. The taxpayer shall be notified of the tax value determined in terms of paragraph 1 of this article and may appeal it by litigation before the Tax Court of first instance jurisdiction.

**CHAPTER III
DETERMINATION AND PAYMENT**

**ARTICLE 6
JURISDICTION TO DETERMINE**

1. The determination of the petroleum production tax shall be made by the holders of the right to engage in petroleum operations that produce petroleum.
2. The petroleum production tax may also be determined by the tax administration in the cases set forth in paragraph 2 of article 7 and whenever it is discovered that the tax has not been determined or that the determination was made for an amount lower than that due.

**ARTICLE 7
DETERMINATION AND PAYMENT PROCEDURES**

1. The amount of the production tax results from the application of the rates to the value of the petroleum production calculated in accordance with article 4 of this Regulation.
2. The determination shall be effected in the following terms:
 - a) in the cases where the taxpayer is responsible for determination [of the tax], it shall be made within 15 days of the period in respect of which the tax is due, or up to the moment of official determination, in the latter case without prejudice to compensatory interest, on the official form of return, and shall have as a basis the taxable amount therein reflected;
 - b) in the absence of presentation of the return by the deadline referred to in the preceding clause, the determination shall be made officially by the tax administration, in accordance with the provisions of Law n° 2/2002, of 22 March, by the last working day of the month subsequent to the month in which petroleum was produced;
 - c) in the absence of determination in terms of the preceding clauses, the same shall have as a basis the elements which the Tax Administration has available.
3. Tax shall be paid using a payment order form, by the taxpayer, at the Directorates of the Tax Areas or at any other entity authorized by law, in the same period of tax determination, in accordance with the provisions of the clauses of the preceding paragraph.
4. The return, [on] the official form referred to in paragraph 2, shall be submitted together with the payment order referred to in the preceding paragraph, by the end of the month [sic] following the month of production, and shall contain, among other things, the following:
 - a) the quantity of petroleum produced during the month;
 - b) the quantity of petroleum sold during the month;

- c) the quantity of petroleum in stock at the beginning and at the end of each month;
- d) the quantity of petroleum unavoidably lost;
- e) the quantity of petroleum that has been flared, vented, re injected or used in petroleum recovery operations with the Government's authorization;
- f) the quantity of petroleum upon which the tax shall be delivered or paid;
- g) the amount of tax to be delivered or paid in that month; and
- h) any other information relevant to tax determination.

**ARTICLE 8
METHODS OF TAX PAYMENT**

- 1. The petroleum production tax is generally paid in money.
- 2. The petroleum production tax may be paid in kind, at the discretion of the State, in part or in whole, by means of notice issued by the tax administration, after consultation with the agencies with jurisdiction of the Ministry with oversight of the petroleum sector.
- 3. The tax shall be presumed to be collectable in money unless the Government, by six months' prior notice, counted from the first day of the month corresponding to the tax [due], notifies the taxpayer to pay part or all of the tax in kind.

**ARTICLE 9
PROCEDURES FOR PAYMENT OF THE TAX IN KIND**

- 1. The obligation of payment of tax in kind shall be met by the producer to the entity designated by the Ministry with oversight of the Finance sector, in the quantities stated in the notice referred to in paragraph 2 of the preceding article, at the delivery point designated in accordance with article 9 of Law no. 12/2007, of 27 June.
- 2. The price [sic] of petroleum production tax, when paid in kind, may not be less than would have resulted if the petroleum production tax had been paid in money.

**ARTICLE 10
TAX PERIOD**

Without prejudice to the determination of the tax period referred to in the Corporate Income Tax Code, approved by Law no. 34/2007, 31 December, the petroleum production tax taxpayers must effect payment monthly, in accordance with the provisions of article 7.

**ARTICLE 11
COMPENSATORY INTEREST**

- 1. Whenever, for reasons attributable to the taxpayer, the determination or payment of tax in part or in whole is delayed, compensatory interest is added to the amount of the tax at the interbank rate (MAIBOR) in effect on the date of determination, plus two percentage points.

2. Compensatory interest is counted on a daily basis from the last day for the return to be filed up to the [day of] completion, correction or discovery of the shortcoming that gave rise to the delay in determination.
3. It is understood that there is delay in determination whenever the return is filed after the deadline set without the tax due having been paid in full in the legal period.
4. If the delay in determination arises from mistakes in calculation made in the space on the return for tax calculation, the compensatory interest due as a result may not be accrued for a period greater than one hundred and eighty days.

**ARTICLE 12
INDEMNITY INTEREST**

1. Taxpayers are entitled to receive indemnity interest when it is determined, by direct initial appeal, administrative appeal or administrative litigation, that there was a gross error of fact or law in the qualification or quantification of the taxable facts, attributable to the [tax] agencies, and that resulted in payment of the tax debt in an amount greater than that which was legally due.
2. For the purposes of the preceding paragraph, the payment of indemnity interest depend on a request made by the taxpayer to the tax administration, which must be made no later than 90 days after the error of fact or law attributable to the [tax] agencies was acknowledged, in terms of the preceding paragraph.
3. Indemnity interest is counted from the date of payment of the tax to the date of issuance of the credit note.
4. The rate of indemnity interest is equal to the rate of compensatory interest.

**CHAPTER IV
ADDITIONAL OBLIGATIONS AND INSPECTION**

**ARTICLE 13
ACCOUNTING OBLIGATIONS**

1. The taxpayers of this tax are obliged to have an organized accounting system in accordance with the terms of the Corporate Income Tax Code, so as to permit a clear and correct knowledge of the information needed to check the tax determined, as well as to allow control thereof.
2. The record of operations and actions referred to in the preceding paragraph shall be made so as to show the information referred to in paragraph 4 of article 7.
3. The supporting documentation of the record referred to in the preceding paragraphs and the documents proving payment of the petroleum production tax shall be kept in good order during a period of 10 years.

ARTICLE 14
INSPECTION ENTITIES

The tax administration shall oversee the fulfillment of the obligations provided for in this regulation, and all entities, within reasonable limits, shall cooperate as requested by the agencies with jurisdiction, so as to enable the exercise of their powers. Inspection procedures shall follow the rules set forth in the Tax Inspection Regulation, approved by Decree no. 19/2005, of 22 June.

CHAPTER V
FINAL PROVISIONS

ARTICLE 15
TAXPAYER GUARANTEE

Taxpayers' guarantees are those provided for in Law n° 2/2006 of 22 March.

ARTICLE 16
INFRACTIONS

Violations of the provisions set forth in this Regulation are tax infractions punishable pursuant to Law n.° 15/2002, of 26 June, Law n° 2/2006 of 22 March, the General Regime of Tax Infractions, approved by Decree n.° 46/2006 of 26 December and further applicable legislation.