

SANTOMEAN INCOME TAXES

(PART 1/2)

BY KILUANGE TINY

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August, 2005.

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I – INTRODUCTION

The Santomean personal and company income taxation is set up in two tax codes:

- (i) The Salary Tax Code (*Código de Imposto sobre Salários*), entered into force in 1993, and emended in 1997; and
- (ii) The Income Tax Code (*Código de Imposto sobre o Rendimento*) which became effective in 1933.

Under both codes, the payable tax is based on the aggregated income obtained by the taxpayer. However, the legal regimes of these taxes are based on their different scopes. In the one hand, the Salary Tax is levied on the salaries and other remunerations (in cash or kind) obtained by dependent employees, i.e., individuals; in the other hand, the Income Tax Code is levied on the incomes obtained by legal entities or by individuals from services, industrial and commercial activities, agricultural businesses and independent professional activities, i.e., individuals and legal persons or entities.

In this paper, I intend to analyze the legal regimes of these taxes. In order to do so, I divide this paper in two parts. In this Part 1, I intend to overview the Salary Tax Code. The Income Tax Code is object of Part 2 of this study. This paper does not cover the special regimes provided for oil and gas operations (set in the Petroleum Activities Framework Law), and free trade and offshore activities (set in the Free Trade Law and in the Offshore Activities Code).

II – SALARY TAX (IMPOSTO SOBRE SALÁRIOS)

1. SCOPE

1. 1. PERSONAL SCOPE

The salary tax is a personal income tax levied on the yearly incomes obtained in Sao Tome and Principe by residents (either nationals or expatriates) or non-residents dependent employees. This means, of course, that any resident or non-resident physical person who, either regularly, temporarily or occasionally obtains income by performing any work to a third person (dependent work) in the country is subject to the tax. In addition, individual entrepreneurs with activities in STP are also subject to this tax.

1.2. INCIDENCE

Under the Salary Tax Code, taxable income is any remuneration (in cash or kind) resulting from the aggregation of all salary (regardless its nature) obtained in each fiscal year. Tax is levied on any salary paid or made available to the employee derived from an employment agreement or any other legally treated as an individual employment agreement, and from the performance of a public job, service or duty.

The Salary Tax Code adopts a broad concept of salary. Under the Code, any salary resulting from the employment agreement or the performance of a service, public job or duty, either periodical or non periodical, fixed or variable, of a contracting nature or not, namely, wages, salaries, fees, commissions, subsidies, rewards, attendance money, other benefits in kind or ancillary remuneration, for example, bonuses, tips, transference and mission allowances and pensions are subject to tax. The salaries of the members of statutory bodies of companies and other legal persons are also subject to tax.

Salaries paid/obtained in foreign currency are subject to special provisions setting the applicable exchange rate for tax purposes.

2. EXEMPTIONS

Salaries obtained from the staff of consular and diplomatic missions, and from the performance of ecclesiastical activities are exempt from the tax. In the case of consular and diplomatic missions, the exemption is subject to the principle of reciprocity, i.e., as long as the other State/organization grants the same benefit to Santomeans. Furthermore, individuals obtaining salaries of less than Dbs. 40,000,00 (monthly) or 480,000,00 (yearly) are exempt.

3. TAX RATE

The tax rate is 13%, calculated on the salaries higher than Dbs. 40,000,00 (monthly) or 480,000,00 (yearly). In addition, the Code sets a partial rebate to be taken into account when calculation the taxable income.

4. COMPULSORY WITHHOLDING

The income payer entity (in most cases, the employer) must deduct the monthly amounts corresponding to the tax rates applicable to the salaries paid or made available to the employee.

5. ASSESSMENT

The taxpayers must submit an annual tax statement before the Tax Office of the respective tax area on January of the fiscal year following that to which the income relates.

The assessment is made by the Tax Office. Consequently, the annual tax statements submitted by the taxpayers may be subject to revisions by the tax services in case there are reasons to believe they are inaccurate, obscure or inadequate.

6. PAYMENT

Under the law, the payer entity is liable for the payment of the tax withheld on the monthly salaries of his employee. However, the dependent employee (or broadly speaking, the individuals receiving salaries) may be subsidiary liable, when the payer entity as no capacity or have failed to pay the payable tax.

The payer entity must deliver the withheld tax amounts until the 8th day of the month following the payments relating to such amounts.

7. GUARANTEES

The Code grants the taxpayer (or any person jointly or subsidiary liable for the payment of salary tax) and the payer entities which by duty of compulsory tax withholding have deposited within the Treasury an amount higher than the amount effectively payable, as a result of a material error, the right to claim against tax assessment made by the tax administration, under the conditions set in the Tax Proceedings Code.

Additionally, the General Tax Law provides other guarantees to the taxpayer and other persons liable for the tax payments.

8. PENALTIES

The Code lays down penalty payments for non-compliance of tax obligations. The payer entities failing to withhold and/or to pay the due payable tax, or the employees failing to submit to the annual tax statement on time or not submitting the annual tax statement are subject to fines. Taxpayers and other liable persons may be also subject to other penalties provided in the General Tax Code.

K ILUANGE *T*INY

OLHOS DE ÁGUA - CCI 12801
2955-011 PINHAL NOVO - PORTUGAL
E-MAIL: tiny@juristep.com