

Transfer Pricing rules applicable in the West African Economic and Monetary Union Zone

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F I : S C : A L
HRS MINS SECS

C O U N T : D O W N
DAYS HRS MINS SECS



Transfer Pricing

MALI:

Companies that are dependent on or control companies located outside Mali must now make available of tax administration, at the first date of the tax audit, a documentation to justify their transfer pricing policy in respect of transactions of any kind with related legal entities established or incorporated outside Mali.

Now, with the 2017 Finance Act, the tax authorities specify that this documentation must also contain a general description of functions performed and the risks assumed by the associated companies as soon as they affect the audited company (art. 57-B-II-c Tax Procedure Code).

Failure to comply with this obligation to make available the documentation justifying the transfer pricing policy shall be subject to a penalty equal to 5% of the profits deemed to have been transferred abroad and the adjustment will be a minimum of CFAF 5 000 000 (approximately €7 600) per audited financial year (article 57-C TPC).

IVORY COAST:

With the 2017 Finance Act, Côte d'Ivoire introduced the obligation for companies that are dependent on or control companies located outside Côte d'Ivoire to attach transfer pricing documentation to their financial statements.

The taxpayers concerned by the transfer pricing filing requirement are companies established in Côte d'Ivoire with capital links, in particular, with companies located outside of Côte d'Ivoire and with which they carry out transactions.

Failure to comply with this rule is sanctioned by the non-deduction of sums paid as part of the transactions involving associated companies (Article 36 General Tax Code).

BURKINA FASO: 2017 (1/3)

Any company operating in Burkina Faso must keep at the disposal of the tax administration a documentation to justify their transfer pricing policy regarding transactions of any kind with related companies operating in Burkina Faso or outside Burkina Faso.

BURKINA FASO: (2/3)

Two companies are deemed to be related when one directly or through an intermediary holds the majority of the share capital or voting rights of the other; or when one actually exercises directly or through an intermediary the power of decision in the other, or when both are placed under the control of the same third party company (which directly or through an intermediary holds a majority of the share capital or voting rights of each of them, or which in fact exercises directly or through an intermediary the decision-making power in each of them).

It is specified that the condition of dependence or control described above is not required when the transfer of profits is made with enterprises resident in a non-cooperative State or territory whose tax regime is privileged.

The tax regulation has also introduced the possibility for associated companies to conclude an advance pricing agreement (APA) with tax authorities.

Finally, the regulation introduces the transfer pricing documentation requirement into the Burkinabe tax system. Regarding the threshold of these documentation requirement, the system provides that it applies to companies with an annual turnover excluding tax of CFAF 3 000 000 000 or more or to companies with gross assets of CFAF 3 000 000 000 or more.

With regard to the provision of documentation and its sanction, the system provides that the documentation must be made available to the tax authorities at the first date of the tax audit.

Failing this, the tax authorities send to the audited company a formal notice to produce or complete it within 30 days, specifying the nature of the documents or additions expected.

When the audited company doesn't produce or partially produces the documentation within the 30-day time limit, it is liable to a fine equal to 5% of the profits indirectly transferred and the tax authorities are authorized to assess the amount of profit transfer solely on the basis of the information at their disposal.

BURKINA FASO: (3/3)

Finally, for affiliated enterprises that do not meet the transfer pricing documentation requirement threshold (turnover or assets of less than CFAF 3 000 000 000), if the tax authorities have gathered information giving rise to a presumption of a transfer of profits, they may request any information or documents on relations with non-resident enterprises and on the method for determining transaction prices.

TOGO:

The former tax code applicable until the end of 2018 tax year regulated transfer pricing in its article 112 but did not provide for a documentation requirement.

This deficiency has been remedied by the new code applicable as from 1 January 2019, which now regulates transfer pricing in Articles 104 and 105 and the documentary obligation in Articles 106 of the new General Tax Code and 206 of the tax procedure book.

Thus, taxpayers must collect sufficient information and carry out sufficient analyses to ensure that the conditions of their transactions with associated companies comply with the provisions of article 104 of the GTC.

This information must be communicated to the tax authorities, specifying the nature of relationship between the company and one or more companies operated outside Togo, the method of determining the prices of the transactions it carries out with companies, the activity carried out by the companies linked to the transaction, the tax treatment reserved for transactions carried out by the companies it operates outside Togo or by the companies in which it directly or indirectly holds a majority of the capital or voting rights.

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