

Transfer Pricing Country Summary Madagascar

May 2018

Legislation

Existence of Transfer Pricing Laws/Guidelines

Regarding the Malagasy transfer pricing regime, the following primary legislations are relevant:

- The General Tax code: By virtue of Décision n°04 MFB/SG/DGI/DELF of 24 January 2014, relating to valuation for tax purposes with respect to the Arm's length principle and the procedure for implementing specific provisions on Transfer Pricing, the Malagasy Directorate of Taxes (Direction Generale des Impots 'DGI') passed into law the Transfer Pricing Legislation. The Legislation lays down specific rules of application with regards to transactions conducted by Multinationals in Madagascar, in accordance with the OECD Arm's Length Principle as enshrined in Paragraph 2, 3 & 4 of Article 01.01.13 of the General Tax Code -

'when conditions made or imposed in a commercial or financial transactions between associated companies do not conform to the arm's length principle, the benefits that would, in the absence of these conditions, accrue to the enterprise based in Madagascar and taxed at the expense of the company, but by reason of those conditions have not so accrued, may be included in the profits of that enterprise and taxed accordingly'.

Article 01.01.13 vehemently lays down the Arm's Length principle by highlighting that when the Transfer Price cannot be determined, the Tax Administration is empowered to make adjustments in order to determine the tax base. Thus, conformity to the Arm's Length Principle must be observed by Multinationals established and conducting transactions in and out of Madagascar;

- The executive decision no. 4 – MFB/SG/DGI on transfer pricing rules transfer pricing tax audit, pricing methods, and tax haven details.

Definition of Related Party

The new Legislation equally prescribed a threshold for application of the Transfer Pricing regulation by defining the meaning of an 'Associated Enterprise' in Article 3: *'when an enterprise participates directly or indirectly in the management, control and capital of another enterprise, or the same physical or moral person'* direct or indirect participation in the capital of the other entity in effective commercial circumstances is more 25 percent.

The Legislation also applies when a company located in Madagascar performs one or more commercial or financial transactions with a company(s), whether associated or not, but established in a foreign State with a privileged tax regime.

Transfer Pricing Scrutiny

Transfer pricing is scrutinized in every sector in the economy. In the Mining industry, for example, the taxable income is determined in accordance with the provisions of the General Tax Code, as supplemented by the mining code. Per the Mining code, transfer payments for goods supplied or services rendered to mining company affiliates must be justified in relation to the prevailing market prices for similar goods or services.

Generally, in Madagascar, the probability of a tax audit for foreign companies and companies submitted to income tax under corporate regime is high since such companies are under close monitoring. However, tax audits and tax reassessments related to transfer pricing are not yet a standard. Malagasy transfer pricing laws and practices are still recent; field tax auditors within the tax authority are not quite familiar with TP principles or pricing methods.

Transfer Pricing Penalties

The New Transfer Pricing regulation equally prescribed penalties for noncompliance. Article 20.01.58.8 of the General Tax Code relating to Nonresponse/ non-communication and noncompliance by the taxpayer within the aforementioned deadlines (the three-month first-request period or the 30-day additional-information period) on a request by the Tax administration for documentation during Tax audit is fined at AR 5,000,000.

Advance Pricing Agreement (APA)

There are currently no provisions for Advance Pricing Agreement in the Malagasy Tax code.

Documentation And Disclosure Requirements

Tax Return Disclosures

Consolidated tax returns are not permitted; each company must file a separate tax return. Companies are generally required to file an annual tax return, depending on the financial year-end of the company. The tax code requires a declaration of amounts remitted to third parties, and on goods sold, exclusive of taxes. On the other hand, tax agents with at least the rank of a controller in the exercise of their functions are required to control accounting records, as well as all books, papers and related tax documents. The agents may also proceed in a manner prescribed by law to visit or search business premises for verification of the accounting documents, equipment, and stocks. Malagasy Tax agents generally have the right to obtain from public or private natural or legal persons, documents necessary for the establishment of taxes, regardless of the medium. Any information requested in this bid must be provided within 15 days from the date of receipt of the written request.

Level of Documentation

By Virtue of Article 20.06.08 of the CGI, the tax auditor/ administration may require the taxpayer to submit Transfer Pricing Documentation in support of the declared transfer price during a tax audit. The required documentation must provide information specifying:

- The nature of the relationship between the company and one or more businesses carried out with companies or group companies based in or outside Madagascar;
- The Transfer Pricing Method used in determining the transfer price of the industrial, commercial or financial nature of the transaction performed with enterprises, companies or groups enterprises which justifies the transfer price, supported by comparables used, where applicable;
- The transactions performed by the enterprises, companies or groups enterprises;
- The tax treatment of the transactions carried out by companies' resident out of Madagascar or the companies or groups that directly or indirectly hold a majority of the capital or voting rights.

The required documentation is usually explicitly indicated in the request for documentation notice. The type of activities or products involved in the transaction, the countries concerned, the companies or group companies concerned and, where appropriate, the amounts involved must be provided upon the request. This notice also indicates a time frame for submission of the required documentation.

Record Keeping

Accounting and Tax documentation must be prepared using the Malagasy accounting rules (Decree No 87.332 September 17, 1987). The tax documentation and justifying account records must be preserved for at least 10 years, starting 1 January, following the year the accounts and assessment was conducted.

Language for Documentation

The Malagasy General Tax code does not prescribe a precise language for preparing TP documentation. Even though the official national languages are Malagasy, French and English, Art 01.01.20 stipulating the accounting standards for preparing tax documentation stipulates, detailed accounting records must be prepared and registered in French or Malagasy, without erasures.

Small and Medium Sized Enterprises (SMEs)

There are no specific TP provisions for Small and Medium Sized Companies.

Deadline to Prepare Documentation

There are no precise deadlines in preparing TP documentation.

Deadline to Submit Documentation

The time frame for submission of Documentation is two months; and may be extended upon reasoned request by the taxpayer for no more than one month, to total three months. In case the documentation submitted is inadequate, the Tax administration would notify the taxpayer the obligation to complete the required documentation within an extended period of thirty days, while stating the additional documentations needed. This notice also reminds the taxpayer of the consequences for failure to respect instructions on the request notice.

Statute of Limitations

The Tax administration is generally empowered to repair errors found on the tax base, total or partial omissions in tax declarations, inaccurate charges and royalties, or insufficient payment of taxes, unless special provisions apply. For taxes on personal income and corporate profits, the Tax Administration has a right to make adjustments until the end of the third year, following the year in which the tax is due.

Transfer Pricing Methods

By virtue of Article 7 of the Transfer Pricing regulation and in line with the OECD Transfer Pricing Guidelines, the Arm's Length Transfer Price must be determined by one of the following methods:

- The Comparable Uncontrolled Pricing Method, (CUP);
- The Resale Price Method (RPM);
- The Cost Plus Method (C+);
- The Transactional Net Margin Method (TNMM), and;
- The Transactional Profit Split Method (PSM).

The determination of the Transfer Pricing Method in support of the required documentation according to the circumstances of the commercial transaction depends on the taxpayer. The Taxpayer is equally not obliged to use more than one method in deriving the Transfer Price.

Comparables

As aforementioned, the Transfer Pricing Method used in determining the transfer price of the industrial, commercial or financial nature of the transaction performed with enterprises, companies or groups enterprises, that determines the transfer price must be supported by comparables (if applicable) provided by the taxpayer. The tax administration equally has an obligation to substantiate the adjusted tax base by any comparable available to it.

Thus, upon a request for submission of the required tax documentation, the taxpayer is given a period not exceeding three Months to comply. Compliance at this point shifts the burden of proof to the taxpayer. After compliance by the taxpayer and adjustments subsequently made by the tax authority, the taxpayer is notified on the evidence (comparables) used in determining the tax base, and the reason for rejecting/ accepting (as the case may be) the proof/evidence (if any) tendered by the taxpayer and the means of appeal available. At this point the burden of proof has shifted to the Tax Administration to justify the adjustment.

* It is worth noting that documentary justification not tendered to the taxpayer within the allocated time frame is barred from future use as evidence to challenge the basis of an adjustment.