

Transfer Pricing Country Summary

Ivory Coast

July 2018

Legislation

Existence of Transfer Pricing Laws/Guidelines

On 2 November 2016, Ivory Coast officially joined the Inclusive Base Erosion and Profit Shifting (BEPS) Multilateral Convention ("Multilateral Instrument" or "MLI"). This Convention updated the existing network of bilateral tax treaties and aims at reducing opportunities for tax avoidance by multilateral enterprises. It implements agreed minimum standards to counter treaty abuse and would improve dispute resolution mechanisms, while providing flexibility to accommodate specific tax treaty policies.

However, Transfer pricing rules were introduced in Ivory Coast by virtue of Article 38 CGI (General Tax code) and enhanced by the Finance Act of 2006 (transfer pricing). It is further strengthened by the taxpayer's obligation of communication with the tax authorities, laid down by the Ivorian TP regulation, as enshrined in Article 33 (Art 50 bis) of the Livre des Procédures Fiscales and the new Article 36 of the CGI.

By virtue of the procedure, during an audit, if the tax administration gathers evidence suggesting an enterprise has made an indirect transfer of profits within the meaning of Article 38 CGI, it may request information and documentation specifying the nature of the relationship between the companies, the method in determining the transfer price of the transaction, the elements justifying the transaction and, where appropriate, comparables used, the business activities of the non-resident related enterprise and its relationship to the operations concerned, and the tax treatment of the foreign operations. If the taxpayer's response to the request for justification/clarification is deemed inadequate, the tax administration may use any information in its possession to challenge the declaration, thus, adjusting the transfer price.

Definition of Related Party

The TP regulation applies to all international transactions conducted by resident companies. By virtue of the new Section 36 of the CGI, Companies that control other companies located outside Ivory Coast are required to provide to the Tax Administration, following the end of each fiscal year, an annual declaration with a country by country breakdown of group profits and various economic aggregates and tax accounts. This rule applies to related parties which fulfill the following conditions:

- achieved a consolidated pre-tax turnover equal to or greater than 491,967,750,000 frs CFA in respect of the tax year subject to declaration;

- be subjected to the obligation to prepare financial statements pursuant to Articles 74 et seq. of the Uniform Act of OHADA on Accounting Law and Financial Reporting;
- controlled entities established outside Ivory Coast; and,
- Entities not under the control of a company located in Ivory Coast, but submitted to filing of a declaration, or in a country linked to Ivory Coast by an agreement providing for the exchange of tax information, for purposes and subject to a similar declarative obligation.

Transfer Pricing Scrutiny

Transfer pricing is strongly scrutinized in Ivory Coast, typically in the natural resources sector. Cocoa and coffee production constituting the pillar for employment (60% of the population) has witnessed increased State involvement in a bid to fight tax evasion. The tax base is now widened; every quarter, taxpayers are required to disclose documentations on every sale and purchase of goods; the transfer prices as well as identities of their suppliers.

Transfer Pricing Penalties

Per the amended 2018 CGI, TP documentation must be declared within 12 months after the end of each fiscal year. Such documentation must also be transmitted electronically. In case of discrepancy between the electronic version and the paper version, the latter version is valid.

Failure to declare within the legal timeframes for declaration is punishable by a fine of 5,000,000 francs CFA, without prejudice, to the application of other sanctions provided by law. Per the 2006 tax procedure code, other penalties applicable for non-compliance of tax provisions include:

- 0.75% interest rate per month for late payment of taxes;
- An increase by 10% in case of delay or failure to report;
- 40% in case of bad faith of the taxpayer and;
- 80% in case of fraud; abuse of rights, or failure to report within 30 days of a second set notice;
- Tax fraud may also trigger an imprisonment for a maximum of 5 years. Approximately 800 criminal complaints for tax evasion are filed each year in the criminal courts;
- And a ban, (also applicable to corporates) from entering the State for a period of not less than 6 months.

Advance Pricing Agreement (APA)

There is currently no regulation in the Ivorian General Tax code relating to Advanced Pricing Agreement.

Safe Harbor

In order to fight against Thin Cap practices, the tax Administration proposes strengthening the conditions for deductibility of interest by Ivorian companies towards related parties established outside Ivory Coast.

Paragraph 6 of article 18 A CGI; interest paid to companies directly or indirectly related to the resident company, as compensation for the sums they make available to the resident company, in addition to their share of capital, are limited as follows:

- The total amount left at the disposal of the company cannot exceed the amount of the capital of the latter. This limit is not applicable to shareholders or shareholders of holding companies, as referred to in Article 23 of the Code;
- interest paid on abovementioned sums may not exceed 30% of the company's profit before tax, interest, and endowments on depreciation for fixed assets;
- the rate of interest paid may not exceed the average rate at BCEAO (2.5%) for the current year, plus 2 points;
- Repayment of the sums must take place within 5 years.

Documentation and Disclosure Requirements

Tax Return Disclosure

Payment of CIT is generally made in 3 instalments, April, June, and September following the end of the fiscal year, depending on the sector of activity and taxpayer's office:

Medium and large-size companies tax office:

- 10 April, 10 June, and 10 September for industrial, oil and gas, and mining companies;
- 15 April, 15 June, and 15 September for commercial companies;
- 20 April, 20 June, and 20 September for service providers.

Companies with other tax offices:

15 April, 15 June, and 15 September.

The disclosure documentation generally includes, the company's accounting data; Sale and purchases invoices; and, electronic data in computers must be made available to the tax auditor on request. The Act further requires that for each country or territory in which a group company has entities, Transfer Pricing declaration must include:

- The realized overall turnover resulting from intragroup transactions;
- turnover resulting from transactions with independent companies;
- total turnover achieved in Ivory Coast; earnings before income taxes;
- tax on profits due in Ivory Coast and the amount of profit tax actually paid that year;

- the total amount of retained earnings at the end of the year;
- the cumulative share capital of the entities established in Ivory Coast;
- the total number of staff employed in Ivory Coast;
- identification of non-cash tangible assets and their equivalent cash, held or used in Ivory Coast; and,
- The location, identity and main activities of the entities of the group, affected by the aggregated data reported.

The declaration is to be produced on an administrative form designed for this purpose, within 12 months after the end of each fiscal year.

Level of Documentation

The taxpayer's communication with the tax authorities plays a key role in compliance. Justification for every intercompany transaction must be presented on request. Upon a request for justification, the taxpayer must state:

- The nature of the relationship between the resident and non-resident enterprises involved in the transaction;
- The methodology used in determining the transfer price in the commercial, industrial, and financial transaction with the non-resident enterprise and other elements to substantiate the use of the methods and where possible, the comparables used;
- The activities performed by the non-resident enterprise; its connection with the company and targeted transaction; and,
- The foreign fiscal treatment of the activities performed by the non-resident enterprises related to the company resident in Ivory Coast.

The request for justification by the tax administration is usually specific on a targeted transaction or product transferred, the foreign countries involved, the target company audited and, where applicable, the amounts involved. Where the taxpayer inadequately responds to the inquiry, the tax administration may, with the information available at its disposal, proceed in adjusting the transfer price at the expense of the taxpayer.

Record Keeping

There is no specific rule in the regulation relating to the preservation of TP documentation.

Language for Documentation

There is also no specific requirement in the regulation in regards to the language of drafting TP documentation. It is advisable to prepare the required documentation in the French language, since it is the official language in Ivory Coast.

Small and Medium Sized Enterprises (SMEs)

No special TP regulations exist in respect to Small and Medium sized Enterprises.

Deadline to Prepare Documentation

There is no specified deadline to prepare transfer pricing documentation. This is made upon request by the tax authorities; nevertheless, entities need to have their documentation prepared in case of an audit.

Deadline to Submit Documentation

Per the ANNEX to FISCAL law N° 2017-870 of 27 December 2017 for Tax year 2018 as modified by Ordinance n° 2018-145 of 14 February 2018, a 6 months deadline was proposed for filing TP documentation, with an extension of 6 more months if applicable.

Note: the fiscal year in Ivory Coast runs from 1 January to 31 December. Payments for taxes are due no later than 20 April following closure of the accounting period, via a form prescribed by the Administration.

Statute Of Limitations

There is no statute of limitation in respect to TP cases. However, as guidance, the statute of limitation for general tax adjustment is 3 years if all the disclosure/ tax documentation requirements have been met, and 10 years in all other cases.

Transfer Pricing Methods

Article 33 (Art 50 bis) of the Livre des Procédures Fiscales does not stipulate a specific transfer pricing methodology in determining the arm's length transfer price. Per the documentation requirement, the decision to provide a methodology lies on the taxpayer. No best method rule is equally supported by the code. Thus, it is up to the taxpayer to resort to one of the OECD, or UN transfer pricing methods or any other method to justify its transfer price. The Tax Administration in Ivory Coast follows the OECD transfer pricing methods.

Comparables

Further, and together with the transfer pricing methodology used, the taxpayer may justify its transfer price by the use of comparables. Otherwise, the tax authorities are empowered to adjust the price to reflect the arm's length price by any means or information available to it.