Transfer Pricing Country Summary
Burkina Faso

June 25, 2018

Legislation

Existence of Transfer Pricing Laws/Guidelines

After 2010, some provisions regarding transfer pricing were inserted in the Corporate Income Tax Act (CGI) and in the Tax Procedures Book in Burkina Faso.

By virtue of Article 22CGI and 82 CGI, in determining the tax base from industrial and commercial transactions, profits indirectly transferred through an increase or decrease in the transfer price or by any other means by resident companies, dependent or controlled by non-resident company(s) are included in the accounts and taxed accordingly. In the absence of a particular means/methodology to derive the actual price, the taxable income is determined by a comparison of the income derived by independent enterprises carrying out similar transactions under similar operating circumstances in the open market.

Article 4 of the Tax Procedure Book further introduced an obligation for taxpayers to provide documentation to substantiate their transactions with associated companies, if during an audit or tax investigation, the tax authority concludes that the taxpayer made an indirect transfer of profit.

In a bid to enforce its Transfer Pricing rules, Burkina Faso is a member of the Global Forum on Transparency and Exchange of Information for Tax Purposes and hence participates in the peer review process, which encourages all countries to adopt an effective exchange of information in tax matters. The latest review was published in 2016 and rated Burkina Faso overall "largely compliant."

The 2017 budget law on its part contained new provisions to combat fraud and tax evasion, in a bid to enhance revenue mobilization, including:

(i) Steps to combat transfer pricing, in particular the lowering of selling prices from mining products or raw materials by using stock market quotations; and limits on the deduction of overhead costs;
(ii) the inclusion of additional documentation for VAT reimbursement credits, with the aim of ensuring that the transactions actually have taken place;
(iii) modification of the third-party notification procedures, in order to compel financial structures and any third party to comply with the instructions of the DGI;
(iv) establishment of a legal requirement that a unique financial identification number (IFU) must be assigned, and making it mandatory for banks and financial institutions to include the IFU identification documents for commercial and professional account holders; and,

(v) Elimination of exemptions from registration fees for deeds and transfers granted to semi-public companies, in order to ensure equal treatment with other commercial companies.

Additional measures are planned for the 2018 budget law, drawing on TA provided by the IMF and other international partners.

Definition of Related Party

Per the aforementioned regulation, the criteria for determining the relationship between a resident and non-resident enterprise stems from dependence and control of the resident company by the foreign entity, in line with the OECD guidelines. The code however does not quantify the level of dependence and control, but leaves it to be determined by the tax authorities during audits, principally on a case-by-case basis.

Transfer Pricing Scrutiny

TP scrutiny is common in the mining sector. Through a report made January 30, 2013, the Directorate General of Taxes in Burkina Faso outlined the major concerns on tax management and collection for the tax administration. On transfer Pricing, the tax authorities solicited technical help and partnership (from France) to curb tax avoidance and evasion. Fiscal information exchange with foreign countries was noted very poor, whereas huge volumes of mineral exploitation and other transactions are conducted with foreign multinational enterprises and their subsidiaries based in Burkina Faso. In this bid, the tax authority solicits technical assistance in the drafting of legislation and strategies to fight against tax avoidance, especially through transfer pricing. Thus, it's membership at the Global Forum on Transparency and Exchange of Information for Tax Purposes.

Transfer Pricing Penalties

There are no specific Transfer Pricing penalties mentioned in the General Tax Code of Burkina Faso. However, general penalties on tax non-compliance may be charged by virtue of Article 22 CGI, which constitute:

- A fine of up to 100,000 FCFA for the destruction of tax documentation and accounting records before the 4-years revision term;

- A 50,000FCFA fine on refusal to disclose the accounting books; and other documents used as basis in determining the income tax within 10days after a formal request by the tax inspectors. This may be increased by 100% in case of recidivism (Article 148 of CGI); and,
- Any violation or non-compliance of the provision to submit documents substantiating the tax return is punishable with penalties from 100,000 FCFA per month of the delay to 500,000FCFA per year depending on the situation (Article 17 of CGI).

Advance Pricing Agreement (APA)

There is currently no regulation for Advanced Pricing Agreement.

Documentation and Disclosure Requirements

Tax Return Disclosures

There is no specific Transfer pricing documentation or declaration requirements in the code.

However, by virtue of Art 16 CGI, taxpayers whose operations amounts to an annual turnover equal to or more than 50 million FCFA (placed under real profits) are required to report to the Tax authorities the total taxable income for the year or the previous year.

Companies operating in two or more States (Burkina Faso and abroad), whose headquarter is located outside Burkina Faso must report to the Directorate of Taxes of the State, stating its annual income, and its overall operations; usually three months after its fiscal year.

Where the accounting records of related parties do not accurately distribute the profit or loss incurred during the fiscal year, such profit or loss if applicable must be distributed in a pro-rata bases, in proportion to the overall turnover achieved in each state or, by an agreement with the Tax Office, or by any other process for an equitable distribution.

And, by virtue of Article 19 CGI, upon request by the tax authority during audits, all accounting records, inventories, copies of letters, profits and loss statements and invoices from expenses incurred must be presented to justify the accuracy of the results shown in the return.

Tax Return Documentation

In general, Art 17 CGI stipulates enterprises subject to the General accounting code (OHADA Accounting System) of Burkina Faso are required to include the following documents in their tax return documentation for the financial year:

- The company' balance sheet;
- A tabulation of sales, purchases, and balances;
- Detailed fixed assets and depreciation - state;
- A statement of provisions in the balance sheet with precise indication of their purpose;
- A table determining the taxable income; incomes available and assigned to the company;
- A detailed statement of overhead; salaries, commissions, fees, etc. and;
- And for industrial companies, the list of major clients including the following information: identity, full address, and annual purchases. Every industrial, commercial or agricultural company headquartered in Burkina Faso must also keep its accounting documents at the Company's head quarter;
- A declaration of the related enterprises and the extent of the application of the arm's length principle to their domestic transactions and transactions involving a tax haven/non-cooperative jurisdiction.

However, these rules do not apply to foreign enterprises having a contractual relationship with private, and state owned corporations for a limited period.

Level of Documentation

The level of documentation tendered during tax audits is generally strict and thus, non-compliance may trigger penalties:

Non-declaration of the real profits by enterprises are levied a fine of 25% of the amount due and 50% in case of a repeat non-declaration. A fine is also applicable to people who deliberately do not file the required documentation to substantiate the taxes declared.

Record Keeping

In general, tax documentation and accounting records must be preserved for a minimum period of four years (Article 148 CGI). Non-compliance of this time frame may trigger a fine of up to 100, 000FCFA.

Language for Documentation

There is no specific stipulation for a language to be used in drafting the TP documentation. However, tax and accounting documentation per Art 19 (Para 2) must be drafted in French.

Small and Medium Sized Enterprises (SMEs)

There is no legislation in the code on Small and Medium sized enterprises in relation to Transfer Pricing.

Deadline to Prepare Documentation

By virtue of Article 16 of the code, tax declaration are filed annually, within three months following close of the company's financial year.

Statute Of Limitations

There is currently no statute of limitation for transfer pricing cases.

However, Art. 402 CGI states that, the tax administration in relation to direct taxes, has a period, expiring on the 31 of December of the third year following the year on which the tax is due to audit the accounts of a taxpayer.

Transfer Pricing Methods

There is no clear-cut or standard TP methodology prescribed in the code.

In most Sub-Saharan French African (SSFA), transfer-pricing adjustments are at the discretion of the tax authorities. The lack of a precise methodology to determine the transfer price empowers the tax authorities to make adjustments depending on the size of their foot as guided by the economic reality, which may sometimes be disputed. In this regard, a taxpayer will fault no one by using one of the OECD Transfer Pricing methodologies in deriving and or substantiating its transfer price during audit.

Comparables

The use of comparables in determining the transfer price is at the discretion of the tax authority. Art 22 CGI simply empowers the tax authorities to reassess the tax base on indirect transfer of goods and services between related parties. In the absence of a defined TP methodology, the transfer price is determined by a comparison of the income derived by independent enterprises carrying out similar transactions under similar operating circumstances.