

Transfer Pricing Country Summary Senegal

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Legislation

Existence of Transfer Pricing Laws/Guidelines

Law No 2012-31 of 31 December 2012 of 'Code Générale des Impôts' (CGI - General Tax Code) modified the Transfer pricing regulation of Senegal. The new Regulation took effect January 1, 2013.

By virtue of Article 17 CGI, where in determining the taxable profit of an entity derived through its dependence or the ownership of its capital by another entity situated out of Senegal, profits indirectly transferred, either by raising or reducing the transfer price, by thin capitalization or any other means will be added to the resident entity and taxed accordingly. This provision also applies to entities whose capital is controlled by a group entity resident out of Senegal. Such requirements apply only to local entities, which realize an annual net turnover equal to 5 Billion FCFA as well as those related to such companies.

Definition of Related Party

Application of the Transfer pricing rules is based on dependency in capital, and control by another entity or where both entities are being controlled by a group entity.

Dependency in capital and control is further defined as a relationship between two entities connected by direct or indirect majority of shareholding and or one of the companies has voting rights upon the other.

Transfer Pricing Scrutiny

The new provision has considerably strengthened the control of transfer pricing. It enables tax authorities to ensure, in particular, compliance of transfer pricing based on the arm's length principle. It has enhanced determination of the role of the Senegalese company in the transaction process (functional analysis) and the relevance of the method chosen in determining the transfer price.

Transfer Pricing Penalties

There are no specific Transfer pricing penalties outlined in the code.

But, in cases when transfer pricing misstatements relates to tax avoidance, the penalties enshrine in the tax code are applicable; thus:

- Late payment of tax is charged a 5% interest on the amount due, plus an additional 0.5% duty per month of delay. A late payment is due when the taxpayer's regularization is spontaneous.

On the other hand, if such payment is triggered by a tax audit from the authority after the deadline is due, the following penalties apply:

- Where there is no specific penalty for the tax crime committed, the taxpayer is levied a fine of 200,000FCFA; and a fine of 500,000FCFA if a judicial notice was served;
- Where the fine stems from insufficient documentation, it may not exceed 1,000,000FCA after a judicial notification;
- Failure to keep accounting records, opposition to a tax audit, fraud, the existence of a private contract fixing prices and any proof of express commission of a tax crime carries a fine of 5,000,000FCFA.

The above fine is doubled where committed by a recurring offender.

Further penalties in the tax code include:

- Fined at 25% for other taxes (CIT, business license tax, taxes on real estate, registration duties and company car tax);
- Fined at 50% for failure to pay any WHT and concealment of prices or a section of the contract on the price of a transaction during registration;
- Fined at 100% when the taxable transaction by a tax recidivist was not declared at the tax office;
- And a fine of 5,000,000FCFA to 25, 000, 000FCFA and from 2 years to 5 years for Fiscal Fraud.

Advance Pricing Agreement (APA)

Advance Pricing Agreements are generally available. There is a possibility for a unilateral prior agreement (between the taxpayer and the Senegalese Tax administration) or a prior bilateral agreement (between the tax authorities of the two countries of the companies involved) on transfer pricing.

Safe Harbor Rules

Senegal does not have specific thin capitalization rules; however, limits are imposed on interest paid to partners on funds provided to a company. In Senegal, the net assets of a company must be equal to at least half of the share capital of the company. In case the net assets are lower than this threshold, the situation should be regularized by any lawful means within a period of two years following the financial year it appears. Otherwise, any third party can request the closing of the entity before the courts. Deductibility of interest paid to a shareholder upon a loan or an advance in general is limited to a maximum rate calculated on the Central Bank legal interest rate (currently fixed at 3.5%) plus 3 points, calculated on the amount of the share capital. Portions exceeding this limit are not deductible for CIT purpose.

Documentation And Disclosure Requirements

Tax Return Disclosures

Taxpayers resident in Senegal are required to preserve, at the reach of the Tax administration, documentations justifying the transfer price of transactions carried out with non-resident associated enterprises.

Taxpayers are required to declare their taxes at residence, on or before April 30, after the close of the preceding fiscal year being December 31. A tax return consolidation is necessary when a company established in Senegal controls other companies. Thus, the taxpayers are required to comply with the tax provisions regulating their business activity and the specific accounting procedure, otherwise, the tax documentation must be prepared according to the OHADA (Organisation for the Harmonization of Business Laws in Africa) accounting standards.

In compliance therefore, the accounting books, registers, declarations, receipts, contracts, documents and justifying documents whose preservation is mandatory must be presented to the tax administrator. Upon request by the tax administration, the company must present its general tax documentation, while respecting a deadline of 20 days to this effect; except otherwise extended to 45 days at the request of the taxpayer.

Level of Documentation

The Senegalese Transfer pricing documentation comprises:

- A general information on the associated group enterprise; a description of the transaction, including the changes that took place during the business course;
- A general description of the legal and operational structure of the associated group entity engaged in the controlled transaction;
- A general description of the functions performed, risks assumed, and assets used by the associated enterprises that affects the controlled/audited enterprise;
- A list of intellectual property used; trademarks, trade names, licenses, and knowhow by the control enterprise; and,
- A description of the general Transfer pricing policy of the group.

Specific information concerning the controlled enterprise must comprise:

- A description of its commercial activity;
- A description of the transaction carried out with other associated enterprises; the capital employed and the expected profits;
- Cost sharing arrangements and a copy of any prior agreements on the transfer price, the criteria used in determining the transfer price, which affected the result of the controlled entity;

- The TP Methods used; in regards to the industrial, commercial and financial nature of the transaction carried out with the related party, companies and group entities involved; while justifying its use; and,
- An outlined comparability analysis pertinent to the controlled enterprise if applicable.

Where during the tax audit the tax administration discovers some intercompany transactions were carried out, she may request for further documentation comprising:

- A description of the nature of the relationship between the controlled enterprise and other non-resident entities that gave rise to the application of the Transfer Pricing provision;
- The TP Methods used in determining the transfer price; in regard to the industrial, commercial and financial nature of the intercompany transaction; and the companies and group entities involved;
- A general description of the functions performed and the risks assumed by the associated enterprises;
- And, the tax treatment of such transactions carried out by the non-resident enterprises and or entities that own the capital and voting power in the controlled entity.

Considering the fact that the level of documentation is extremely stringent, suppliers are required to keep a register indicating the names and address of purchasers, the nature and quantity of raw materials and the finished goods transferred. Such register must be presented during a tax audit. Where the transaction is carried out with an associated enterprise resident in a tax haven or non-cooperative State (in terms of tax information), every beneficiary of the transaction must also provide complementary documentation such as balance sheets.

Record Keeping

Tax records, registers, declarations, receipts, bills, pricing contracts, and accounting documents must be preserved for at least 10 years. The 10-year record keeping period also applies to tax information stored in electronic form. The taxpayer is required to provide access to this electronic storage device to the tax administration in order to audit such electronic form, if required. As a rule, the justifying documentation must be kept within the territorial boundaries of Senegal.

Language for Documentation

The Language of documentation for Transfer pricing purposes in Senegal is the French language.

Small and Medium Sized Enterprises (SMEs)

There is no special provision for small and medium sized companies in the code.

Deadline to Prepare Documentation

There is no statutory deadline to prepare Transfer pricing documentation. Documentation needs to be prepared upon request; however, entities must always be prepared to present the necessary documentation to justify that transactions between related entities are made according to the arm's length principle.

Deadline to Submit Documentation

Generally, Transfer pricing documentation must be made available to the tax administration on the date scheduled for verification and audit of the controlled entity. Upon request by the tax administration therefore, the outlined documents must be produced within a deadline of 20 days.

Statute Of Limitations

In Senegal, there is an applicable statute of limitation of 4 years from the date of commission of a tax crime, to challenge the tax administration and or punish the taxpayer. This 4 years date limit applies to erroneous tax declarations, omissions and fictive declarations. However, the prescriptive period ends in the event of a notification by the tax authorities for a correction and or acknowledgement by the taxpayer of the crime. The taxpayer also has a period of one year beyond the four years to redress any erroneous declaration made.

Transfer Pricing Methods

The Senegalese TP regulation is largely inspired by the OECD guidelines. However, the determination of the arm's length nature of a transaction is left to the appreciation of the controlled enterprise. In this regard, no specific Transfer pricing method is favoured; hence the wide acceptance of the OECD TP methods by the CGI. The taxpayer therefore has the liberty to choose a TP method that best substantiates her transfer price and transfer pricing policy.

Thus, any OECD transfer pricing method will be accepted by the tax administration, suffice it produces acceptable results justifying the arm's length price; suite, the CUP, RPM, C+, TNMM and PSM may be used in determining the Transfer Price.

Comparables

Per the CGI Transfer pricing regulations, the search and provision of comparables to substantiate the transfer price is on the taxpayer/controlled entity. Where the Transfer pricing method used requires the taxpayer or controlled entity must provide an outlined comparability analyses, the Tax administration

may also determine the transfer price based on information at her disposal and or by comparing the transaction to those of independent entities in the free market.