

Transfer Pricing Country Summary Mali

August 19 2018

Legislation

Existence of Transfer Pricing Laws/Guidelines

Mali Parliament's adoption of the Country' budget for 2017 and the Finance Act for 2017 introduced its Transfer pricing rules.

Previously, Art 81 CGI (General Tax code 2006) regulated related party transactions; "in determining the taxable income from industrial and commercial transactions derived by companies dependent or controlled by an enterprise(s) situated outside a member State of the West African Economic and Monetary Union (UEMOA), profits indirectly transferred to the latter, either by an increase or decrease of the purchase or selling price, or by any other means, shall be added to the tax base'.

According to the code, the Malian tax Administrator may adjust the tax base in order to determine the arm's length transfer price where there exist a relationship of dependency and or control between the resident entity and its foreign party. Adjustments made on profits indirectly transferred are based on the economic realities of the transaction. The tax directorate in the exercise of its duty may fully or partially repair omissions in the tax base or recover any tax, duties, or fees due as well as fix errors impairing determination of the transfer price.

Art 81 covers a broad scope of transactions (industrial and commercial). It also empowers the tax authorities to adjust on "any other transaction" that artificially reduces the taxable profits. On the other hand, the level of dependency and control required for tax adjustment is not defined. - This gives room for appreciation of a transaction and any subsequent adjustment of the transfer price at the discretion of the tax inspector. On this basis, taxpayers are therefore required to comply with competition rules; and produce sufficient information/documentation on the nature of the transaction, as well as the economic reality of the prices to substantiate the transfer price.

Definition of Related Party

Related parties are defined to include where one party has direct or indirect capital ownership of 50% or more, or has effective decision-making power in the other, or where multiple parties are controlled by a third party meeting the same conditions.

Transfer Pricing Scrutiny

The transfer pricing rules apply, regardless of two parties being related for transactions undertaken with a non-resident party located in a low-tax jurisdiction (lower than Mali's rate by 10% or more) or a non-cooperative jurisdiction (lack of transparency or exchange of information with Mali)

TP scrutiny in Mali is intense in the Natural resources sector. In its quest for technical assistance in developing fiscal laws and general tax administration from the IMF (IMF report August 2013), Malian Tax authorities noted that in spite the adjustments and changes made in the Mining Laws of 1991, 1999 and 2012, the regulations did not cover every loophole in the fiscal system. For example, there are no legislations in the Mining code in respect to Transfer Pricing (tax avoidance & evasion), and exchange of information in this domain. As is, and in response to the IMF report, it is certain that well defined regulations will be drafted in the near future, a trend pursued by most sub-Saharan French African countries.

Transfer Pricing Penalties

Failure to meet the new requirements will result in a penalty equal to 5% of profits deemed transferred abroad, with a minimum penalty of 5 million CFA franc

Advance Pricing Agreement (APA)

Taxpayers are allowed to request APAs from the tax authority

Safe Harbor

Per the CGI, without any fixed ratio, interests, bonds, loans, deposits and guarantees, assignment or licensing fees for operating licenses, patents, trademarks, processes or forms of manufacturing and other similar rights or payments for services provided for by natural or legal entities/persons residing or established outside the West African Economic and Monetary Union are tax deductible expenses if the debtor proves these expenditures represent actual operations and are not exaggerated.

Documentation And Disclosure Requirements

Tax Return Disclosure

Taxpayers under audit are required to disclose the following information within one month upon request by the tax authorities, with possible extension up to three months:

- The nature of relationships with non-resident companies;
- A description of activities with non-resident companies;
- The transfer pricing method used determining prices for transactions with non-resident companies;
- The foreign tax treatment of operations undertaken with non-resident dependent companies.

Level of Documentation

Transfer pricing documentation requirements include:

- Group-level documentation, including a general description of legal structure, business activity, functions performed, and risks assumed, intangible assets, and the transfer pricing policy; and
- Taxpayer-specific documentation, including details of business activities, related-party transactions, the transfer pricing methods used, the comparable analysis, and a list of cost-sharing agreements and advance pricing agreements (APAs) entered into.

Record Keeping

Accounting documentation and records determining the profits and losses incurred during the fiscal year must be safely preserved. An employee accountant keeping the accounting records must possess at least a Professional bookkeeping certificate or an equivalent, recognized by the Minister of Education. As a rule, every accounting record saved in an electronic form must meet the legal requirements of security, integrity and evidence of what they purport to prove. The accounting books, supporting documentation, purchase invoices and related computerized information must be kept for 10 years – (after the year of purchases, sales, supplies and other recorded benefits). And upon request by the tax administration, such documentation must be submitted otherwise penalties may ensue.

Language for Documentation

There are no regulations in the code requiring a specific language for presenting Tax documentation. Taxpayers are obliged to sign the tax return forms, at the times and places indicated, together with a declaration that they are bound by the laws and tax regulations. The tax statement must be prepared in accordance with the model provided for by the tax administration and signed by the declarant or his representative and accompanied by the required documentary justifications.

Small and Medium Sized Enterprises (SMEs)

There are currently no regulations on Transfer Pricing in relation to Small and Medium sized enterprises.

Deadline to Prepare Documentation

There is no statutory deadline for the preparation of documentation. Preparation and submission of TP documentation is made upon request.

General tax return documentation must meet the regulatory requirements. The deadline for taxpayers to respond to inquiries, and justification of the tax base is usually 20 days upon receipt of a notice to this effect. If a taxpayer provides insufficient tax documentations, the tax administration may add 10 more days for completion of the required documentation. After this second notice, any inadequate response to

the request is considered a failure to comply within the specified statutory time, which may trigger penalties. - It should be noted that the fiscal year in Mali starts from January 1st to December 31st.

Statute Of Limitations

The Malian Tax code does not have a statute of limitation for Transfer Pricing.

However, by virtue of the new Article 584 CGI, the power to recover taxes, in respect to direct and similar taxes ends on the third year following that of which the tax was due. This regulation allows for tax collection/redress of the tax base and further grants the administration an opportunity to rectify any omissions or irregularities in the tax base. The tax administration may thus repair within the statutory time limit, not only mistakes committed by taxpayers but also the errors made during tax audits. In this bid, it may seek the advice of independent tax experts in order to determine the tax base.

Transfer Pricing Methods

The Malian tax code does not have a prescribed Transfer Pricing methodology.

Determination of profits indirectly transferred; adjustment of the transfer price thereof, and the provision of comparables to substantiate the adjustment ultimately depend on the tax inspector. Every taxpayer is therefore obliged to be tax compliant; respecting competition rules in deriving the transfer price; and provide sufficiently precise information on the nature of the transaction, as well as its economic reality and consideration.

Comparables

The taxpayer is not obliged (Art 81 CGI) to provide comparables to substantiate its transfer price. As aforementioned, adjustments of the tax base to reflect the economic reality of a transaction is the responsibility of the tax administration. In order to substantiate the adjusted tax base, the Tax authority may then rely on comparables from similar enterprises operating in similar transactions under similar circumstances in the open market.