

Transfer Pricing Country Summary

Morocco

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1. Introduction	3
2. Laws & Regulations	3
a) References to OECD/EU/Local Rules	3
b) Definition of Related Party	5
c) Nature of Transfer Pricing Documentation	5
d) Tax Havens & Blacklists	5
e) Advance Pricing Agreement (APA)	5
f) Audit Practice	5
3. Transfer Pricing Documentation	5
a) Level of Documentation	5
b) Industry Analysis	6
c) Company Analysis	6
d) Functional Analysis	6
e) Choice of Transfer Pricing Method	6
f) Economic Analysis – Benchmark Study	7
g) Inter-company (IC) Legal Agreement	7
h) Production Process for TP Relevant Returns, Documents, Forms and Financials	7
i) Mandatory Language	9
j) Notification Requirement	9
k) Record Keeping	9
l) Penalties and Interest Charges	9

1. Introduction

Morocco is not a member of the OECD but participates in the OECD BEPS inclusive framework. It appears that Morocco is currently in the process of implementing the BEPS Action 13 documentation requirements.

2. Laws & Regulations

a) References to OECD/EU/Local Rules

In Morocco, the General Tax Code (Code Général des Impôts) is the primary legislation for Transfer Pricing, particularly Article 213(II) and 214(III) of the code. The Act stipulates that all intercompany transactions must be conducted at arm's length, and the necessity and requirement of maintaining communication and information exchange.

The Transfer pricing provisions in code empowers the tax administration to reassess/re-correct a Moroccan taxpayer' transaction with her non-resident connected party, where the purchase and/or sale price between the two entities are either raised or reduced. The tax administration thus determines the taxable income by comparing the taxable transaction(s) with those of similar enterprises operating in similar conditions or on the basis of information to its knowledge.

Article 213(II) refers to businesses established in Morocco that have direct or indirect dependency with businesses situated outside of Morocco. Per the Act, a subsidiary is dependent on its parent company directly or indirectly where:

- In legal terms, by virtue of the number of shares and voting power held by the parent company, or where, either directly or through a third party intermediary;
- In economic terms, there is a close link governing the business activities carried out; constituting dependency, in terms of the supply of raw materials or spare parts, or the use of a brand or patents, held by the parent company;
- There is financial dependency arising through reciprocal shareholdings; and
- A de facto situation resulting from a monopoly or quasi-monopoly position or common interest, especially where the management personnel of one company has an influence on the management of other companies, through their shareholdings in those other companies.

In the abovementioned cases, the tax authorities can therefore adjust the profits that have been indirectly transferred to a dependent enterprise. Adjustments are made through the following methods:

- Comparison with the profits of similar independent enterprises;
- Direct assessment, based on the information available to the Tax Administration.

For operations involving foreign companies, the Tax Administration can request from local entities a complete documentation and information related to article 214-III of the Code. These documents usually comprises, the:

- Nature of their relationship with the foreign companies;
- Nature of the services provided or the products sold;
- Method for determining the prices of the transactions carried out between the Moroccan and foreign companies; and
- The foreign company's tax regime and tax rates.

Furthermore, the recent Finance Bill of 2015 has also strengthened the Moroccan TP regulations, by virtue of Article 234 bis of CGI, which introduced Advanced Transfer pricing Agreement and its procedure in the Moroccan tax Law.

A secondary legislation in the form of the Circular Note No. 717, published 24 May, 2011 by the Directorate General of Taxes is also relevant to transfer pricing. This Legislation provides that indirect transfers of profits between dependent companies can result from various practices, including:

- Increasing the purchase price for goods and services imported or acquired locally;
- Lowering selling prices for goods and services exported or sold locally;
- Reducing or increasing interest rates;
- Charging excessive prices for royalties and other remuneration;
- Charging excessive or fictitious management fees.

The Finance Law 2019 and the Finance Law 2020 transposed the TP documentary obligations (Master File and Local File) and the CbCR obligations, respectively, into internal tax law (both of which correspond to Action 13 requirements under the BEPS Project). Then, the Finance Law 2021 provided some specification about the TP documentation requirements.

In this regard, tax doctrine (through Moroccan Tax Authority ("MTA") Circular Notes 729, 730 and 731) clearly translates the kingdom's desire to harmonize the national tax system with international norms and standards.

The CbC reporting requirements under BEPS Action 13 form are one of the four BEPS minimum standards. Each of these minimum standards is subject to peer review in order to ensure timely and accurate implementation. All members of the Inclusive Framework on BEPS, including Morocco, commit to implementing the Action 13 minimum standard on CbC reporting and to participating in the peer review.

b) Definition of Related Party

No quantitative threshold is applicable. The Act applies to resident entities that have direct or indirect dependency with businesses situated outside of Morocco; for instance, by virtue of the number of shares and voting rights held by the parent company or 3rd party, and where there is financial and management dependency in the shareholding.

c) Nature of Transfer Pricing Documentation

Morocco's transfer pricing regulatory framework is largely based on the OECD Guidelines. In addition, efforts were made to participate in the OECD BEPS inclusive framework. Considering this, the OECD Guidelines should be authoritative and persuasive in a court of law.

d) Tax Havens & Blacklists

Panama does not have a tax haven or 'black list' for non-cooperative jurisdictions.

e) Advance Pricing Agreement (APA)

Starting 2015, under Article 234 bis of the CGI, Moroccan companies with direct or indirect links with foreign companies can request the tax administration to conclude a preliminary advanced transfer pricing agreement on the method of pricing of intra-group transactions for a period not exceeding four years. The article reiterates that the tax administration cannot challenge a transfer pricing method that is subject to prior agreement under the above provisions, except where "the agreement is declared null and void during a tax audit; especially where a concealment of information, a misrepresentation, fraudulent, or simply non-compliance with the agreed method is discovered".

f) Audit Practice

The Moroccan tax authorities specifically target the financial sector, where loss-making companies are heavily scrutinized. Hence, the implementation of a somewhat Safe harbor rules, which limits foreign direct investments in the financial sector to rates prescribed by the Central Bank of Morocco, Bank Al-Maghrib.

3. Transfer Pricing Documentation

a) Level of Documentation

Morocco does not have any specific transfer pricing documentation disclosure requirements; information on intercompany transactions must be maintained at the level of the Moroccan resident entity. The CGI generally requires resident entities to provide the following documents on intercompany transactions:

- The nature of the relationship between the resident and the non-resident company;
- The nature of the services rendered and or the transactions performed;
- The methods used in determining the prices in intercompany transactions; a reasonable justification for its use thereof; and
- The tax regime and rate of the non-resident related party.

The CGI requires taxpayers to furnish all documents justifying and supporting their tax declaration, especially upon request. Within the 30 days deadline, renewable until the end of the tax audit, submission of the necessary tax documentation is given a central place in determining the arm's length Transfer price. The presence of errors, omissions, incorrect accounts, fictive accounts and the availability of non-documented transactions may vitiate the veracity of the declaration, and would thus entail determination of the transfer price by the Tax administration.

b) Industry Analysis

By identifying value drivers for the relevant industry, a first indication of the level of profitability common in the industry is being given.

c) Company Analysis

A description of the management structure of the local entity, a local organisation chart, and a description of the individuals to whom local management reports and the country(ies) in which such individuals maintain their principal offices.

A detailed description of the business and business strategy pursued by the local entity including an indication whether the local entity has been involved in or affected by business restructurings or intangibles transfers in the present or immediately past year and an explanation of those aspects of such transactions affecting the local entity.

d) Functional Analysis

In conducting a functional analysis, an assessment is made of the significant activities and responsibilities that are performed by the related parties relevant to the Intercompany Transactions under review, the tangible and intangible assets that are employed and the risks that are borne in undertaking the business activities. Such an assessment is consistent with the recommendations that have been made in the OECD Guidelines at paragraph 1.51.

e) Choice of Transfer Pricing Method

Moroccan transfer pricing rules generally follow the OECD Transfer Pricing Guidelines. Morocco has not yet introduced transfer pricing methodologies, but the law requires that transactions between related entities be performed in compliance with the arm's length principle. Therefore, determination of the Transfer price is made by comparing profits of similar companies or through a direct

assessment of the profit, based on information available to the DGI. The transactional net margin method (TNMM) can also be applied.

f) Economic Analysis – Benchmark Study

The Moroccan CGI does not stipulate taxpayers are required to supply a benchmark study to justify their transfer price. The code simply request companies taxable in Morocco to justify the method of determining their transfer price. Thus, in the event of an inspection, the only reference to comparables is in the authority’s power to adjust the business’s tax base by reference to prices applied by “similar businesses” or “by means of direct valuation” on the basis of information available to it.

Where the tax authority does not have access to relevant comparables, practical difficulties may thus arise. This may also lead to the refusal by the tax authorities to take into account comparables provided for by the controlled entity. It is therefore advisable, for businesses established in Morocco conducting intercompany transactions outside Morocco to keep a file of documents containing comparables evidencing the international practices of the group.

g) Inter-company (IC) Legal Agreement

Although an Inter-company legal agreement formalizes the business and financial relationship between group entities, the legal agreements have a lower ranking since the OECD 2017 Guidelines made the “conduct of parties” the prevailing concept.

h) Production Process for TP Relevant Returns, Documents, Forms and Financials

In the chart below, the existence of the filing requirements with the details of which format is used, the latest filing date, notification requirement and its deadline, thresholds to be applied in case it exists, and the required languages are demonstrated. These information can be seen respectively for CIT, master file, local file, CbCR, local forms, annual accounts and segmented P&L documentations.

	Prepare or File?	Format	Deadline	Notification Deadline*	Threshold* (Yes/No)	Local Language (Yes/No)* (If “No”, it can be filed in English)
Corporate Income Tax	File	Local GAAP	Within 3 months of the fiscal year end	No	No	Yes (French)

Master File	Prepare	OECD Guidelines (2017)	Not yet determined	No	Yes	Yes (French)
Local File	Prepare	OECD Guidelines (2017)	Not yet determined	No	No	Yes (French)
CbCR	File	OECD Guidelines (2017)	Within 12 months of the tax year end	No	Yes	Yes (French)
Local forms	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
Annual Accounts	Prepare	Either IFRS or the Moroccan GAAP	Within 3 months of the fiscal year end	No	No	No
Segmented P&L	Prepare	Excel/Other	Ready upon filing CIT/TP document ation	No	No	No
* Morocco has signed the MCAA agreement for the filing of CBCR.						
* Morocco does not request as much and detailed information from smaller and less complex enterprises (SME's included) than it does from large and complex enterprises.						

Tax documentations must be submitted in a prescribed form within the strict 30 days deadline, upon request by the Tax Administration. Non-compliance to the request or submission of an erroneous documentation may trigger the Tax Administrations to use any means available to recover any unpaid tax. The Tax administration in so doing first informs the taxpayer of her decision requiring submission of tax documentation, the deadline for submission, and any applicable extension period of 30 days (if available) to complete/submit the required tax documentation.

The threshold requirement for preparing a master file is met when a company has an annual turnover or gross asset value being equal or greater than MAD 50 million (approximately EUR 4.7 million). It should be noted that although formal documentation requirements have been implemented into law, no official guidance has been published to regulate the content and deadlines of the respective

documentation obligations (local file and master file). Therefore, submission dates for master and local file have not yet been determined.

i) Mandatory Language

Moroccan TP documentation must be presented in one of the Official languages: French or Classical Arabic. In practice however, the majority of documentations relating to Moroccan Taxation are written in French.

j) Notification Requirement

Every Moroccan group entity, which is obliged to file a country-by-country report, should file the country-by-country reporting notification form. It should specify whether the Moroccan entity is the ultimate parent ultimate parent entity, the surrogate parent entity, or if none of these, who will be the filing company within the group. The Country-by-Country reporting notification form must be filed ultimately on the 31 December 2022.

k) Record Keeping

The taxpayer is obliged to preserve tax documentation for at least 10 years. These documents usually constitute sales receipts, documents justifying expenditures and investments, balance sheets, inventory documents, documents registering the transactions, journal entries, purchaser receipts and all other documentation required by the regulation. Where any of the above tax documentation is missing, the tax administration must be notified within 15 days via registered mail.

l) Penalties and Interest Charges

Before the introduction of the Finance Law 2021, there were no specific transfer pricing penalties in the code. In the event of breach of the provisions relating to the authority's right to documentation, a fine of 2,000 Moroccan dirham (approximately €180) is applicable, as well as a late payment penalty of 100 dirham (approximately €9) per day, up to a maximum of 1,000 dirham (approximately €90).

Article 214 (III) of the Moroccan GTC provides that in the absence of a response or in the event that a requested documentation is incomplete, the relationship of dependency is presumed. Thus, documentation that is incomplete or that is not submitted will not, in the true sense, reverse the burden of proof in relation to the arm's-length nature of the transaction, but will establish that the companies in question are dependent.

When the relationship of dependency is established in this way, the tax authority will then be able to invoke article 213 (II) of the GTC, and thus adjust taxable profit by bringing in the profits it considers to have been indirectly transferred by means of increasing or reducing purchase or sales prices.

In such a case, the remuneration and costs paid by the Moroccan entity will be subject to general corporation tax at one of the proportional rates, up to 31 per cent.

The tax code also provides general penalties for non-compliant taxpayers:

- A punitive rate: 15%, or 100% in case of fraudulent operations with a 10% surcharge;
- On late payments: 5% for the first month; 0.5% on each additional month.

Interest rates on late payments are generally non-negotiable. A company may however ask for a total or partial waiver of the penalties and the tax authority's decision on such waivers is discretionary.

Since 1 January 2021, taxpayers are subject to transfer pricing documentation penalties (art. 185-IV of the GTC). Where a taxpayer fails to submit transfer pricing documentation within 30 days of a formal request by the tax authorities, the MTA may levy a penalty of 0.5% on the relevant transactions not documented correctly.