Transfer Pricing Country Summary

Algeria

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1. Introduction

The Minister of Finance issued a decision in January 2013 defining the transfer pricing documentation requirements for Algerian resident companies. According to the decision, the following companies are required to produce transfer pricing documentation:

- joint stock companies and partnerships (which have elected to be subject to corporate tax) when they realize a total annual revenue of at least DZD 100 million;
- companies operating in the hydrocarbon sector as well as their subsidiaries;
- resident subsidiaries which are members of a foreign group irrespective of their annual revenue; and
- group member companies where the annual revenue of one member company is equal to or exceeds DZD 100 million.

2. Laws & Regulations

a) References to OECD/EU/Local Rules

Even though Algeria is not one of the OECD members, there are significant references to OECD Guidelines in their legislation related to transfer pricing. Also, Algeria has no specific set of transfer pricing rules. However, the anti-avoidance rules which adopt the arm's length principle are enshrined in the country's Tax Code. The rules largely reflect Article 9 of the OECD Model Tax Convention.

Thus, profits are indirectly transferred through:

- An increase or decrease in the purchase or sale price;
- Excessive payments of royalties or payments made in exchange for nothing;
- Interest-free grants or low-rate interest loans;
- A waiver of interest payments as stipulated in loan agreements;
- The attribution of advantages disproportionate to the services supplied; and,
- All other means are reassessed, reinstated to the Algerian entity and taxed accordingly.

Where this is the case, and the taxpayer fails to respond to inquiries during a tax audit, the tax authority is obliged to use any evidence in their possession or compare the income of similar enterprises operating in the open market to determine the tax base of the taxpayer.

b) Definition of Related Party

Involvement in the capital, control and management of enterprises operating in and out of Algeria determines the applicability of the anti-avoidance rules. There is no specific threshold provided for that.

More specifically, under Article 141 bis 2013 ('Code des Impôts Directs et Tax Assimilees, known as CID), when an enterprise operating in Algeria, or out of Algeria, is directly or indirectly involved in the management, control or capital of another enterprise(s) operating in or out of Algeria or the same person(s) participates directly or indirectly in the management, control or capital of an enterprise(s) operating in or out of Algeria, and in both cases, the commercial and financial relationship of the two enterprises differ from those between independent enterprises, whose profits would have been accrued to the enterprise operating in Algeria.

c) Nature of Transfer Pricing Documentation

In Algeria, all the transactions carried out with related parties are subject to documentation requirements, including the transactions made with companies located in Algeria. Also, there has been an update of the documentation requirements enacted via the Decree of the 17th of November 2020 published in the Official Gazette of January 2021.[1] While the general structure of requirements is mostly protected, including the basic group documentation and company-specific documentation, the content of the required documentation increases with new detailed information as complementary submissions. Main documentation that must be submitted with the tax return contains:

For Basic Group Documentations, the general descriptions are required for:

- the activities performed, including the changes that occurred within the FY;
- the organizational structure reflecting the legal and equity relationships and geographical location of the operational entities;
- the supply chain information for the five main products or main services offered by the group;
- the main geographic markets where the group's major goods and services are provided;
- the performed functions, assumed risks, and assets used by related companies which affect the company operating in Algeria;
- a list of the main intangibles owned by the group such as trademarks, patents, know-how, trade names, etc. to the extent relevant to the company conducted in Algeria,
- the group's transfer pricing policy together with the ones applied to R&D and intangibles;

For Company Documentations, descriptions are required of:

- the strategy and activities of the local enterprise, including the transaction types, and whether it has been affected by restructuring operations or intangibles' transfers during the reporting year and the year before;
- the transactions carried out with other related enterprises such as the acquisition of goods, the purchase of manufacturing services, the provision of services, etc.;
- of the transfer pricing methods and justifications, used by reference to a comparability analysis and functional analysis;
- copies of the annual report of the auditor and financial statements for the year covered by the documentation;
- a list of the service level agreements with related entities, including licensing agreements, research contracting agreements, and cost-sharing agreements;

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[1] https://www.mfdgi.gov.dz/images/pdf/textes_reglementaires/FR-Arrete_-documentation_prix_transfert.pdf

- an intangibles' list that is key for the determination of the entities that are the legal owners and of their policy for transfer pricing;
- information on any intangibles' transfer between the related entities and the corresponding remuneration.

d) Tax Havens & Blacklists[2]

As of September 2021, Algeria have joined the international fight against tax evasion. Algeria will participate on an equal footing and is committed to combating tax evasion through the implementation of internationally agreed standards of transparency and exchange of information for tax purposes—both on request and automatically. All G20 countries, all OECD members, all international financial centers, and a large number of developing countries are members of the Global Forum.

The Global Forum is the leading multilateral body tasked with ensuring that jurisdictions around the world adhere to and effectively implement both the standard of information exchange on request and the standard of automatic information exchange. These goals will be met through a rigorous monitoring and peer review process that Algeria will be subjected to. The Global Forum also runs a robust capacity-building program to assist its members in implementing the standards and assisting tax authorities in making the best use of cross-border information sharing channels.

Algeria, as a member of the Global Forum, will also participate in the Africa Initiative, a work program launched in 2014 to support domestic revenue mobilization and the fight against illicit financial flows in Africa through increased tax transparency and information exchange.

e) Advance Pricing Agreement (APA)

There is currently no provision for 'Advanced Pricing Agreement' in the Algerian anti-avoidance rules. The option for a Tax consolidation regime does not constitute a pricing agreement with the tax administration.

However, Algerian tax authorities introduced a tax-ruling regime in Executive Order No. 12-334, dated the 8th of September 2012. This regime, which is designed to provide greater certainty for taxpayers and enhance the monitoring capabilities of the tax administration, allows a taxpayer to request a ruling that determines the tax administration's formal position about the taxpayer's particular situation. Such a ruling regime would be effective from the date of the executive order. The procedure could, in theory, cover transfer pricing and is valid only for certain categories of companies. Effectively, this procedure has streamlined a deadline of four months to receive an answer to a ruling request.

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[2] https://www.oecd.org/tax/transparency/documents/algeria-joins-global-forum-on-transparency-and-exchange-of-information-for-tax-purposes.htm

f) Audit Practice

The Finance legislation, 2010 (Lois de Finance complementaire) supplementing the Finance Law further increased transfer pricing scrutiny. The law clarifies the Algerian tax authority's idea of documentation expected from taxpayers to substantiate their company's TP policy. This documentation requirement applies to every sector in the economy, with the requirements specifically listed for companies under the Direction des Grandes Entreprises (Major Company Directorate or DGE).

3. Transfer Pricing Documentation

a) Level of Documentation

Companies operating under DGE must provide, in addition to their tax return documentation, other documentation substantiating the transfer pricing policies used in respect of transactions with affiliated enterprises. The Code des Procédures Fiscales (Tax Procedure code) supplementing the 2010 LFC (Loi de Finances Complémentaire) reiterates the necessity of providing Transfer pricing documentation upon request. The required documentation must include the following:

- Company's organizational structure and information/documents stipulating the nature of the relationship between the Algerian company and the foreign company(s);
- A description of the group transfer pricing policy and the kind of transactions that take place between the related entities;
- The methodology used in determining intercompany transfer price;
- The activities performed by the companies located outside Algeria; as connected through industrial, commercial or financial transactions, as well as the tax treatment reserved for such types of transactions;
- Copies of annual audit reports, together with the audited financial statements related to the reported fiscal year;
- The list of key owned intangible assets, such as licences, trademarks, trade names and know-how; and,
- The financial information about overheads and administrative costs and research and development costs.

Although there is no standard Transfer pricing documentation requirement for all companies, besides companies operating under DGE, preparation and submission of Transfer pricing supporting documentation must be furnished on request. Otherwise, the taxpayer would be exposed to penalties.

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 organization 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 of 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 in paragraph 1.51.

e) Choice of Transfer Pricing Method

The code lacks guidance on the transfer pricing methodology for determining the arm's length transfer price. However, since the Algerian anti-avoidance (Transfer Pricing) rules' arm's length principle is in line with the OECD TP guidelines, it will be no mistake to conclude that the arm's length transfer price might be determined through one of the methods of OECD Transfer Pricing. Furthermore, the tax administration may reassess and reinstate intercompany transfer price during a TP audit in order to determine the arm's length price by comparing similar business transactions in the open market to that of the selected party.

f) Economic Analysis – Benchmark Study

There is no mention in the Tax Act regarding specific comparables to be provided by the taxpayer during the filing of its tax return or during the audit. To the tax authorities, the source of comparables used in determining the arm's length transfer price is more important than the scope of the comparables. Thus, the tax authorities will likely accept a global/regional contemporary database that provides reliable and reasonable comparables.

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) Financial Statements[3]

With the exception of very small enterprises, which have a simplified set of standards, all business enterprises, public enterprises, quasi-public enterprises, cooperatives, and other ongoing commercial entities are required to prepare financial statements in accordance with Algerian accounting standards.

Algerian accounting standards (the Plan Comptable National, or PCN) are set by the Ministry of Finance's Conseil National de la Comptabilité. The Ministry of Finance adopted a program in July 2006 to revise the PCN to be substantially based on IFRSs, effective January 1, 2010. Companies currently prepare their financial statements using a statutory format published in 1975.

i) 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	Special Form + e-Filing	30 April of the next fiscal year	N/A	N/A	Yes (Arabic)
Master File	N/A	N/A	30 days after the request of the local tax authorities	Yes	Yes – annual revenue of DZD 100 million	Yes (Arabic, but French is also negotiable)
Local File	N/A	N/A	30 days after the request of the local tax authorities	Yes	Yes – annual revenue of DZD 100 million	Yes (Arabic, but French is also negotiable)
CbCR	N/A	N/A	N/A	N/A	N/A	N/A
Local form X	N/A	N/A	N/A	N/A	N/A	N/A

[3] https://www.iasplus.com/en/jurisdictions/africa/algeria

Annual Accounts	Prepare	PCN or IFRS	Before 1 April of every year	N/A	N/A	Yes (Arabic, but French is also negotiable)
Segmented P&L	N/A	N/A	N/A	N/A	N/A	N/A
* Algeria has NOT signed the MCAA agreement for the filing of CBCR.						
* There is no special guidance of a tax regime applicable to Small and Medium Medium-sized enterprises in the Tax code. According to the language of the Algerian Tax code, transfer pricing mostly affects transactions between big Algerian Tax code language, transfer pricing mostly affects transactions between big-sized companies involved in cross border trade.						

In order to reduce Tax compliance risks, Transfer Pricing documentation ought to be prepared for disclosure. The tax authorities may require any document supporting the declared transfer price, such as the balance sheet and a summary of the profit and loss account. Failure to provide a required transfer pricing documentation within 30days may trigger a penalty of 25% over the reassessed amount.

There is no official deadline set for preparing Transfer Pricing documentation. However, the tax return documentation must be prepared during a tax audit. The transfer pricing documentation should be filed along with the annual tax return. It should be filed no later than the 30th of April when the tax return deadline is. The documentation includes a detailed statement of proceeds paid to third parties concerning subcontracted services, hiring of personnel and equipment, leases, and technical assistance services. The final tax payment deadline (including VAT, IBS instalments, WHTs, PIT, and payroll taxes) is on the 20th of the month following submission of the tax return, instead of the tax return due on the 30th of April. The appropriate financial statements to substantiate the returns are due after the close of the tax year (follows a Calendar year) together with the statutory return.

Documentation must be submitted within 30 days if DGI requests from the company.

There is no statute of limitation applicable for Transfer pricing purposes in the Algerian Direct Tax code (CID).

j) Mandatory Language

In Algeria, Transfer Pricing and tax return documentation are prepared and submitted in Arabic; but a French version or a certified translation is also acceptable by the Tax authorities.

k) Notification Requirement

There is no information on the notification requirement.

l) Record Keeping

There is no guidance on records preservation for TP purposes in the code. However, a taxpayer should preserve its TP documentation for as long as possible. The tax authorities may require a tax declaration, reinstatement and clarification at any time. A taxpayer faced with such a request has only 30days to provide the requested records.

m) Penalties and Interest Charges

If a taxpayer fails to submit or produces incomplete documentation, whether initial or complementary, the tax authorities issue a notice to comply with the requirements within 30 days. In Algeria, a non-response to notice for submission of Transfer pricing documentation may trigger a penalty of 25% over the taxable amount, calculated based on the reassessment resulting from the tax audit. Thus, insufficient documentation to substantiate the transfer price carries a risk of a 25% penalty payment. The tax authorities may also consider insufficient documentation as an attempt of fraud or tax avoidance by the taxpayer. Late filing, failure to file or filing incorrect tax returns is heavily penalized. Failing to comply deadline may result in sanctions, including a DZD 2 million fine. Recently, there have been increased penalties for failing to file a return, in the amount of DZD 10 million, for foreign companies with temporary operations in Algeria.