

# Transfer Pricing Country Summary

## Mali

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## 1. Introduction

Mali is not a member country of OECD. Mali has no formal transfer pricing documentation requirements to submit the master file, local file, country-by-country reporting and the notification of country-by-country reporting for qualifying multinational groups.

## 2. Laws & Regulations

### a) References to OECD/EU/Local Rules

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.

### b) 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.

### c) Nature of Transfer Pricing Documentation

It should be noted that Mali is not a member of the OECD and also did not participate in the BEPS Inclusive Framework.

### d) Tax Havens & Blacklists

Mali does not have a 'black list' for non-cooperative jurisdictions.

### e) Advance Pricing Agreement (APA)

Taxpayers are allowed to request APA's from the tax authority.

### f) Audit Practice

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.

## 3. Transfer Pricing Documentation

### a) 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.

## 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

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.

## f) Economic Analysis – Benchmark Study

The taxpayer is not obliged (Art 81 CGI) to provide comparables to substantiate its transfer price. As afore mentioned, 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.

### 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

The following information shall be submitted together with the corporate income tax return:

- An overview of the overheads
- Financial Statements (three copies)
- Harmonized Codes

### 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. This 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) |
|-----------------------------|------------------|-----------------|----------|------------------------|---------------------|---|
| <b>Corporate Income Tax</b> | File             | Local GAAP/IFRS | 30 April | No                     | No                  | Yes   |
| <b>Master File</b>          | N.A.             | N.A.            | N.A.     | N.A.                   | N.A.                | N.A.  |
| <b>Local File</b>           | N.A.             | N.A.            | N.A.     | N.A.                   | N.A.                | N.A.  |
| <b>CbCR</b>                 | N.A.             | N.A.            | N.A.     | N.A.                   | N.A.                | N.A.  |
| <b>Local form</b>           | N.A.             | N.A.            | N.A.     | N.A.                   | N.A.                | N.A.  |
| <b>Annual Accounts</b>      | N.A.             | N.A.            | N.A.     | N.A.                   | N.A.                | N.A.  |

|  |      |      |      |      |      |      |
|--|------|------|------|------|------|------|
| <b>Segmented P&amp;L</b>   | N.A. | N.A. | N.A. | N.A. | N.A. | N.A. |
| * Mali has not signed the MCAA agreement for the filing of CBCR.   |      |      |      |      |      |      |
| * Mali 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. |      |      |      |      |      |      |

### j) Mandatory Language

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.

### k) Notification Requirement

Mali has not signed the MCAA agreement for the filing of CBCR.

### l) 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.

### m) Penalties and Interest Charges

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.