



Transfer Pricing Country Summary

Madagascar

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1. Introduction

Early in June 2021, Madagascar's Ministry of Economy and Finance provided instructions on the transfer pricing documentation required for taxpayers.

A Master file and a Local file must be prepared and submitted as part of the transfer pricing paperwork requirements.

2. Laws & Regulations

a) References to OECD/EU/Local Rules

Regarding the Malagasy transfer pricing regime, the following primary legislations are relevant:

The General Tax code: By virtue of Décision n°04 MFB/SG/DGI/DELF of 24 January 2014, relating to valuation for tax purposes with respect to the Arm's length principle and the procedure for implementing specific provisions on Transfer Pricing, the Malagasy Directorate of Taxes (Direction Generale des Impots 'DGI') passed into law the Transfer Pricing Legislation.

The Legislation lays down specific rules of application with regards to transactions conducted by Multinationals in Madagascar, in accordance with the OECD Arm's Length Principle as enshrined in Paragraph 2, 3 & 4 of Article 01.01.13 of the General Tax Code

'when conditions made or imposed in a commercial or financial transactions between associated companies do not conform to the arm's length principle, the benefits that would, in the absence of these conditions, accrue to the enterprise based in Madagascar and taxed at the expense of the company, but by reason of those conditions have not so accrued, may be included in the profits of that enterprise and taxed accordingly'.

Article 01.01.13 vehemently lays down the Arm's Length principle by highlighting that when the Transfer Price cannot be determined, the Tax Administration is empowered to make adjustments in order to determine the tax base. Thus, conformity to the Arm's Length Principle must be observed by Multinationals established and conducting transactions in and out of Madagascar;

- The executive decision no. 4
- MFB/SG/DGI on transfer pricing rules transfer pricing tax audit, pricing methods, and tax haven details.

b) Definition of Related Party

The new Legislation equally prescribed a threshold for application of the Transfer Pricing regulation by defining the meaning of an 'Associated Enterprise' in Article 3: *'when an enterprise participates directly or indirectly in the management, control and capital of another enterprise, or the same physical or moral person'* direct or indirect participation in the capital of the other entity in effective commercial circumstances is more 25 percent.

The Legislation also applies when a company located in Madagascar performs one or more commercial or financial transactions with a company(s), whether associated or not, but established in a foreign State with a privileged tax regime.

c) Nature of Transfer Pricing Documentation

Madagascar is not a member of the OECD.

The OECD Guidelines, as well as the French tax law, inspired Malagasy laws on transfer pricing, even though there are no direct references.

d) Tax Havens & Blacklists

Not applicable. (There are currently no Blacklists or Tax haven in Madagascar.

e) Advance Pricing Agreement (APA)

There are currently no provisions for Advance Pricing Agreement in the Malagasy Tax code.

f) Audit Practice

There is no requirement to prepare transfer pricing documentation annually, however documentation must be available in case of a tax audit.

3. Transfer Pricing Documentation

a) Level of Documentation

By Virtue of Article 20.06.08 of the CGI, the tax auditor/ administration may require the taxpayer to submit Transfer Pricing Documentation in support of the declared transfer price during a tax audit. The required documentation must provide information specifying:

- The nature of the relationship between the company and one or more businesses carried out with companies or group companies based in or outside Madagascar;
- The Transfer Pricing Method used in determining the transfer price of the industrial, commercial or financial nature of the transaction performed with enterprises, companies or groups enterprises which justifies the transfer price, supported by comparables used, where applicable;
- The transactions performed by the enterprises, companies or groups enterprises;
- The tax treatment of the transactions carried out by companies' resident out of Madagascar or the companies or groups that directly or indirectly hold a majority of the capital or voting rights.

The required documentation is usually explicitly indicated in the request for documentation notice. The type of activities or products involved in the transaction, the countries concerned, the companies or group companies concerned and, where appropriate, the amounts involved must be provided upon the request. This notice also indicates a time frame for submission of the required documentation.

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

In line with the OECD Transfer Pricing Guidelines, the Arm's Length Transfer Price must be determined by one of the following methods:

- The Comparable Uncontrolled Pricing Method, (CUP);
- The Resale Price Method (RPM);
- The Cost Plus Method (C+);
- The Transactional Net Margin Method (TNMM), and;
- The Transactional Profit Split Method (PSM).

The determination of the Transfer Pricing Method in support of the required documentation according to the circumstances of the commercial transaction depends on the taxpayer. The Taxpayer is equally not obliged to use more than one method in deriving the Transfer Price.

f) Economic Analysis – Benchmark Study

As aforementioned, the Transfer Pricing Method used in determining the transfer price of the industrial, commercial or financial nature of the transaction performed with enterprises, companies or groups enterprises, that determines the transfer price must be supported by comparables (if applicable) provided by the taxpayer. The tax administration equally has an obligation to substantiate the adjusted tax base by any comparable available to it.

Thus, upon a request for submission of the required tax documentation, the taxpayer is given a period not exceeding three Months to comply. Compliance at this point shifts the burden of proof to the taxpayer. After compliance by the taxpayer and adjustments subsequently made by the tax authority, the taxpayer is notified on the evidence (comparables) used in determining the tax base, and the reason for rejecting/ accepting (as the case may be) the proof/evidence (if any) tendered by the taxpayer and the means of appeal available. At this point the burden of proof has shifted to the Tax Administration to justify the adjustment.

* It is worth noting that documentary justification not tendered to the taxpayer within the allocated time frame is barred from future use as evidence to challenge the basis of an adjustment.

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

Taxpayers are required to submit their financial statements.

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)
Corporate Income Tax	File		Before 31 March of each year	N.A.	Yes	Yes
Master File	Prepare	OECD Guidelines	until 31 October 2021 for companies with a 31 December 2020 year-end	N.A.	No	No
Local File	Prepare	OECD Guidelines	until 31 October 2021 for companies with a 31 December 2020 year-end	N.A.	No	No

CbCR	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
* Madagascar has NOT signed the MCAA agreement for the filing of CbCR						
* Madagascar 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

The Malagasy General Tax code does not prescribe a precise language for preparing TP documentation. Even though the official national languages are Malagasy, French and English, Art 01.01.20 stipulating the accounting standards for preparing tax documentation stipulates, detailed accounting records must be prepared and registered in French or Malagasy, without erasures.

k) Notification Requirement

There is no CbCR notification and CbC report submission requirement in Madagascar.

l) Record Keeping

Accounting and Tax documentation must be prepared using the Malagasy accounting rules (Decree No 87.332 September 17, 1987). The tax documentation and justifying account records must be preserved for at least 10 years, starting 1 January, following the year the accounts and assessment was conducted.

m) Penalties and Interest Charges

The New Transfer Pricing regulation equally prescribed penalties for noncompliance. Article 20.01.58.8 of the General Tax Code relating to Nonresponse/ non-communication and noncompliance by the taxpayer within the aforementioned deadlines (the three-month first-request period or the 30-day additional-information period) on a request by the Tax administration for documentation during Tax audit is fined at AR 5,000,000.