Contribution on transfer pricing

Updated with the provisions of the Finance Law 2025

January 2025

kpmg.dz

Contents

Preface

Transfer pricing in the spotlight

Law 23-15 relating to the Amending Finance Law 2023, published on November 5, 2023, and the Order of February 15, 2024 setting out the content and format of transfer pricing documentation, have introduced changes to transfer pricing regulations.

This contribution is not intended to be an exhaustive analysis, but simply a presentation of the provisions relating to the fiscal year.

We draw your attention to the fact that the opinions expressed here are based on the texts in force in Algeria. As a precautionary measure, we would also like to point out that we cannot guarantee that the positions taken or opinions given here will be maintained in the event of changes in legislation, case law or practice.

Yours faithfully

KPMG ALGERIA

01

Introduction

Transfer pricing definition

"The prices at which a company transfers tangible assets, intangible assets, or renders services affiliated companies".

Arm's length principle

When two companies, in their commercial or financial relations, are bound by agreed or imposed conditions which differ from those which would be agreed between independent companies, the profits which, without these conditions, would have been made by one of the companies but could not in fact be made because of the conditions, may be included in the profits of that company and taxed accordingly.,

Art. 9.1b OECD Model Tax Convention

Implementation and alignment of transfer pricing approaches on the African continent

28 countries

in Africa are already members of the OECD Inclusive Framework and aim to apply the BEPS transfer pricing standards, for example :

38 countries

in Africa are members of the ATAF Many African countries are involved in global debates on transfer pricing;

- Steps are being taken to implement the OECD recommendations by coordinating international tax rules and enforcement efforts.

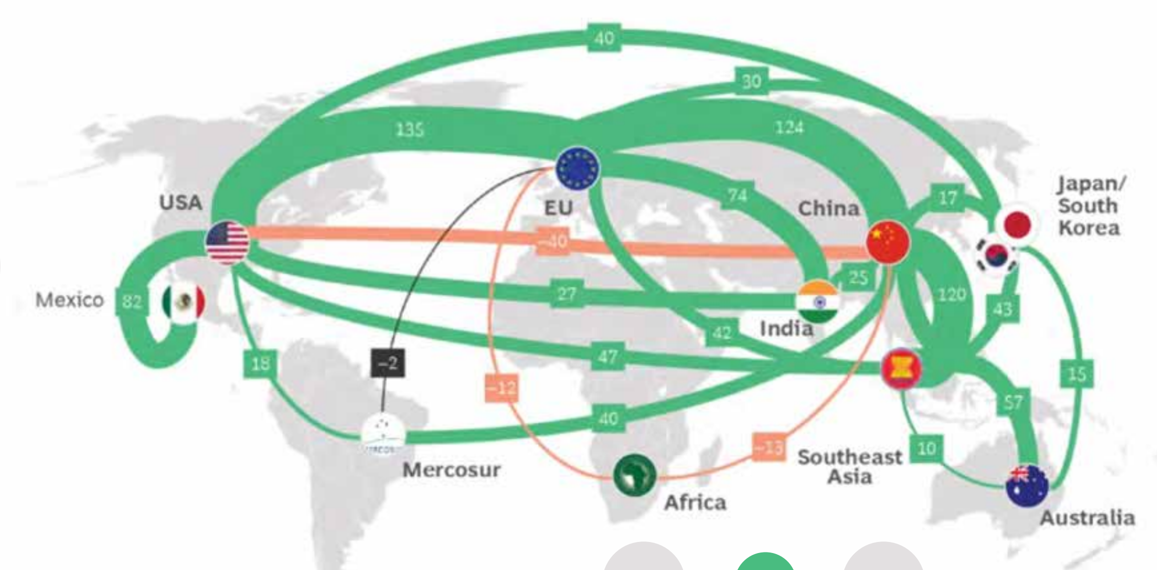
AFRICAN TAX ADMINISTRATION FORUM
FORUM SUR L'ADMINISTRATION FISCALE AFRICAINE

Press Release
Pretoria, 19 February 2024

Context : Materiality of intra-group flows

Evolution of trade volume in the main corridors from 2015 to 2019 (in billions of $)

~$18 trillion
Global trade 2019



15.7 — +2.5 — 18.2
2015 2019

Legend
the width of the arrow represents the evolution of trade flows between 2019 and 2015 (in billions of $).

<-3% | <-3%> <+3% | <3%
The color of the arrow represents the percentage change in 2019 compared to 2015.

Source : UN contract; OECD ; World Economic Forum ; IHS ; Commerciale Alerte ; BCG analysis

Note: The corridors account for around 30% of world trade. Not included: intra-EU = ˜20%; intra-NAFTA = ˜8%; China (including Hong Kong) = 4%; intra-Southeast Asia = 3%; rest of the word + ˜35%.

80%

of the world's trade is intra-group

UNITED NATIONS UNCTAD

78 000

multinationals(870,000 affiliates) in 2022 compared with 7,000 multinationals in 1970

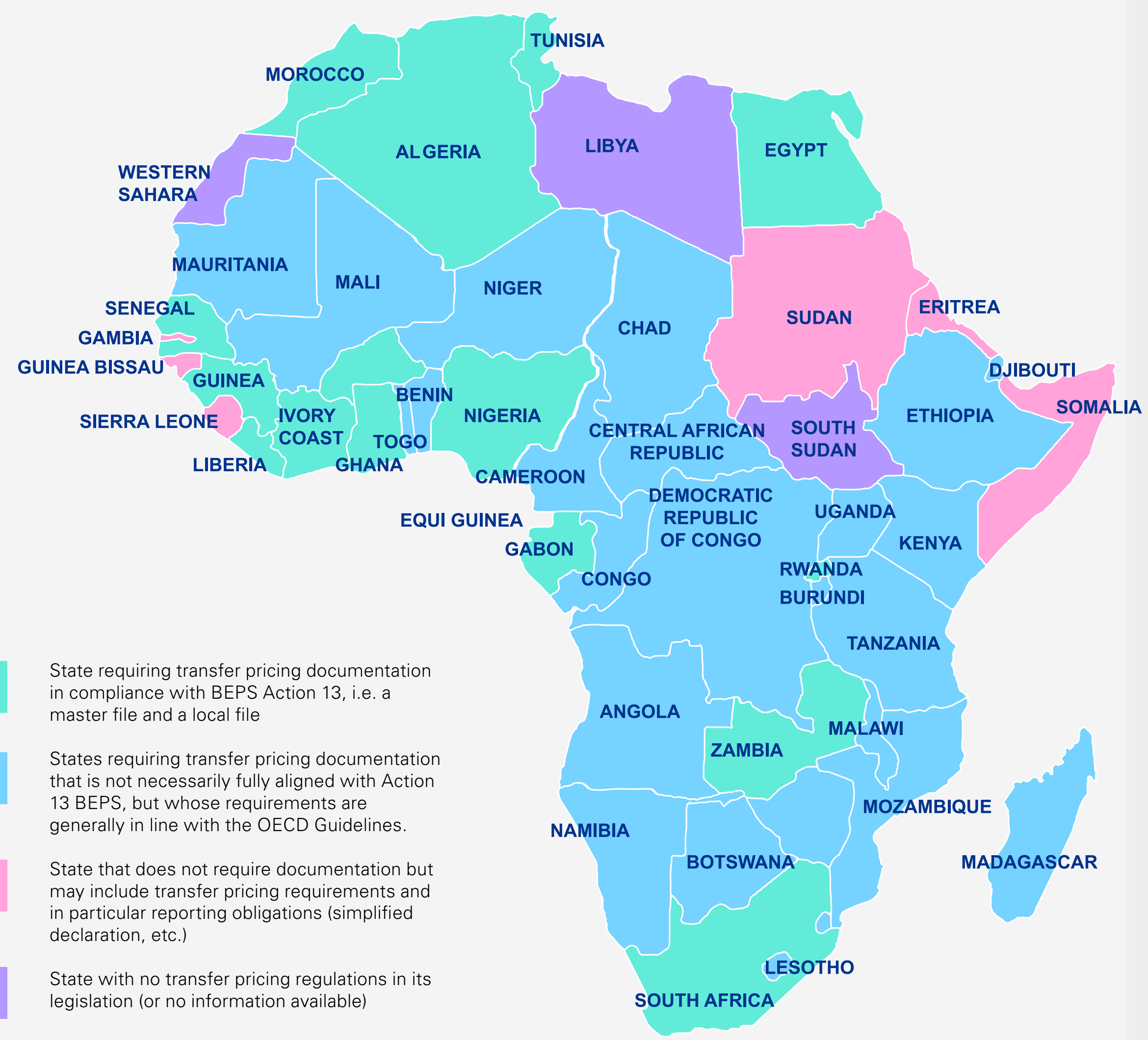
Africa : mapping legislation on documentary obligations

DECLARATION AND DOCUMENTARY OBLIGATIONS

Most African countries have put in place transfer pricing rules of varying degrees of sophistication to provide tax authorities with a legislative/regulatory framework for applying them. This legislative arsenal includes a mechanism for :

- Control through the maintaining and/or submission of transfer pricing documentation and/or declarations; and
- Sanction through recognition of the arm's length principle and transposition of the OECD Transfer Pricing Guidelines.

However, the rules on the continent are still disparate. The map below summarizes in four categories the legislative arsenal in place for each of the continent's states



State requiring transfer pricing documentation in compliance with BEPS Action 13, i.e. a master file and a local file

States requiring transfer pricing documentation that is not necessarily fully aligned with Action 13 BEPS, but whose requirements are generally in line with the OECD Guidelines.

State that does not require documentation but may include transfer pricing requirements and in particular reporting obligations (simplified declaration, etc.)

State with no transfer pricing regulations in its legislation (or no information available)

Africa : transfer pricing legislation and documentation

implementation of BEPS action 13

Algérie
LF
final legislation

Ghana
CbCR/MF/LF
final legislation

Maroc
MF
Project
CBCR/LF
final legislation

Tunisie
CBCR/MF/LF
final legislation

Egypte
CBCR/MF/LF
final legislation

Cote d'Ivoire
CbCR/MF/LF
final legislation

Ouganda
CbCR/MF
Intentions
LF
final legislation

Senegal
CbCR/MF/LF
final legislation

Guinée
CbCR/MF/LF
final legislation

Kenya
LF
final legis-lation
MF
Intenti-ons
CbCR
Project

Nigeria
CbCR/MF/LF
final

Rwanda
CbCR/MF
Intentions
LF
final legislation

Cameroun
CbCR/MF/LF
final legislation

Tanzanie
LF
final legislation

Gabon
CbCR/MF/LF
final

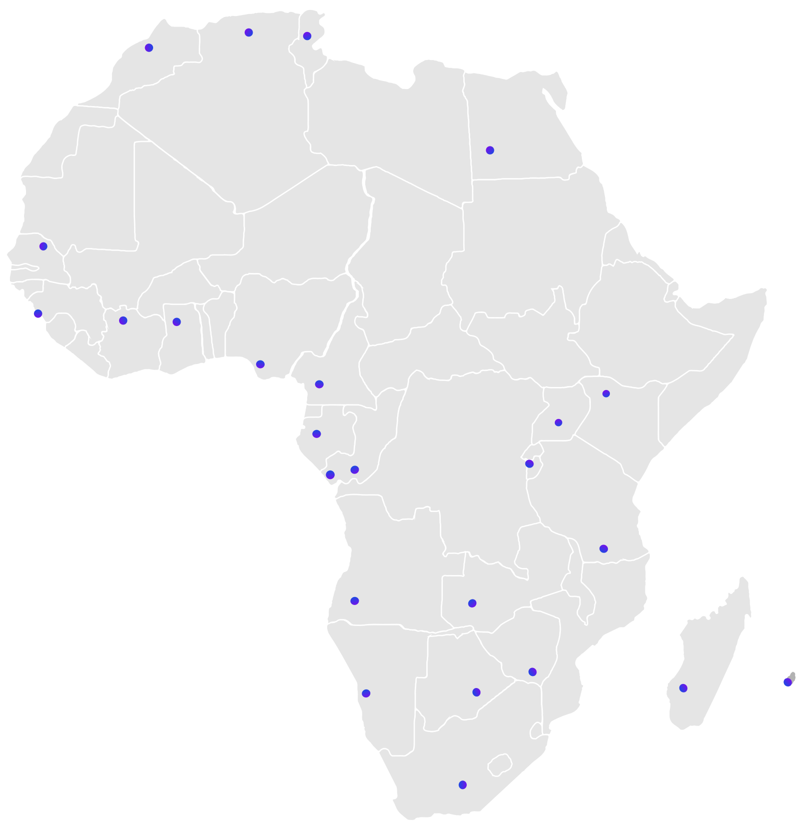
Maurice
CbCR
final legislation

Congo Brazzaville
LF
final legislation

Madagascar
MF/LF
final legislation

RDC
LF
final legislation

Zimbabwe
LF
final legislation



Angola
LF
final legislation

Namibie
CbCR/MF
Intentions
LF
final legislation

Zambie
CBCR/MF/LF
final legislation

Af. Du Sud
CBCR/MF/LF
final legislation

Botswana
MF/LF
final legislation

Nature of cross-border flows

1. Intercompany purchases and distribution of finished goods

Fair market remuneration for the Distribution activity
(Wholesale ou retail)

- Risks related to distribution activities (market, prices, etc.) (loss-making distributors)
- Loss-making business (number of years, explanations, contracts in place)
- Remuneration of central purchasing agencies
- Considerations / discussions Pillar 1 / Amount B

2. Management Fees

- HR, IT, accounting, legal services, etc.
- Service reality
- Determining the relevant cost base;
- Definition of "low value-added" services as set out in Chapter VII of the OECD Principles

3. Technical Services infrastructure projects

- Remuneration for the added value of technical services rendered in the value chain
- Determination of the effective sharing of functions and risks between the parties involved in the project (Margin as sold vs Margin Actual)
- Contribution analysis" approach to allocate project revenues/profits between offshore and onshore entities

4.Royalties for use of intangible assets

- Residual profit approach (routine remuneration and calculation of surplus profit)
- R&D and strategic marketing costs engaged
- Economic life of intangible assets

7. Remuneration related to energy resources

- **Exploration and production of mining and petroleum resources**
  - › Remuneration for intangible assets
  - › Remuneration for technical services
- **Trading and supply :** Remuneration for intermediation and origination functions;
- **Sale of derivative products :**
  - › Wholesale or retail for petrol station networks
  - › Remuneration for technical services (logistics, jet supplies, etc.)
  - › Remuneration for refining/blending activities

6. Sales of agricultural products

- Remuneration for extraction and/or processing activities
- Trading fees associated with intermediary activities (Marketing / Sales / Hedging / Arbitrage)

5. Interests

- Determining the borrower's synthetic credit rating
- Determining an arm's length interest rate band

Cross-border transactions must comply with domestic exchange control regulations.

02

Transfer pricing in Algeria

Context

According to the OECD, transfer prices are the rates at which a company exchanges goods, assets or services with affiliated companies. In other words, they are the prices applied in transactions between companies belonging to the same group but established in different countries, thus involving cross-border exchanges. This practice is of crucial importance for several reasons:

- Cross-border trade has become commonplace with economic globalization.
- Between 40% and 85% of world trade consists of intra-group transactions.
- Tax competition between countries is increasingly intense.
- Transfer pricing regulation is essential to prevent price manipulation.

In Algeria, transfer pricing regulations have evolved significantly in recent years, in response to economic changes and international guidelines.

Initially, Algeria aligned itself with the OECD's transfer pricing principles and recommendations, recognizing the importance of this practice in a context of trade globalization.

Over the years, however, Algeria has progressively strengthened its legislation in this area, in order to better adapt it to national specificities and the growing need for tax transparency.regulations. In 2010, this led to the introduction of a documentary obligation for the companies concerned, designed to ensure greater compliance with international standards.

At the same time, sanctions have been stepped up to encourage companies to comply with their regulatory obligations in this area.

The evolution of transfer pricing regulations in Algeria bears witness to the country's commitment to efficient and transparent tax management, while fostering an environment conducive to investment and economic development.

Transfer Pricing: A Crucial Definition

The concept of associated companies, as defined by the OECD, supposes links of dependence between the various companies in the group.

The concept of a group implies the existence of connections of dependence between the companies belonging to it. Two companies are considered to be dependent and therefore belong to the same group if one of them participates directly or indirectly in the management, control or capital of the other, or if the same persons participate directly or indirectly in the management, control or capital of both companies. Thus, the relationship of dependence may be legal (de jure) or de facto.

Algerian legislation is in line with OECD guidelines, specifying that links of dependence or control are deemed to exist between two companies in the following situations:

- When one holds, directly or indirectly, more than 50% of the share capital or more than 40% of the voting rights of the other, or in fact exercises decision-making power.
- When the two companies are controlled by the same company or person under the conditions specified above.

Methods and guidelines

Once the functional analysis has been carried out, the company must select the most appropriate method for defining the remuneration of its activity, ensuring that this price corresponds to that of an arm's length transaction between independent entities. It must also document its transfer pricing method.

According to the OECD guidelines, the remuneration methods adopted by companies for transfer pricing purposes can include so-called traditional, transaction-based methods such as the comparable open market price, the resale price, and the cost-plus method, or so-called transactional, profit-based methods: the profit-sharing method and the transactional net margin method.

- Comparable Uncontrolled Price method (CUP): this method compares the prices of goods or services exchanged between affiliated companies with the prices of similar transactions between independent companies.

- Resale price method (RPM): this method compares the gross margin on resale to a third party with the gross margin on resale of a good or service in a related transaction.

- The cost-plus method (CP): This method involves determining the cost of goods or services sold or provided to an affiliated company, and adding an arm's length profit margin, obtained using a comparable internal or external to the company.

- The profit-sharing method (PSM): This method consists in determining the consolidated result for the Group for all operations involving various related companies, and then sharing it between these companies according to relevant criteria, in order to obtain an allocation of profits comparable to that which would have been obtained in an arm's length situation;

- Transactional net margin method (TNMM): This method consists in determining the net profit margin achieved by a company in an intra-group transaction, based on appropriate data (e.g. expenses, sales, asset values, etc.), and comparing it with the margin that an independent company would achieve for a comparable transaction.

Exchange of information

The Finance Law for 2025 introduced a new article "61bis" to the Tax Procedures Code, enabling tax authorities to exchange information collected with the tax authorities of countries that have signed an administrative assistance agreement with Algeria, with a view to combating tax fraud and evasion.

In October 2024, Algeria signed the Multilateral Convention on Administrative Assistance in Tax Matters, bringing the number of participating jurisdictions to 148.

This signature enables Algeria to join the largest international treaty on tax cooperation and information exchange, strengthening the Convention's reach in Africa. It will facilitatethe exchange of information with 147 jurisdictions, including the world's leading financial centers.

The Convention enables the exchange of information on request, as well as tax audits and tax collection assistance, while guaranteeing taxpayers' rights.

Transfer Pricing perimeter: Who is concerned?

Companies established in Algeria that are dependent on or in control of companies located in or outside Algeria that meet the following conditions:

Foreign companies

with a Permanent Establishment in Algeria or a permanent business installation

Entity under Algerian law

Has annual turnover excluding tax or gross assets equal to or greater than one billion dinars (1,000,000,000 DA), .

Parent Company/subsidiary

The entity concerned holds, directly or through an intermediary, either more than 50% of the share capital or more than 40% of the voting rights of a company or is itself held in the same proportions by a company, located in Algeria or abroad, whose annual sales excluding tax or gross assets exceed one billion dinars (1,000,000,000 DA) at the close of the financial year.

Remote filing
30 April

General information about the Group

A brief description of the restructuring operations carried out within the group that affected the reporting company during the financial year, and their consequences in terms of reallocation of functions, risks or assets.

A list of intangible assets held by the Group **(owning companies and their state or territory of tax residence)**

A general description of the transfer pricing policy applied by the group in relation to the reporting company

A description of the Group's main activities

Company name, registered office address and state or territory of tax residence of the group's ultimate parent entity

Information specific to the reporting company

Information on transactions with related companies that are subject to advance pricing agreements or tax rulings with another country or territory.

Information on transactions with related companies, whether without remuneration or for a non-monetary remuneration

Information on loans and borrowings between affiliated companies

A summary statement of transactions with related companies

A description of business activities, including changes during the year

Documentary obligation
(for Tax assessement)

General group information (Master file)

A diagram illustrating the (capital structure and location of entities)

A description of the areas of activity of the group of related companies (sources of group profits, main geographical markets, functional analysis, supply chains, etc.).

Intangible assets of the group of affiliated companies (list of intangible assets or categories, description of the group's transfer pricing policies relating to intangible assets and R&D, etc.).

Intercompany financial activities of the group of related companies (how the group is financed...)

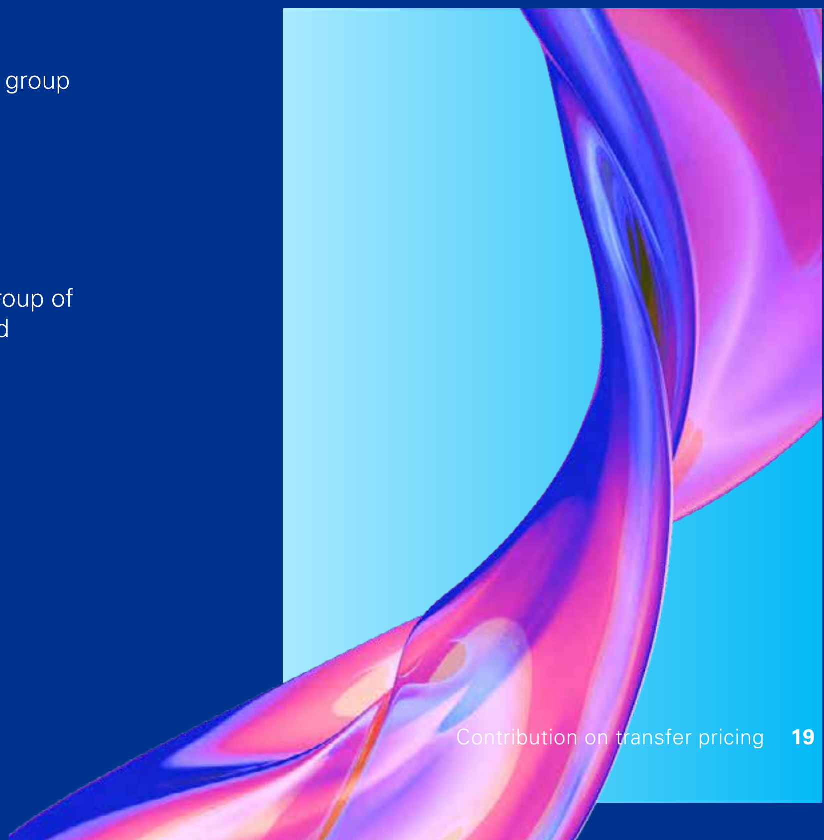
The financial and tax situation of the group of related companies (annual consolidated financial statements of the group, etc.)

Information specific to the audited company (Local file)

Organizational structure and areas of activity (company management structure, organizational chart, description of specific activities carried out, etc.).

Transactions with affiliated companies (description of transactions, amounts, functional analysis, comparability analysis, indication of transfer pricing methods, etc.).

Financial information (the company's annual financial statements, tables breaking down the financial data used to apply the transfer pricing method, etc.)



Format & sanctions

Remote filing format

The format of the remote filing will be determined by a model drawn up by the tax authorities.

Documentation format

Documentation must be produced in both paper and electronic formats.

Used languages

This documentation must be presented in one of the languages used by the tax authorities.

Remote filing sanctions

A fine of DZD 15,000,000 is imposed for failure to file, or incomplete or inaccurate filing of, the annual transfer pricing declaration by the due date.

Documentation sanctions

In the event of no response or incomplete response to the formal notice (formal notice 15 days), a penalty of 2% of the amount of transactions concerned for each tax year audited (>10,000,000 DZD).

Contacts

Ramzi Ouali
Partner Genreral Manager
rouali@kpmg.dz

Lamia Achaibou
Director
lachaibou@kpmg.dz

Anis Alloum
Senior Manager
aalloum@kpmg.dz

kpmg.dz