Madagascar

WTS Global Country TP Guide

Last Update: December 2017

1. Legal Basis	
Is there a legal requirement to prepare TP documentation?	No
Is the preparation of TP documentation advisable, e.g. to avoid penalties?	Yes
Are TP policies of multinational enterprises in principle accepted by the tax authorities, if they are in line with the OECD TP Guidelines?	No. Tax authorities are free in their appreciation; they can take the OECD Transfer Pricing Guidelines as a reference, but they can also have their own appreciation on how an operation shall be appreciated. To date, there is no guarantee that Tax authorities will systematically take in consideration the OECD Transfer Pricing Guidelines.
Does your country apply the arm's length standard?	Yes
Which TP methods may be applied?	The Decision no.4-MFB/SG/DGI provides 5 methods for the determination of the arm's length price: the comparable uncontrolled price method, the resale price method, the cost plus method, the transactional net margin method and the transactional profit split method.
Are any TP methods preferred over others?	To date, in practice, there is no preferred method applied. The choice between the five methods remains to the taxpayer. The latter has to justify their choice, that shall be adapted to the circumstances of the present case. It is not mandatory nor necessary to apply several methods to a transaction.
Have the documentation requirements of OECD BEPS Action 13 already been implemented (i.e. the LF, MF and CbCR concepts)?	No CbCR/MF/LF
Reference to relevant articles of law, legislative regulation or applicable administrative guidance that are in place for TP documentation in general.	Article 01.01.10-1° of the General Tax Code (principle of non deductibility of services paid to a company located abroad, in a country where it benefits from a preferential tax regime) Article 01.01.13-I of the General Tax Code (Arm's Length principle on cross-border transactions) Article 20.06.08 § 1 (information checked during on-site tax audit concerning cross-border transactions) Article 20.01.56.8 of the General Tax Code (Fine applicable in case of non provision of the information stated in article 20.06.08 §1) Decision no.4-MFB/SG/DGI related to the estimation for tax purposes taking into account the arm's length principle and the method of applying of the special dispositions on transfer pricing.

2. Master File (MF)	Not implemented
What is the (consolidated revenue) threshold requirement for the obligation to prepare a MF?	This requirement does not exist for Madagascar.

3. Local File (LF)	Not implemented
What is the threshold requirement for the obligation to prepare a LF?	LF documentation requirements in line with OECD BEPS 13 have not been implemented. Local transfer pricing documentation rules exist to which the answers in this section relate. The General Tax Code does not provide a threshold requirement but has stated the criteria of control related to transfer pricing. These criteria are as follows: - transactions between associated companies, - associated companies are two companies linked between them by a direct or an indirect involvement in the direction, in the control or in the capital, by the same natural or legal person, - the involvement is constituted by the direct of indirect holding of more than 25% of the capital, or by the observation of the effective capacity in commercial decision by the other company, - controlled transactions are operations made between associated companies in the scope of cross-border transactions.
Euro Equivalent	Not implemented
As from which year does this obligation exist?	The obligation of conformity to the arm's length principle has to be applied for any transactions which meet with the criteria mentioned above. Tax authorities carry out the control of such conformity on the basis of the income tax filing of the company registered in Madagascar. Income tax filing concerns a business year activity and is submitted to tax authorities the 15th of May of the year n+1 for a business year coinciding with the calendar year; and not latest November 15th of the current year for business year ending in June 30th.
When does the LF need to be available?	Documentation proving the respect by the companies involved in the cross-border transactions has to be available the business year the transaction was performed, with the details concerning the method of determination of the arm's length price that was applied.
When does the LF need to be submitted?	To date, the documentation mentioned above has to be submitted to tax authority only in case of tax audit.
Does the LF have to be prepared in the relevant local language?	Yes In practice, it is advisable to prepare the documentation in French.
Or is documentation in English permissible?	No
What are the possible consequences of not having the LF available?	
Imprisonment?	No
Shifting of the burden of proof?	Yes
Other?	Yes
To which extent do local rules differ from the OECD standard regarding the OECD content requirements for the LF as shown in the 2017 OECD TP Guidelines?	Our local rules is less detailed compared to OECD content requirements as shown in the BEPS. The General Tax Code provides that information and documentation shall precise: - 1° the nature of the relationship between the company implemented in Madagascar and the company(ies) located abroad, or company(ies) or groups established outside of Madagascar, - 2° the method of determination of the prices of industrial, commercial, or financial operations carried out with companies or groups as mentioned above, and the elements which justify such method, and, where appropriate, the agreed counterparts; - 3° The activities of the companies or groups mentioned in 1° above, linked to the operations referred to in 2°, - 4° The tax treatment of the operations referred to in 2° and carried out by the company(ies) that it operates outside of Madagascar or by the groups mentioned in 1° for which it holds, directly or indirectly, the majority of the capital or the voting rights.

4. Country-by-Country Reporting	Not implemented
Did your country sign the Multilateral Competent Authority Agreement on the Exchange of CbC Reports ("CbC MCAA")?	No
Did your country enter into other information exchange agreements, such as on a bilateral basis?	No

5. TP disclosure in tax return or transfer pricing specific returns	
Does a taxpayer need to disclose information regarding TP documentation in his tax return?	No
When a taxpayer files a tax return for which he understands or should understand that the result reported in that tax return is too low due to incorrect transfer pricing, what could be the legal consequences?	The General Tax Code provides that insufficiency exposed in tax return are subjected to fines equal to 40% of the additional due tax. In case of fraudulent practice, fines are 80% of the additional due tax. Imprisonment for 2 to 12 months is also laid down by law (article 20.01.56.14 CGI)
What could be the consequences for the tax advisor/accountant/administrator drafting and filing the tax return of a client where that advisor/accountant/administrator understands or should understand that the result reported is too low due to incorrect TP?	These persons are accomplice and are exposed to fines corresponding to 80% of the due tax, and can also be prosecuted before the Penal Court.
Does a taxpayer need to file TP-specific returns?	No

6. Benchmarking	
Is there any local guidance or requirement with regard to the preparation of a benchmark study?	No
Are there any materiality thresholds that apply for the requirement to have a benchmark study available?	No
Does your country apply the general guidance by the OECD to prepare a new benchmarking search every three years and an update of the financial data of the accepted comparable in year 2 or 3?	No
Or is a new search every three years without any financial updates in year 2 and 3 sufficient?	No

7. Year-end adjustments	
Are year-end adjustments permissible?	Yes
Does the taxpayer have to comply with any specific features or guidance?	Yes. Madagascar Tax System is based on a declarative system. Adjustment on tax return has to be operated by the Tax Service in charge of the taxpayer's file, and upon request by the later one. In practice, the taxpayer has to submit a request addressed to the Tax Service, with the specification of the element to be adjusted: line number, caption, amounts. The incorrect tax return has to be annexed to the request, with all relevant supporting documents, such as the annexure of the return. The Tax Service will then update the Tax System that is used by the taxpayer for the tax returns. This update concerns also the rectified tax return that will be certified by the Tax Service, and delivered to the taxpayer.

8. Transfer Pricing Audit and Dispute Resolution Mechanisms

What are currently the main TP areas of scrutiny by the tax authorities in your country?	Intercompany financing, intercompany agreement on commercial, management and technical assistance.
Based on your experience, are joint or multilateral audits initiated and carried out?	No
Does the taxpayer have the option to apply for bilateral or multilateral APAs?	No
Are there any restrictions?	To date, we have no feedback concerning any restrictions.

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