Transfer Pricing Country Summary

Burkina Faso

June 2022

1. Introduction 3
2. Laws & Regulations 3
a) References to OECD/EU/Local Rules 3
b) Definition of Related Party 3
c) Nature of Transfer Pricing Documentation 3
d) Tax Havens & Blacklists 4
e) Advance Pricing Agreement (APA) 4
f) Audit Practice 4
3. Transfer Pricing Documentation 4
a) Level of Documentation 4
b) Industry Analysis 5
c) Company Analysis 5
d) Functional Analysis 5
e) Choice of Transfer Pricing Method 5
f) Economic Analysis – Benchmark Study 5
g) Inter-company (IC) Legal Agreement 5
h) Financial Statements 5
i) Production Process for TP Relevant Returns, Documents, Forms and Financials 5
j) Mandatory Language 7
k) Notification Requirement 7
l) Record Keeping 7
m) Penalties and Interest Charges 7

1. Introduction

Burkina Faso is not an OECD member. It has, however, committed to applying a minimal BEPS standard as a member of the Inclusive Framework on BEPS. It should be noted that The Ministry of Economy and Finances published an order clarifying transfer price reporting requirements on April 15, 2022 (see *Ministerial Order No. 2022-101/MEFP/SG/DGI.*).

2. Laws & Regulations

a) References to OECD/EU/Local Rules

After 2010, some provisions regarding transfer pricing were inserted in the Corporate Income Tax Act (CGI) and the Tax Procedures Book in Burkina Faso. Furthermore, the government has enacted Decree No: 211 MINEFID/SG/DGI in 2018, outlining the circumstances for implementing the Transfer Pricing documentation requirements. More specifically, Articles 66, 99, 588, 616, and 618-2 of the General Tax Code regulate the TP policy of Burkina Faso.

In its recent Budget Law, Burkina Faso also adopted several tax-related provisions, which entered into force starting from 1 January 2021. The legislation contains, amongst others; (i) the restructuring of the synthetic taxation policies and the establishment of a disclosure regime for enterprises with annual revenues ranging from FCFA (Central African CFA Franc) 5 million to FCFA 15 million, (ii) imposing a 17% tax on financial activities on financial transactions and banking(iii) declaring fisheries and aquaculture goods as part of the livestock sector contribution (iv) introduction of mandatory electronic payments for SME's, (v) requirement of tax clearance certificate for the land transfers in certain cases.

b) Definition of Related Party

Article 4 of the Tax Procedure Book further introduced an obligation for taxpayers to provide documentation to substantiate their transactions with associated companies, if during an audit or tax investigation, the tax authority concludes that the taxpayer made an indirect transfer of profit.

The criteria for determining the relationship between a resident and non-resident enterprise stems from dependence and control of the resident company by the foreign entity, in line with the OECD guidelines. However, the code does not quantify the level of dependence and control. Still, it leaves it to be determined by the tax authorities during audits, principally on a case-by-case basis.

c) Nature of Transfer Pricing Documentation

There is no specific transfer pricing documentation or declaration requirements in the code. However, by virtue of Art 16 CGI, taxpayers whose operations amounts to an annual turnover equal to or more than 50 million FCFA (placed under real profits) are required to report to the Tax authorities the total taxable income for the year or the previous year. Burkina Faso is also a member of the Global Forum on Transparency and Exchange of Information for Tax Purposes and participates in the peer review process, encouraging all countries to adopt effective exchange of information in tax matters. The latest review was published in 2016 and rated Burkina Faso overall "largely compliant."

Companies operating in two or more States (Burkina Faso and abroad), whose headquarter is located outside Burkina Faso, must report to the Directorate of Taxes of the State, stating its annual income and its overall operations usually three months after its fiscal year.

Where the accounting records of related parties do not accurately distribute the profit or loss incurred during the fiscal year, such profit or loss, if applicable, must be distributed in a pro-rata basis, in proportion to the overall turnover achieved in each state or, by an agreement with the Tax Office, or by any other process for equitable distribution.

And, by virtue of Article 19 CGI, upon request by the tax authority during audits, all accounting records, inventories, copies of letters, profits and loss statements and invoices from expenses incurred must be presented to justify the accuracy of the results shown in return.

d) Tax Havens & Blacklists

This section is not applicable.

e) Advance Pricing Agreement (APA)

There is currently no regulation for Advanced Pricing Agreement. The legislation provides agreeing with the local tax authority in Article 588-8. However, no more information is provided further.

f) Audit Practice

Transfer Pricing Audit is common in the mining sector. Through a report made 30 January 2013, the Directorate General of Taxes in Burkina Faso outlined the major tax management and collection concerns for the tax administration. The tax authorities solicited technical help and partnership (from France) to curb tax avoidance and evasion on transfer pricing. Fiscal information exchange with foreign countries was noted as very poor. In contrast, huge volumes of mineral exploitation and other transactions are conducted with foreign multinational enterprises and their subsidiaries based in Burkina Faso. In this bid, the tax authority solicits technical assistance in drafting legislation and strategies to fight against tax avoidance, especially through transfer pricing.

3. Transfer Pricing Documentation

a) Level of Documentation

Although the government is committed proceeding for implementing international tax standards[1], BEPS Action Plan 13 is not completely implemented by Burkina Faso yet. Therefore, the documentation requirements concerning Master File, Local File, and CbC Reporting are not formally established. However, practical obligations about Master File and Local File are currently applied and supposed to be provided to tax authorities in transfer pricing documentations.

In general, Art 17 CGI stipulates enterprises subject to the General accounting code (OHADA Accounting System) of Burkina Faso are required to include the following documents in their tax return documentation for the financial year:

- The company' balance sheet;
- A tabulation of sales, purchases, and balances;
- Detailed fixed assets and depreciation - state;
- A statement of provisions in the balance sheet with a precise indication of their purpose;
- A table determining the taxable income; incomes available and assigned to the company;
- A detailed statement of overhead; salaries, commissions, fees, etc. and;
- And for industrial companies, the list of major clients includes the following information: identity, full address, and annual purchases. Every industrial, commercial or agricultural company headquartered in Burkina Faso must also keep its accounting documents at the company's head quarter;
- A declaration of the related enterprises and the extent of applying the arm's length principle to their domestic transactions and transactions involving a tax haven/non-cooperative jurisdiction.

However, these rules do not apply to foreign enterprises having a contractual relationship with private and state-owned corporations for a limited period.

1

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 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

There is no clear-cut or standard TP methodology prescribed in the code. In most Sub-Saharan French African (SSFA), transfer-pricing adjustments are at the discretion of the tax authorities. The lack of a precise methodology to determine the transfer price empowers the tax authorities to make adjustments depending on the size of their foot as guided by the economic reality, which may sometimes be disputed. In this regard, the OECD Transfer Pricing methods are generally accepted, and there is no harm in the taxpayer's use of one of these methods in proving the transfer price during the audit.

f) Economic Analysis – Benchmark Study

There is no specific requirement. The use of comparable in determining the transfer price is at the discretion of the tax authority. Art. 22 CGI empowers the tax authorities to reassess the tax base on the indirect transfer of goods and services between related parties. However, west African or local comparable would be favoured. In the absence of a defined TP methodology, the transfer price is determined by comparing the income derived by independent enterprises carrying out similar transactions under similar operating circumstances.

g) Inter-company (IC) Legal Agreement

Although an Inter-company legal agreement formalises 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 taxpayers are required to submit their financial statements at TP documentation

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	Local GAAP	30 April (31 May for insurance companies)	No	No	No
Master File	Request	OECD Guidelines2017	30 days upon request	No	3 billion FCFA	Yes
Local File	Request	OECD Guidelines2017	30 days upon request	No	3 billion FCFA	No
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
Local form Y	N/A	N/A	N/A	N/A	N/A	N/A
Local form Z	N/A	N/A	N/A	N/A	N/A	N/A
Annual Accounts	N/A	N/A	N/A	N/A	N/A	N/A
Segmented P&L	N/A	N/A	N/A	N/A	N/A	N/A
* Burkina Faso has NOT signed the MCAA agreement for the filing of CBCR.						
* There is no legislation in Burkina Faso on Small and Medium-sized enterprises about Transfer Pricing.						

By virtue of Article 16 of the code, the tax declaration is filed annually, within three months following the end of the company's financial year. Additionally, companies have 30 days upon official request by the auditors for submitting the requested documentation.

There is currently no statute of limitation for transfer pricing cases. However, Art. 402 CGI states that the tax administration in relation to direct taxes has a period expiring on 31 December of the third year following the year.

j) Mandatory Language

There is no specific stipulation for a language to be used in drafting the TP documentation. However, tax and accounting documentation per Art 19 (Para 2) must be drafted in French.

k) Notification Requirement

There are no requirements related to CbC Reporting in Burkina Faso.

l) Record Keeping

In general, tax documentation and accounting records must be preserved for a minimum period of four years pursuant to Article 148 CGI. Non-compliance with this time frame may trigger a fine of up to 100,000 FCFA.

m) Penalties and Interest Charges

There are no specific Transfer Pricing penalties mentioned in the General Tax Code of Burkina Faso. However, general penalties on tax non-compliance may be charged by virtue of Article 22 CGI, which constitutes:

- A fine of up to 100,000 FCFA for the destruction of tax documentation and accounting records before the 4-years revision term;
- A 50,000 FCFA fine on refusal to disclose the accounting books; and other documents used as the basis in determining the income tax within 10 days after a formal request by the tax inspectors. That may be increased by 100% in case of recidivism (Article 148 of CGI); and,
- Any violation or non-compliance of the provision to submit documents substantiating the tax return is punishable with penalties from 100,000 FCFA per month of the delay to 500,000 FCFA per year depending on the situation (Article 17 of CGI).

The level of documentation tendered during tax audits is generally strict, and thus, non-compliance may trigger penalties. Non-declaration of the real profits by enterprises are levied a fine of 25% of the amount due and 50% in case of a repeat non-declaration. A fine is also applicable to people who deliberately do not file the required documentation to substantiate the taxes declared.