Transfer Pricing Country Summary

Ghana

December 2021

1. Introduction

Ghana is not a member of OECD. However, it has recently implemented the three-tiered reporting structure of BEPS Action 13 requirements of the master file, local file, and CbCR in its new tax legislation.

2. Laws & Regulations

a) References to OECD/EU/Local Rules

The relevant references to TP requirements can be found under (i) Income Tax Act 2015 (Act 896), (ii) Revenue Administration Act 2016 (Act 915), (iii) Customs Act 2015 (Act 891), and (iv) Value Added Tax Act 2013 (Act 870).

Moreover, Ghana has abolished the former TP laws (L1-2188, 2012) by the new Transfer Pricing Regulations 2020 (L1-2412). Many of the previous regulations' provisions are preserved in the 2020 Regulations, but they now contain requirements for more detailed information to be provided in the yearly TP return and TP documentation. According to the new legislation, the TP documentation must now comprise a master and a local file. It also requires the UPE of an MNE Group tax resident in Ghana and has a yearly consolidated group turnover of GHS 2.9 billion to submit a CbC report. Thereby, it makes a clear distinction between the TP return and the income tax return, designating it as a separate yearly return.

b) Definition of Related Party

The regulation applies to transactions between persons who are in a controlled relationship; dealings between a permanent establishment and its head office; dealings between a permanent establishment and other related branches of that permanent establishment; transactions between a taxpayer and another taxpayer who is in a controlled relationship; and in transactions between a taxpayer and another taxpayer.

Per the Act, a "controlled relationship" refers to a relationship between one taxable person and another, under terms, which enable the relationship to influence the transfer price set in a transaction, and in which that other person is an associate of the first person, a relative of the first person.

The Transfer Pricing regulation applies to commercial transactions that affect the profits or losses of persons covered by the Regulations. These include the purchase and sale of goods; the purchase, sale, lease or use of a tangible and intangible asset; the provision of management services, technical services or other intra-group services; the provision of finance or other financial arrangements; rent and hire charges; and any other transaction that may affect the profit or loss of the entity.

c) Nature of Transfer Pricing Documentation

Inter-related parties must maintain contemporaneous documentation on their transaction for the income year. The enumerated information in the TP regulations on the TP documentation submitted with the annual tax return in a form prescribed by the Commissioner-General. The Commissioner-General may also require any additional information relevant to the transactions undertaken by the person during that tax year, in accordance with the standard provision under the IRA.

Tax return documentation filed in the form prescribed by the Commissioner must state the information required and the manner prescribed. It must also include a duly signed declaration that the return is complete and accurate.

The taxpayer must also furnish with his return a separate statement of income, expenditure and a statement of assets and liabilities for each business undertaking carried on within that business and income year.

d) Tax Havens & Blacklists

Guatemala does not have a Tax Haven list available. As a side note, Ghana was regarded as a “high-risk third nation” in the Money Laundering List by the EU. However, in 2022 the country was removed from that list as it developed anti money laundering actions.

e) Advance Pricing Agreement (APA)

There is currently no provision for 'Advanced Pricing Agreements' in the regulation.

f) Audit Practice

The Ghanaian Transfer Pricing Unit (TPU), set up in 2013, initiated the first cycle of transfer pricing audits in 2015. Managing the resources constraints and concerns about the level of contributions to government revenue from investors operating in key sectors of the economy and the publicity given to reports of tax abuses by certain multinational enterprises (MNEs) doing business on the African continent, including through subsidiaries and branches in Ghana, has heightened Transfer Pricing scrutiny. Extensive training in specialised personnel is being done in response to the Transfer Pricing Regulation of 2012, focused on audits in sectors like mining, oil and gas, manufacturing and the transfer of services.

3. Transfer Pricing Documentation

a) Level of Documentation

In Ghana, the enterprises that meet certain criteria must submit TP documentation as prescribed by the L1-2412 of 2020. Amongst others, companies must include the following:

- In case of a Master File; (i) the group's organisational structure, comprising a chart depicting the group's legal and ownership structure, as well as the geographic locations of functioning businesses, (ii) a description of the group's operations, (iii) the group's intangible assets, (iv) the group's financial activities, and (v) the group's financial and tax situation.
- In the case of a Local File; (i) the organisational structure of the enterprise in Ghana, (ii) the controlled activities of the enterprise in Ghana, and (iii) the financial activities of the enterprise in Ghana.
  In case of a CbC reporting; (i) for each country in which the MNE group operates, aggregate information on revenue, income tax paid, profit or loss before income tax, stated capital, income tax incurred, number of employees, accumulated earnings, and tangible assets other than cash or cash equivalents, (ii) a description of each MNE group constituent entity, including the jurisdiction of tax residence, and, if different from the jurisdiction of tax residence, the jurisdiction under the laws of which the constituent entity is organised, as well as the nature of the constituent entity's main business activity or activities.

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

The Ghanaian Transfer Pricing Regulation endorses the five standard International Transfer Pricing methods for determining the arm's length price. With no reference given to either the OECD or the UN transfer pricing methods, taxpayers may rely on those methods to the extent of no clear guidance in the regulations. Thus:

- The comparable uncontrolled Price Method (CUP);
- The Resale Price Method (RPM);
- The Cost plus method (C+);
- The Transactional Net Margin Method (TNMM);
- The Profit Split Method (PSM)

However, the taxpayer can use any alternative Transfer Pricing method that best substantiate their transfer price. The Regulations also permits the Commissioner-General to apply an alternative method if, considering the nature of the transaction, none of the five listed methods can be used to determine the arm's length price. The alternative method applied by the taxpayer might also be approved beforehand by the Commissioner-General, thus reducing contention.

f) Economic Analysis - Benchmark Study

When assessing comparability, the terms of comparable uncontrolled transactions are used as a guide. The quantity of data on which comparisons with uncontrolled circumstances and deals in a particular case may be made also determines the practicable standard of comparability. For the nature of the comparables, there are no explicit criteria yet. But it can be said that the Ghana Revenue Authority (GRA) allows external comparables when internal comparables are unavailable. Thus, the GRA prefers internal comparables implicitly. The improvements of guidelines on identifying the external comparables are continuing.

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) 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	Electronic	30 April for the previous FY	N/A	N/A	No
Master File	File	Electronic/ OECD	30 April for the previous FY	N/A	N/A	No
Local File	File	Electronic/ OECD	30 April for the previous FY	N/A	N/A	No
CbCR	File	Template TBC	31 December for the previous FY	31 December for the previous FY	GHS 2.9 billion	No
Form22A & Form22B	File	Electronic	30 April for the previous FY	N/A	N/A	No
Annual Accounts	Prepare	IFRS	30 April for the previous FY	No	No	No
Segmented P&L	Prepare	Excel/Other	Ready upon filing CIT/TP documents.	No	No	No
* Ghana has not signed the MCAA agreement for the filing of CBCR yet.						
* There is currently no specific provision in the Ghanaian TP regulation regarding small and medium sized enterprises.						

The IRA's thin capitalization provisions operate to counter a specific form of tax base erosion involving the exploitation of inter-affiliate relationships resulting from excessive financing of resident affiliates through debt instead of equity. The provision thus disallows any interest deductions on inter-affiliate debts that exceed the prescribed debt-to-equity ratio of 2:1.

Since the TPU is developing a few cycles of transfer pricing audits, entities are strongly advised to maintain a high consistency among all documents. Robust local documentation should be prepared in order to provide to the tax authorities in case of an audit.

Tax returns for a year of assessment must be filed no later than four months after a basis period, which coincides with the end of the year. Therefore, Transfer pricing documentation needs to be sent before 30 April. And, on request by the taxpayer, the Commissioner may extend the deadline not later than two months after the due date.

The statute of limitation is 6 years from the date of assessment of the Tax.

i) Mandatory Language

Tax returns must be furnished in the form prescribed by the Commissioner-General stating the information required in the manner he prescribes. The documentation must be prepared in the English language.

j) Notification Requirement

When more than one constituent entity of the same MNE group is resident in Ghana, and one of them is designated to file the CbC report, the Commissioner-General must be notified that the filing is intended to satisfy the filing requirements of all constituent entities of the MNE group that are resident in Ghana for tax purposes. The reporting entity's position as the ultimate parent entity or surrogate parent entity must be communicated to the Commissioner-General. The constituent entity located for tax purposes in the surrogate parent entity's jurisdiction must notify the surrogate parent entity's jurisdiction that it is the surrogate parent entity.

k) Record Keeping

The IRA requires a taxpayer to keep records or evidence necessary to explain the information provided in a tax return or other documents accompanying the return to enable the taxpayer's tax liability to be accurately determined. The taxpayer retains such records or evidence for at least six years unless otherwise specified by the Commissioner-General.

l) Penalties and Interest Charges

Pursuant to Article 16(1) of the LI-2412, a tax is due and payable due to an adjustment made by the Commissioner-General following a transfer pricing audit. That is regarded as an extra tax for Section 39 of the RAA. Article 16(2) elaborates that the RAA's rules on fraud, failure to submit returns, penalties for underpayment of tax, and other offences also apply to the LI-2188 Regulations.

For the failures of CbC reporting, there are no specific rules in force. However, failure to comply with the requirements carries the same penalties as similar infringements under Act 915, which is 500 currency points plus a ten-point penalty for each day the failure persists (a currency point is GHS 1). There are penalties specified for Master and Local Files in the new legislation. In brief;

- For non-filing: An initial payment of GHS 500, with an extra payment of GHS 10 for each day the failure persists. When the accused individual is found guilty, a fine of not less than 1,000 penalty units (GHS 12,000) and not more than 2,000 penalty units (GHS 24,000) is imposed. A defendant may also be sentenced to an imprisonment of not less than 2 years and not more than 5 years.
- For the incomplete or incorrect filing: If the statement was made without reasonable justification, the penalty is %100 of the tax deficit. Otherwise, the penalty is 30 percent of the tax shortfall.
- For not having files available: Failure to keep documents up to date might result in penalties. The taxpayer is obligated to pay for each month or part of a month during which the failure persists (i) %75 of the tax attributable to that period where the failure is attributable; or (ii) in any other instance, the less of %75 aforesaid, or 250 currency points applies.