



Transfer Pricing Country Summary

Ivory Coast

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1. Introduction

On 2 November 2016, Ivory Coast officially joined the Inclusive Base Erosion and Profit Shifting (BEPS) Multilateral Convention ("Multilateral Instrument" or "MLI"). This Convention updated the existing network of bilateral tax treaties and aims at reducing opportunities for tax avoidance by multilateral enterprises. It implements agreed minimum standards to counter treaty abuse and would improve dispute resolution mechanisms, while providing flexibility to accommodate specific tax treaty policies.

2. Laws & Regulations

a) References to OECD/EU/Local Rules

Ivory Coast follows the OECD TP Guidelines. Essentially, TP rules were introduced in Ivory Coast by virtue of Article 38 CGI (General Tax code) and enhanced by the Finance Act of 2006 (transfer pricing). It is further strengthened by the taxpayer's obligation of communication with the tax authorities, laid down by the Ivorian TP regulation, as enshrined in Article 33 (Art 50 bis) of the Livre des Procédures Fiscales and the new Article 36 of the CGI.

b) Definition of Related Party

The TP regulation applies to all international transactions conducted by resident companies. By virtue of the new Section 36 of the CGI, Companies that control other companies located outside Ivory Coast are required to provide to the Tax Administration, following the end of each fiscal year, an annual declaration with a country by country breakdown of group profits and various economic aggregates and tax accounts. This rule applies to related parties which fulfill the following conditions:

- achieved a consolidated pre-tax turnover equal to or greater than 491,967,750,000 frs CFA in respect of the tax year subject to declaration;
- be subjected to the obligation to prepare financial statements pursuant to Articles 74 et seq. of the Uniform Act of OHADA on Accounting Law and Financial Reporting;
- controlled entities established outside Ivory Coast; and, - Entities not under the control of a company located in Ivory Coast, but submitted to filing of a declaration, or in a country linked to Ivory Coast by an agreement providing for the exchange of tax information, for purposes and subject to a similar declarative obligation.

c) Nature of Transfer Pricing Documentation

The taxpayer's communication with the tax authorities plays a key role in compliance. Justification for every intercompany transaction must be presented on request. Upon a request for justification, the taxpayer must state: - The nature of the relationship between the resident and non-resident enterprises involved in the transaction; - The methodology used in determining the transfer price in the commercial, industrial, and financial transaction with the non-resident enterprise and other elements to substantiate the use of the methods and where possible, the comparables used; - The activities performed by the non-resident enterprise; its connection with the company and targeted transaction; and, - The foreign fiscal treatment of the activities performed by the non-resident enterprises related to the company resident in Ivory Coast. The request for justification by the tax administration is usually specific on a targeted transaction or product transferred, the foreign countries involved, the target company audited and, where applicable, the amounts involved. Where the taxpayer inadequately responds to the inquiry, the tax administration may, with the information available at its disposal, proceed in adjusting the transfer price at the expense of the taxpayer.

d) Tax Havens & Blacklists

Ivory Coast does not have a Tax haven list of countries currently.

e) Advance Pricing Agreement (APA)

There is currently no regulation in the Ivorian General Tax code relating to Advanced Pricing Agreement.

f) Audit Practice

By virtue of the procedure, during an audit, if the tax administration gathers evidence suggesting an enterprise has made an indirect transfer of profits within the meaning of Article 38 CGI, it may request information and documentation specifying the nature of the relationship between the companies, the method in determining the transfer price of the transaction, the elements justifying the transaction and, where appropriate, comparables used, the business activities of the non-resident related enterprise and its relationship to the operations concerned, and the tax treatment of the foreign operations. If the taxpayer's response to the request for justification/clarification is deemed inadequate, the tax administration may use any information in its possession to challenge the declaration, thus, adjusting the transfer price.

3. Transfer Pricing Documentation

a) Level of Documentation

Ivory Coast does not require specific OECD BEPS format transfer pricing documentation but requires companies to submit yearly a report of intragroup transactions, which is locally understood as a Local File, that will list all intragroup transactions of a specific taxpayer.

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

The most appropriate TP method is to be used. Usually, all the OECD TP methods are used and are applicable depending on the circumstance of the case. The taxpayer needs to choose the most appropriate TP method.

f) Economic Analysis – Benchmark Study

A benchmark study is required to justify that the appropriate TP method is used. The comparables used must be local. International comparables may also be used depending on the TP method used, as well and the circumstances of the case.

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

Companies shall disclose their intra-company transactions and their financial statements when preparing 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. 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	Local GAAP	30 th of June	N/A	Yes	Yes (French)
Master File	N/A	N/A	N/A	N/A	N/A	N/A
Local File	N/A	N/A	N/A	N/A	N/A	N/A
CbCR	Prepare	Available on the website of the tax authorities	No later than 12 months after the last day of the reporting fiscal year of the MNE group	N/A	Yes – EUR 750 million	Yes (French)

Local TP form	File	Available on the website of the tax authorities	31 st of May	N/A	N/A	Yes (French)
Annual Accounts	File	UEMOA	20 th of April	N/A	N/A	Yes (French)
Segmented P&L	N/A	N/A	N/A	N/A	N/A	N/A
* Country has signed the MCAA agreement for the filing of CBCR.???						
* Country 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

There is not a mandatory language requirement when preparing TP documentation in Ivory Coast. Nonetheless, there is preference for the official local language which is English.

k) Notification Requirement

There is not a notification requirement. Consequently, the taxpayer needs to be able to provide the tax authorities with the documentation, if requested.

l) Record Keeping

There is currently no legislation that governs the record keeping in Ivory Coast.

m) Penalties and Interest Charges

Per the amended 2018 CGI, TP documentation must be declared within 12 months after the end of each fiscal year. Such documentation must also be transmitted electronically. In case of discrepancy between the electronic version and the paper version, the latter version is valid. Failure to declare within the legal timeframes for declaration is punishable by a fine of 5,000,000 francs CFA, without prejudice, to the application of other sanctions provided by law. Per the 2006 tax procedure code, other penalties applicable for non-compliance of tax provisions include:

- 0.75% interest rate per month for late payment of taxes;
- An increase by 10% in case of delay or failure to report;
- 40% in case of bad faith of the taxpayer and;
- 80% in case of fraud; abuse of rights, or failure to report within 30 days of a second set notice; - Tax fraud may also trigger an imprisonment for a maximum of 5 years. Approximately 800 criminal complaints for tax evasion are filed each year in the criminal courts;



- And a ban, (also applicable to corporates) from entering the State for a period of not less than 6 months.