

Transfer Pricing Country Summary Angola

July 2018

Legislation

Existence of Transfer Pricing Laws/Guidelines

The Angolan Transfer pricing rules took effect by virtue of Presidential Decree Number 147/13 of 1 October 2013, also known as the Large Taxpayers Statute. The regulation which set forth specific rules governing the tax regimes applicable to large taxpayers empowers the tax administration to make adjustments in determining the taxable income of a taxpayer where, by virtue of a 'special relationship' between the taxpayer and another person, subject to industrial tax or not, income derived between the parties is assessed on an accounting base different from that calculated in the absence of such relationship, or the operations between the parties differ from those which would normally be agreed upon in transactions between independent entities. The transfer pricing regulations applies to commercial transactions on goods, services, rights and financial transactions.

Order number 472/14 published 28 February 2014, as amended by Order number 599/14 of 24 March 2014, further provides information regarding companies operating under the Large Taxpayers Statute.

Angola's Ministry of Finance, by virtue of Order no. 678/17, 25 September 2017, established the Transfer Pricing Unit (TPU). The recently created unit is an ad-hoc technical administrative committee under the Large Tax Payers' Office, which ensures, control and secures the compliance by Large Tax Payers for mandatory submission of the transfer pricing data to the AGT, as established by the presidential decree. The TPU is also tasked with conducting audit on files associated with transfer pricing and see to it that declared operations actually comply with established rules of competition.

The TPU is responsible for proceeding with transfer pricing audits to monitor compliance of controlled transactions with the arm's length rules for taxpayers covered by the Angolan transfer pricing regime.

The unit provides support and the necessary clarifications to these taxpayers in order to ensure greater levels of compliance with the associated obligations, as well as ensure information sharing and interaction regarding the transfer pricing regime with the other Services, Directions or offices of the ATA or other entities with which the ATA cooperates on transfer pricing matters.

Definition of Related Party

The definition of related parties is referred in the code as "special relation", which applies to two entities where one is able to exert, directly or indirectly, a significant influence in the decision or management of the other, including:

- When the management of a company, including spouses, ascendants and descendants of management personnel, has a direct or indirect participation of 10% or more in the capital or the rights to vote in the other entity;

- When the majority of the members of the administration or management of two entities includes the same people or, being different people, related by means of marriage, de facto union or direct kinship;
- When the entities have entered into a subordination contract;
- When the entities are involved in a domination agreement or have reciprocal participations; connected by a subordination contract, connected through an equal partners agreement, or in other ways connected under terms with similar legal effects, according to the Company's Code;
- When two or more commercial entities engage in transactions that represent more than 80% of the total volume of operations of one of the entities; and,
- When one entity is in a position of financing the other with more than 80% of its credit portfolio.

Transfer Pricing Scrutiny

Scrutiny of intercompany transaction applies to the list of companies on the Large Taxpayers Statute; viz. entities with an annual profit that exceeds seven billion kwanzas.

Scrutiny is therefore typical in the lucrative Oil and Gas sector, with transactions in this sector usually surpassing the statutory threshold. Further, 'Production Sharing- agreement' (PSA) applicable in the Oil and Gas sector defines specific transfer pricing rules inherent to petroleum operations; especially in relation to subcontracting services, acquiring materials, equipment, machinery and consumable goods. Other activities usually scrutinized are in the financial, diamond extraction and the telecommunication sectors.

Transfer Pricing Penalties

There are currently no specific transfer pricing penalties for non-compliance. However, general tax penalties may apply. If transfer pricing adjustments are made, a penalty between 50 and 200% of the unpaid tax may apply, with a 2.5% interest on the monthly rate additionally imposed.

Advance Pricing Agreement (APA)

There is currently no legislation in regard to 'Advanced pricing agreements'.

Documentation And Disclosure Requirements

Tax Return Disclosures

In general, a taxpayer with an annual income higher than 7 billion kwanza, at the close of the accounting year, is obliged to prepare and file a declaration characterizing the relationship and pricing arrangements with companies with whom they have 'special relations'. The National Director of Taxation is also

empowered to approve work orders, circulars and orders defining more restrictive terms on the characteristics of the required documentation.

Level of Documentation

The required transfer pricing documentation is prepared and filed by each company in a structure, comprising the:

- Summary of the transaction;
- Macro-economic environment;
- Presentation of the entity;
- Functional analysis of the entity;
- Identification of the related party operations; and the,
- Economic analysis of the related party operations.

By outlining the structure of the required documentation expected from a taxpayer, it is trite that compliance is mandatory so long as the statutory threshold is reached.

Record Keeping

There is no rule on the decree in regard to record keeping.

Language for Documentation

Transfer pricing documentation should be prepared in Portuguese.

Small and Medium Sized Enterprises (SMEs)

There is no specific transfer pricing rule relating to 'Small and Medium sized Enterprises'.

Deadline to Prepare Documentation

The taxpayer is given six months upon the close of the fiscal year to build up the transfer-pricing dossier according to the six steps required. The fiscal year in Angola coincides with the calendar year.

Deadline to Submit Documentation

Documentation should be submitted no later than 30 June of the following fiscal year.

Statute Of Limitations

The statute of limitation for transfer pricing assessments is 5 years.

Transfer Pricing Methods

In general, the Angolan TP Methods follows the basic principles established in the OECD Transfer Pricing Guidelines, with a key exception that only the three traditional methods are used in determining the arm's length transfer price. The methods accepted by the Directorate General for Taxes in order to determine and substantiate the economic analysis of a related party operation are:

- a) The Comparable Uncontrolled Price Method;
- b) The Resale price Method; and,
- c) The Cost Plus Method.

Comparables

Per the Angolan Transfer Pricing Rules, no mention of the use of comparables in determining the Transfer price by the taxpayer is made. The tax authorities are empowered by the decree to make corrections in determining the tax base in 'special relation' transactions. In doing so, a comparison of the special related party transaction is made with transactions between independent parties in similar circumstances. Thus, only the tax authority is allowed to use comparables where necessary to substantiate the corrections made to the taxpayers' tax base.