UN WORKSHOP ON TRANSFER PRICING
ANTANANARIVO, MADAGASCAR
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MADAGASCAR PRESENTATION

1.MADAGASCAR : LEGAL FRAMEWORK ON TRANSFER PRICING (TP) (1/2)

General Law : General provision in the General Tax Code (Code Général des Impôts, CGI): Article 01.01.13 updated by the 2014 Finance Law complies with the principles of international taxation under the arm's length principle.

Application governed by a statutory text: Decision N°04/MFB/SG/DGI on 24 January 2014.

Principle set out by Article 9 of the OECD and the UN Model Tax Convention, as well as in tax treaties with France and Mauritius.

Conditions of the transactions made between associated companies (including prices) should not be different from the ones made between independent enterprises.

1.MADAGASCAR : LEGAL FRAMEWORK ON TRANSFER PRICING (TP) (2/2)

Law on Commercial Companies (Law 2003-036 of 30/01/2004) regulates companies of a Group, in particular on Madagascar territory. It defines the notion of Group 'as a network of controlled companies', provisions on participations, consolidation of accounts of companies in a group: art. 191-192-196.

Madagascar also has other specific regimes:

* Law on Large Scale Mining Investments (LGIM) – Law 2005-022 of 17/10/2005: fiscal benefits in art. 46-49

* Convention on Establishment – Law 98-002. Special law between the Madagascar State, represented by OMNIS (20% of capital) and QIT FER (80% of capital), affiliated to Titane Inc. 99% to regulate the 'tailor-made' benefits and obligations.

* Convention on Free Zones and Enterprises (ZEF) – Law 2007-037 of 14/01/2008, art. 5 and 6 on taxation

* Petroleum Code, etc. guaranteed by the notion of stability, while transfer pricing issues are not addressed in detail.

Madagascar is in its first stage of practical experimentation with Transfer Pricing (start of 2015). However, two relevant cases are being addressed. The TP Unit was initiated by the Directorate General of Taxation.

The notion of Transfer Pricing is to guide the Malagasy Financial Judicial Institutions and State Council.

2. FREQUENT QUESTIONS ABOUT TRANSFER PRICING

On the few current cases handled by Madagascar, the most common transfer pricing issues concern management fees, the services provided to experts, royalties, ad transfer pricing on commodities.

Management fees in a Group are the costs borne by the controlled entity according to a cost allocation criteria, described in an agreement between the parent company and the subsidiary.

The services delivered by the experts concern very technical and specific services, requiring knowledge of the value chain of the MNE.

Royalties are stipulated in an agreement by the assessed party and its parent company, as a percentage of turnover.

Transfer pricing related to large scale retail goods is regulated under the customs categorization.

3. PRACTICAL METHODS OF TRANSFER PRICING

Non-ATAF member countries dealing with MNEs in Madagascar are: France, India, China, and Italy among others.

The methods used in the cases under assessment cam be found in agreements.

The transfer pricing methods used for the cases studied are: Cost Plus Method and Resale Price Method.

However, the auditors are considering using the Transactional Net Margin Method (TNMM)

4. ACCESS TO COMPARABLES

Madagascar has no access to any comparables database yet.

Similarly, the tool to gather information on benchmarks to be used as comparables -with independent parties, has yet to be developed.

Depending on the case in exam, we asked the assessed party to explain the price or margin applied with documentary evidence.

By their responses, it was found that the pricing or margin benchmarks they used as comparables were taken from developed countries, having no similarities with African countries nor having negative results.

Thus, it is more interesting to make an adjustment using internal comparables on the same products but with independent suppliers.

Regarding management fees, auditors experience some discomfort in applying the OECD guidelines for classifying certain costs charged by the assessed party as management fees.

5. MADAGASCAR PERSPECTIVES ON SHORT AND MEDIUM TERM (1/2)

In order to fulfill the five TP methods as specified by the OECD, Madagascar must regulate the need for consolidated group accounts.

Madagascar requested for technical and legal support from ATAF experts and consultants following the Workshop on Transfer Pricing Regimes in Africa, held in Nairobi (Kenya) on 20-22 July 2016.

Madagascar hopes to receive this support starting in the first or second quarter of 2017.

Some practical case studies with the support of experts from ATAF and its technical affiliates, will provide our auditors with more insights different areas of analysis; for example, in the case of major mining investors, oil companies, mobile telecommunications, banking and insurance, large distributions, etc.

5. MADAGASCAR PERSPECTIVES ON SHORT AND MEDIUM TERM (2/2)

A more-in depth observation would be more beneficial, regarding transfer pricing for Multinational Enterprises (MNE) under special regimes.

Madagascar would also like to benefit from the use of the software and the data provided by the ATAF supplier on comparables and risk analysis.