

RECENT TRENDS OF TAX REFORMS IN AFRICA

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MAJOR AREAS OF TAX REFORMS IN AFRICA

- ▶ TRANSFER PRICING RULES
 - ▶ CAPITAL GAINS ON DIRECT AND INDIRECT TRANSFERS
 - ▶ STRENGTHENING OF P.E LEGISLATION
 - ▶ THIN CAPITALIZATION RULES
 - ▶ TARGETING TRANSACTIONS WITH TAX HAVENS
 - ▶ NEW APPROACH TO TAX AUDITS - COOPERATION
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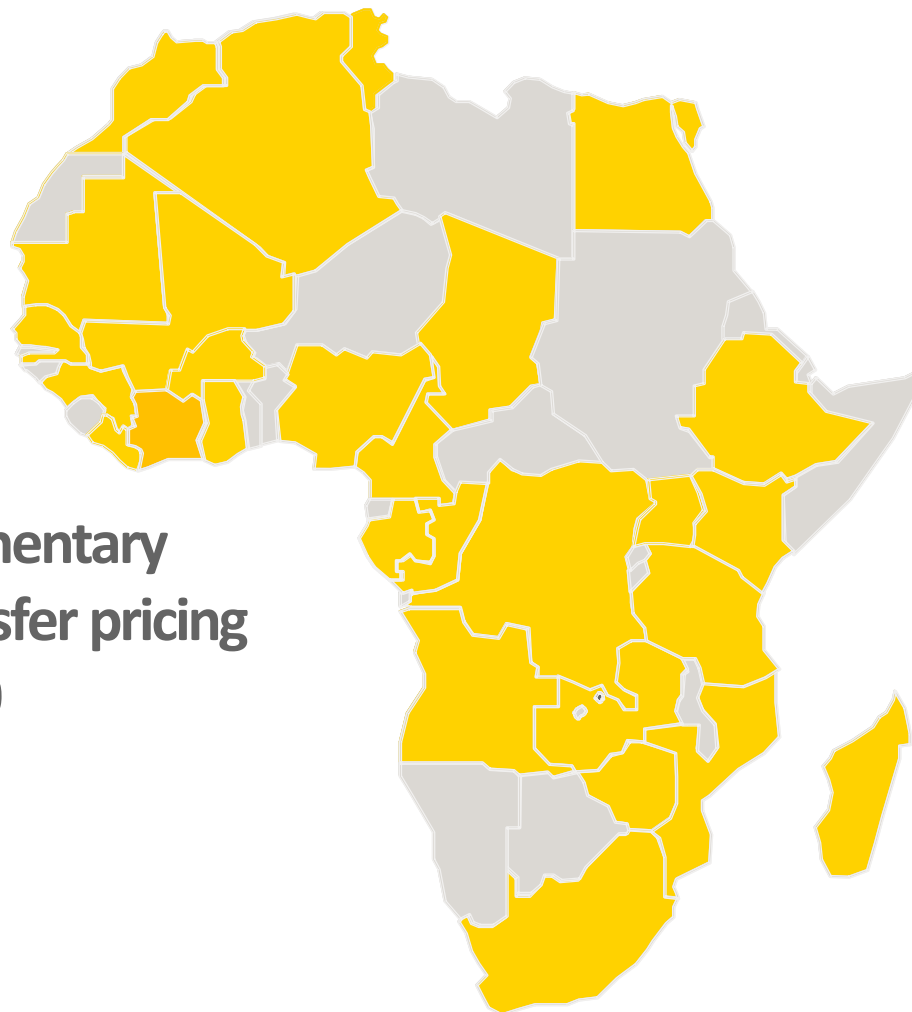
Transfer pricing rules



Focus on documentary requirements in Africa

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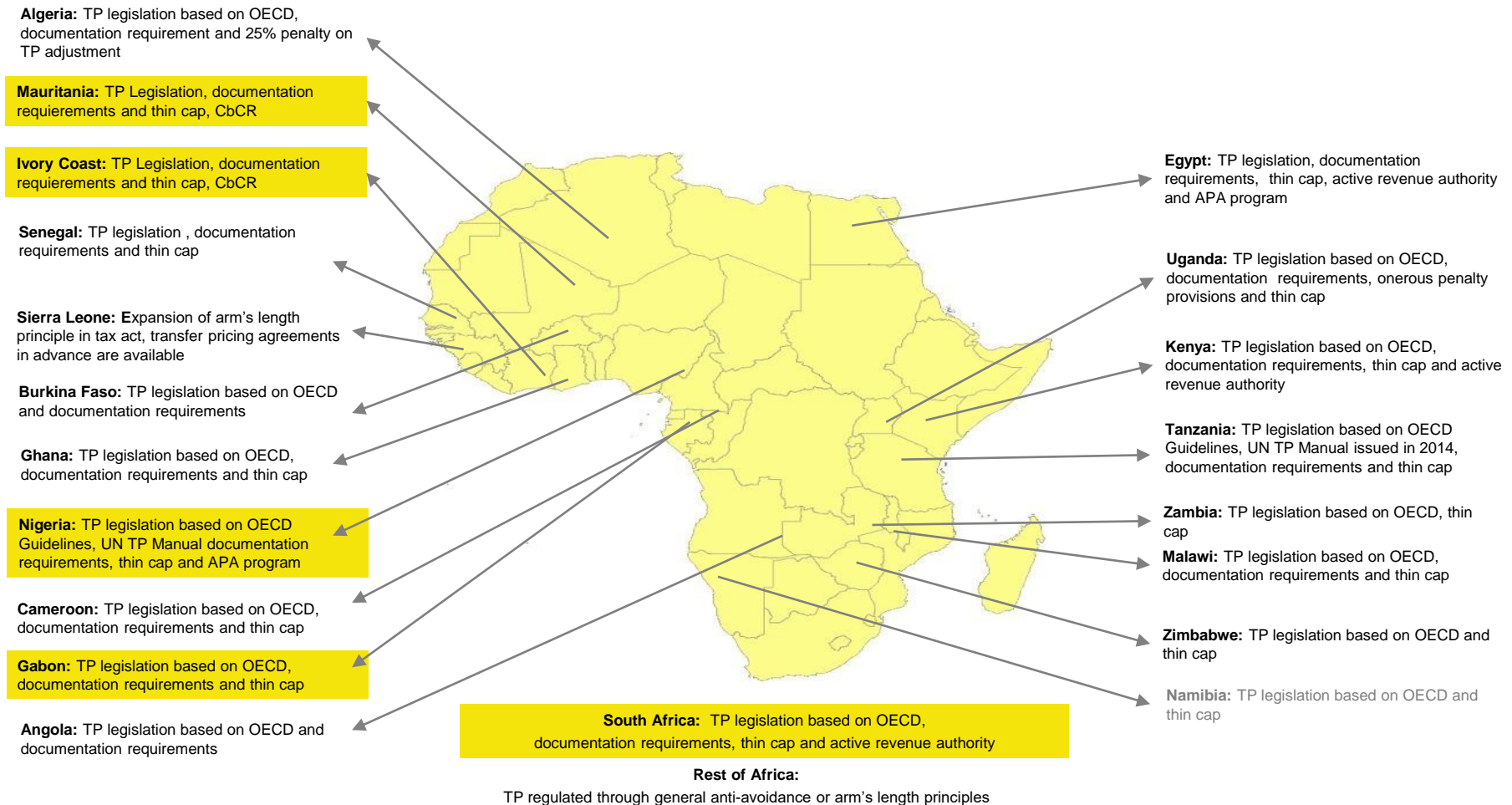
Countries have a documentary and/or declarative transfer pricing obligation in 2019/2020



- South Africa
- Algeria
- Angola
- Burkina Faso
- Cameroon
- Cape Verde
- Congo
- Egypt
- Ethiopia
- Gabon
- Ghana
- Guinea Conakry
- Ivory Coast
- Kenya
- Liberia (TBC)
- Madagascar
- Mali
- Morocco (from 2020)
- Mauritania
- Mozambique
- Nigeria
- Uganda
- DRC
- Senegal
- Tanzania
- Chad
- Tunisia (from 2020)
- Zambia
- Zimbabwe

General information on transfer pricing

➤ Overview of the implementation of OECD transfer pricing rules in Africa.



Transfer pricing rules in some African countries

Countries	Obligations	Sanctions
Cameroon	Cameroonian companies file a transfer pricing report containing specific and general information specified in the Circular of the 2012 Finance Law. For enterprises belonging to the DGE, an annual TP report shall be filed by March 15 of the following year	Absence of declaration: Approximately 2 500 us dollars for each month
Gabon	Obligation to file a transfer pricing documentation (main file and local file)	Late filing or incomplete declaration of transfer pricing documentation: Penalties of 5% on the total amount of intragroup transactions with a minimum 140 000 usd / year. Late filing or incomplete country by country declaration: penalty equal to 0.5 % of turnover excluding consolidated tax, capped at 210 000 usd per fiscal year.
Ivory Coast	<ul style="list-style-type: none"> *No documentary obligation *Obligation to file a statement of intragroup international transactions; *At the express request of the Tax Administration as part of an accounting audit, a company may be required to provide details of the applied transfer pricing policy. 	<p>Absence of declaration or incomplete declaration of the statement of intragroup international transactions leads to the rejection of the deductibility of the relevant expenses ;</p> <p>Absence of the country by country declaration (CBCR 11 000usd ;Incomplete country-by-country declaration 4 000 usd</p>
Guinea Conakry	Obligation to file a transfer pricing documentation (local file) for companies realizing a turnover superior to 175 billion Guinean Francs (GNF) which hold or are held by enterprises realizing a turnover superior to the aforementioned amount	No express penalty to date In case of an absence of declaration and / or documentation;

Transfer pricing rules in some African countries

Countries	Obligations	Sanctions
Republic of Congo	Obligation to provide a documentation justifying the transfer pricing policy practiced, for companies which annual turnover is greater than or equal to 500 000 000 CFA,	Absence of production of the documentation: penalty of 10 000 usd / fiscal year; Failure to response after formal notice: 20 000 Us/each controlled fiscal year; Incomplete response after formal notice: 10 000 USD/each controlled fiscal year.
Democratic Republic of Congo	Obligation to file a declaration including a light transfer pricing documentation ; Obligation to hold a Transfer Pricing Documentation at the local level which includes transactions of any kind made with affiliated companies located abroad.	No express penalty to date In case of an absence of declaration and / or documentation; Risk (in practice) of rejection of deductions of expenses related to transactions with affiliated companies located abroad.
Senegal	Obligation to present a transfer pricing documentation in case of control (master file and local file) Obligation to file a CbCR Obligation to file a transfer pricing declaration	Fine for Failure to File the Annual Transfer Pricing Statement: 20 000usd Fine for failure to reply for partial response to the formal notice to produce documentation transfer price: 0.5% of the amount of undocumented transactions.
Equatorial Guinea	Equatorial Guinea does not provide a provision for transfer pricing.	N/A
Chad	Obligation to file a statement of intragroup international transactions.	Rejection of deductibility of expenses incurred with associated companies for undeclared or erroneous transactions Late filing of the transfer pricing declaration: Penalties of 5% on the total amount of intragroup trade with a minimum of 100 000 usd/ fiscal year.

Capital gains on
direct and indirect
taxation





Taxation of capital gains realized on the indirect transfer of shares in Some African countries

Some tax administrations apply capital gains tax on :

- The direct transfer of shares;
- The indirect transfer of shares defined as: the transfer of shares of a local enterprise made abroad between two foreign companies where one of these foreign companies, completely or partially, holds the share capital of the local enterprise.

It should be noted that Cameroon implemented the taxation of the indirect transfer of shares in 2015. Gabon implemented this measure in 2019.

STRENGTHENING
OF PE
LEGISLATION



PE rules in some African countries

Tax administrations in some African countries seek to capture revenue derived from their jurisdictions by multiplying the criteria for the territoriality of corporate income tax (CIT).

In this context, a company could be deemed to carry out taxable activities in a jurisdiction if it:

- a) has its headquarter or place of effective management in the said jurisdiction;
- b) has a permanent establishment the said jurisdiction;
- c) has a dependent agent the said jurisdiction; or
- d) carries out activities forming a full business cycle the said jurisdiction.

Most countries only use criterium (a) to consider a company taxable for CIT purposes in their jurisdiction.

Other countries such as DRC and Guinea Conakry use in addition to criterium (a), criterium (b) and criterium (d) respectively.

Cameroon applies all of these criteria.

THIN
CAPITALIZATION
RULES

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IV

Thin capitalization rules in some African countries

The following rules concerning thin capitalization are applied in the majority of FSSA countries :

- Interest on sums of money placed at the disposal of the company by partners in addition to their capital shares, irrespective of the form of the company, shall be deductible within the limit of those calculated at the rate of Central Bank advances increased by two percentage points.

Specific rules equally apply when the shareholders hold a majority of the company paying interests.

In Cameroon for example, the deduction shall be possible with respect to partners who directly or indirectly own at least 25% of the share capital or corporate voting rights only if:

- The sums of money made available by all the partners do not exceed one and a half times the amount of equity. Otherwise, interest on the excess amount shall not be deductible;
 - The interest paid to the said partners does not exceed 25% of profit before corporate tax and before deduction of the said interest and amortizations taken into account in determining such profit. Otherwise, the excess amount of interest shall not be deductible.
-

TARGETING
TRANSACTIONS
WITH TAX HAVENS



V

Tax haven rules in some African countries

Remunerations paid to entities resident in tax havens are not deductible as per the tax law of many FSSA countries.

Tax havens are usually defined by these tax laws as :

- any state or territory wherein the tax on income of a natural person or legal entity is less than a third of that paid in Cameroon; or
- any state or territory considered not to be cooperative in matters of transparency or exchange of information required for fiscal purposes by international financial organizations shall be considered a tax haven.

In Chad for instance, the Finance Law 2018 introduced an anti-tax haven rule whereby payments to persons resident or established in a non-cooperative jurisdiction are deductible up to 50% of their gross amount (article 26 of the GTC). A country is considered as a non-cooperative jurisdiction by the Chadian Law if it is mentioned in a blacklist established by the Organisation for Economic Co-operation and Development (OECD) and if that country has not concluded an agreement for the purposes of exchange of tax information with Chad. This rule was effective from 1 January 2018.

NEW APPROACH TO TAX AUDITS

COOPERATION

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African Tax Administration Forum (ATAF)

- ▶ Platform for exchange, collaboration and knowledge sharing in tax matters between member states' administrations.
- ▶ The objective is the improvement of member states' tax systems.
- ▶ More than 50 events planned in 2019
- ▶ « *African tax administrations report that transfer pricing represents one of the highest risks to their tax bases* » (www.ataftax.org).

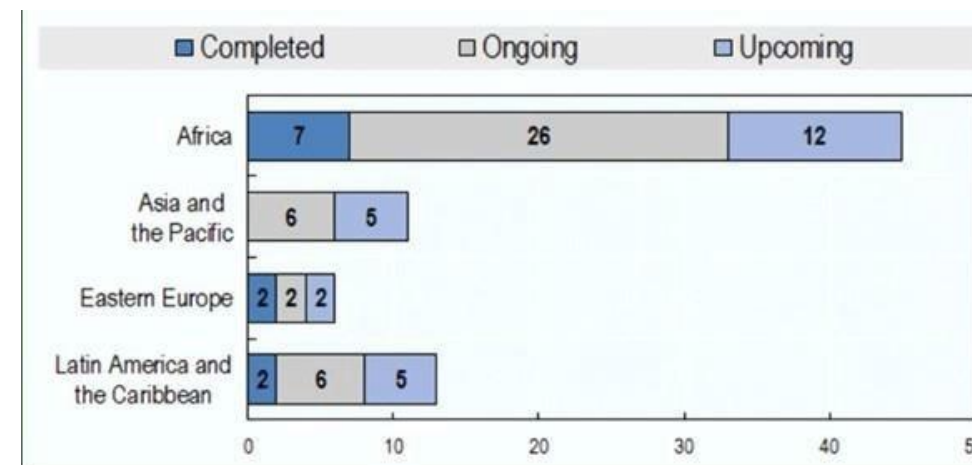


Member countries
Burkina Faso
Ivory Coast
Egypt
Eritrea
Gabon
Kenya
Maurice
Niger
Senegal
Sudan
Chad
Uganda

Tax Audits | Tax inspectors without borders

Context and objectives

- ▶ Support countries with the ability to audit taxpayers
- ▶ Strengthen cooperation in tax matters
- ▶ Transfer of knowledge and risk skills relating to tax audits and for the determination of tax bases
- ▶ Mainly in Africa but also in other regions
- ▶ Initiative which will lead to a greater number of quality audits in the concerned jurisdictions. This will increase the risk of penalties in case of non-compliance



Actual programs		Upcoming programs	
Cameroon		Ivory Coast	
Egypt		Ghana	
Congo		Benin	
Liberia		Chad	
Uganda		Malawi	
Nigeria		Zimbabwe	
Senegal			