

# Algeria Transfer Pricing Documentation obligations

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The amending finance law for 2023 made several modifications regarding the TP documentation's obligations by the cancellation of article 141, creation of articles 151, 141 quinquies and the modification of article 189 of the Direct Tax Code "*Code des impôts directs et taxes assimilées*" which redefine the concept of "dependence" of companies and the conditions of subscription of TP documentation.

This amendment also concerns article 169 bis of the Tax Procedure Code "*Code des procédures fiscales*" which requires to make available to the tax administration's auditors the complete TP documentation on the date of initiation of any on-site tax control.

The TP documentation includes general information about the group of related companies and specific information on the audited company, the content and format of the TP documentation will be determined by order of the Minister of Finance.

Therefore, the Order of November 17<sup>th</sup>, 2020, which determines the companies subject to initial and additional documentation, does not apply following the cancellation of the concept of "initial and additional" documentation through substantial amendments of Article 169 bis of the Tax Procedure Code.

## Companies concerned by The TP obligation :

The TP obligation (TP documentation) concerns **dependent** or **controlled** companies which:

- ✓ has an **annual turnover**, excluding taxes, or gross assets greater than or equal to **one billion dinars (1,000,000,000 DZD)**,  
or
- ✓ **holds** at the end of the concerned financial year, directly or through an intermediary, **more than 50% of the share capital or more than 40% of the voting rights** of a company established in Algeria or outside Algeria, for which the amount of **annual turnover**, excluding taxes, **or the gross assets are greater than or equal to one billion dinars (1,000,000,000 DZD)**, or
- ✓ of which **more than 50% of the share capital or more than 40% of the voting rights** are held, at the end of the financial year, directly or through an intermediary, by a company whose **annual turnover** excluding taxes, **or the gross assets are greater than or equal to one billion dinars (1,000,000,000 DZD)**.

## “Dependence” or “Control” notions:




Dependence or Control are deemed to exist between two companies:

- a) when one holds, directly or through an intermediary, more than 50% of the share capital or more than 40% of the voting rights of the other company or in fact exercises decision-making power, or
- b) when they are both placed, under the conditions defined in paragraph a), under the control of the same company or the same person.

**NB:** The condition of dependence or control is not applied when the transfer is carried out with companies established in a State or in a territory located outside Algeria, whose tax regime is qualified “**privileged**”, within the meaning of Article 141 quinquies.

(Art. 141 quinquies. — A person is considered subject to a preferential (privileged) tax regime in a State or territory, if he is not liable to tax in this State or if he is subject to income tax for an amount 40% or more lower than that one’s for which he would have been liable under the conditions of common law, if he had been domiciled or established in Algeria.

The minimum tax rates accepted by the Algerian tax administration, to be considered for this preferential tax regime are:

-  **7.5%** for manufacturing activities (Common law rate **19%**)
-  **9.5%** for building, public works and hydraulics activities as well as tourist and spa activities excluding travel agencies (Common law rate 23%)
-  **10.4%** for other activities (Services, ... etc. Common law rate **26%**).

## TP obligations in case of a tax audit :

The complete TP documentation should be available at any time of an initiation on-site tax control.

**Tax penalties for non-presentation or incomplete provision of the required TP documentation in case of tax control (Art 169bis of CPF & Art 194/7 of CIDTA):**

In the event of non-presentation or incomplete provision of the required TP documentation at the start of the on-site tax audit, the tax administration shall send a formal notice to the company requiring the complete TP documentation **within fifteen (15) days**.

The failure to respond or incomplete response to the request of the tax administration shall result in the imposition, for each audited fiscal year, of a tax penalty equal to **2% of the amount of transactions covered by the documents or supplements not made available** to the tax administration. The amount of this tax penalty shall not be less than **ten million dinars (10,000,000 DZD) per fiscal year**.

## Recommandation

Given the long time required to prepare a good and complete TP documentation, it would be strongly recommended to prepare this documentation before the online declaration deadline, knowing that it also should be available before any tax administration audit action.





“The information contained in this document is of a general nature and is not intended to address the details of any individual or entity. Despite all the care taken in the drafting of this document, we cannot guarantee the timeliness of the information provided. These details should not be used as a decision-making support without validation by experts.”

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