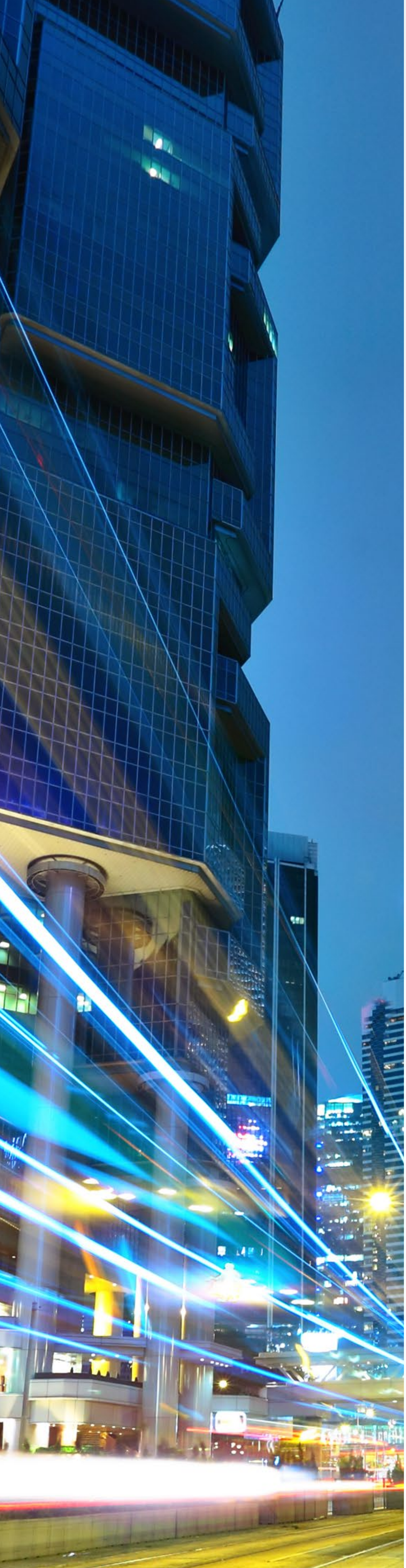
Grant Thornton Société d'Avocats

Grant Thornton

Transfer Pricing Documentation

A crucial but still underestimated requirement regarding reconciliation



Intragroup flows

The necessary demonstration of **the transfer pricing method applied** with reference to the social accounting.

Intragroup flows now represent 60% of all global trade.

The weight of cross-border transactions (transfer prices) has become considerable in the global economy, making their management **a major issue in international taxation.**

Drawing on the recommendations set out in the final report on Action 13 of the OECD Action Plan to enable governments to effectively combat base erosion and profit shifting (BEPS), **Article 107 of France's 2018 Finance Law amended the provisions of Article L. 13 AA of the French Tax Procedure Book ("FTPB") relating to transfer pricing documentation requirements.**

This amendment notably **introduced a new requirement** for the reconciliation of financial data used in transfer pricing methods with the company's annual financial statements.

The obligation of documentation provided for in Article L. 13 AA of the FTPB, aims in particular to demonstrate the nature of the arm's length character of the transfer pricing policy practised in the context of transactions of any kind which are carried out with related entities.

For financial years beginning on or after 1 January 2018, the text almost verbatim repeats the mandatory content recommended by Action 13 for the Master File and the Local File.

Which companies are affected?

Legal provisions differ from country to country.

In France, the transfer pricing documentation requirement provided for in the aforementioned article applies alternately to:

Companies or permanent establishments established in France whose annual turnover excluding taxes or gross assets in the balance sheet is equal to or greater than 400 million euros,

To these same entities when they are directly or indirectly controlled by a legal person verifying these thresholds or when they hold directly or indirectly, more than 50% in subsidiaries verifying these thresholds.

Proof of the application of the method by reference to social accounting

Companies will have to provide a Local File to the French tax authorities

which should include in the financial information section "Information and tables demonstrating how the financial data used to apply the transfer pricing method can be related to the annual financial statements" (FTPB, art. L. 13 AA, II, 2, r).

The mandatory nature of the reconciliation of details is confirmed by Decree n°2018-554 of 29 June 2018 making the reconciliation of transfer pricing documentation data with the social accounting and financial statements of the company absolutely essential.

The Decree provides that the information and tables must in particular, include the following:

• The arithmetic consequences of the application of transfer pricing policies on the company's accounting records with the identification of the accounts concerned,

• The correspondence between the financial statements used to determine prices and those required to be kept by the company.

These requirements are formalized by Article R. 13 AA-1, III, 3, para 1 and 2 of the FTPB. Particular attention must therefore be paid to this requirement, as the French tax administration expects the taxpayer to provide documentation that fully complies with the legal requirements. This is a major change in the Local File, and taxpayers are urged to mobilize the appropriate resources in order to comply with this requirement.

What are **the risks** in the event of a **non-existent or non-proven reconciliation**?

Companies subject to transfer pricing documentation obligations must comply with the mandatory content referred to in Article L. 13 AA of the FTPB, failing which they may be subject to a penalty of up to the higher of the following two amounts, per year audited and without being less than 10,000 euros:

• 0.5% of the total amount of the transactions concerned by the documents or supplements that have not been made available to the administration after receiving formal notice of such;

• 5% of the adjustments to the result based on Article 57 of the French General Tax Code and relating to transactions concerned by documents or supplements that have not been made available to the French tax administration after receiving formal notice of such.

The consequences of a non-existent or non-proven reconciliation between a company's financial statements and the transfer pricing methods applied can therefore be significant, potentially leadingin the more extreme cases (captive companies with numerous intra-group flows), to a full rejection of the company's accounting.

How can we help you?

To ensure that transfer pricing documentation complies with this requirement of reconciliation with your company's accounting records, **Grant Thornton and Grant Thornton *Société d'Avocats*** have combined their expertise to offer a solution entirely dedicated to managing this issue.

This requirement is a major challenge for companies.

Grant Thornton has a dedicated team with a **triple expertise** to assit its clients in the management of this issue. The firm has in fact formed a multidisciplinary team to work closely with you which is composed of:

- **Chartered accountants**
- **Lawyers** and **economists** specialized in transfer pricing
- **Engineers** specialized in Information Systems

This team will be responsible for creating a Proof of Concept (PoC) to demonstrate both the correct application of the transfer pricing methods provided for in the declarations, and the accuracy of the transfer pricing documents in relation to the statutory accounting elements.

In a context of tight budgetary constraints and where the French government is looking for new sources of funding, the public finance inspectors will not hesitate to impose penalties for non-existent or incomplete documentation. It is therefore imperative that companies perform all their reconciliation correctly. Such obligations that were previously considered secondary or too technical to carry out, have returned to the forefront of concerns and taxpayers should expect more thorough controls by uncompromising inspectors in any future controls.

A proven **methodological approach**

Our specialists can intervene over three phases:

A Validation of the principles
of the method(s) used by the company

Identification of discrepancies
between the transfer pricing policy and its application in a company's accounting

Securing documentation
in compliance with the legal obligations

The proof of reconciliation between transfer prices and financial data is supported by **a data analysis which provides an interactive visualization of the situation by exercise,** margin type, product family, and destination/ country of origin.

Analysis year

2017 — 2019

Margin type

- ☐ Cost of goods sold margin
- ☐ Purchase price margin
- ☐ Sales price margin

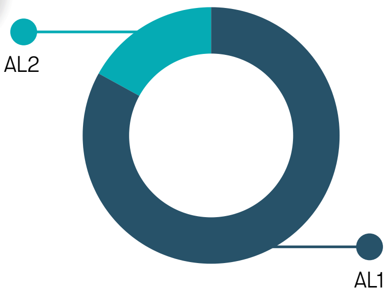
Type of article

- ☐ Trading article
- ☐ Raw material
- ☐ Finished product
- ☐ Semi-finished product

Client/Country type

Client/Country	Average margin rate calculated in %
Germany	3,82 %
England	4,11 %
Brazil	5,16 %
China	4,00 %
France	3,89 %
Great Britain	2,88 %
Hong Kong	4,40 %
Italiy	3,56 %
USA	4,09 %
Total	4,12 %

Sales amount by subsidiary



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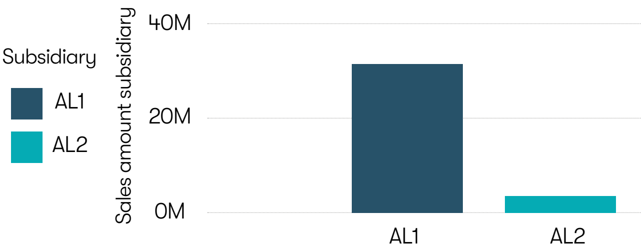


Grant Thornton France

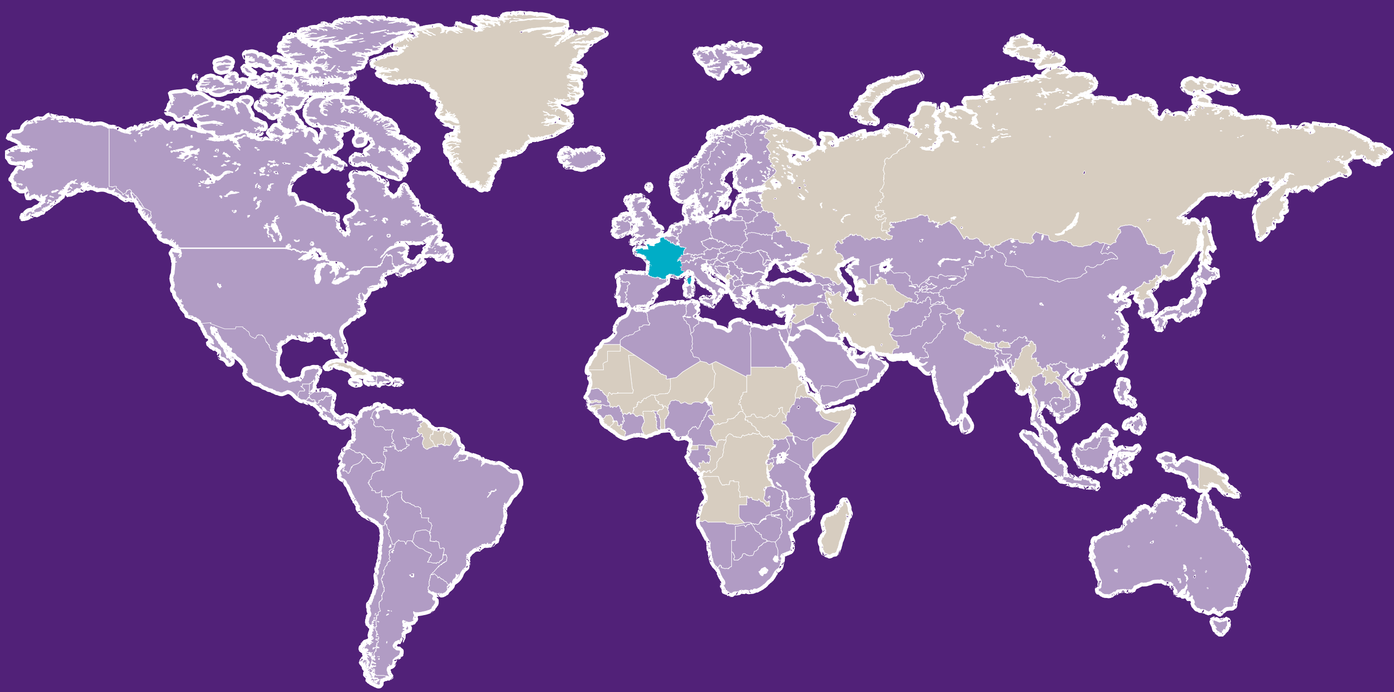
€235
million revenue

5th country
of the GTIL network

24
offices

2 504
employees

136
partners



Grant Thornton worldwide

$US 7,2
billion revenue in 2022

+140
countries

13,7%
annual growth

+750
offices

+68 000
employees

3 978
partners

Contacts

Fabrice GUYOT

Partner, *Business Risk Services / IT*
Conseil Opérationnel
et *Business Process Outsourcing*
T +33 (0)1 41 25 91 65
P +33 (0)6 72 33 61 46
E fabrice.guyot@fr.gt.com

Pascal LUQUET

Partner International Tax and Transfer Pricing
Grant Thornton Société d'Avocats
T +33 (0)1 41 16 27 41
P +33 (0)6 10 12 12 17
E pluquet@avocats-gt.com

Xavier BILLEROT

Senior Manager
Business Risk Services
T +33 (0)1 41 25 91 55
P +33 (0)6 16 27 27 62
E xavier.billerot@fr.gt.com

Nadia BOUDAOUD

Senior Manager
International Tax and Transfer Pricing
Grant Thornton Société d'Avocats
T +33 (0)1 41 16 27 17
P +33 (0)7 57 44 26 48
E nboudaoud@avocats-gt.com

Grant Thornton Société d'Avocats
29, rue du Pont
92200 Neuilly-Sur-Seine
T + 33 (0)1 41 16 27 27
F + 33 (0)1 41 16 27 28

Agnès de RIBET
Partner,
in charge of Business Development,
Marketing, Communication
T + 33 (0)1 41 25 85 85
E agnes.deribet@fr.gt.com

Grant Thornton Société d'Avocats

avocats-gt.com

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