



Summarized French TP requirements

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France imposes three crucial requirements on certain groups regarding transfer pricing: documentation **(A)**, annual declaration **(B)**, and country-by-country reporting **(CbCR) (C)**. These obligations were put in place to prevent profit shifting abroad within groups entities and reduce the risks of aggressive tax planning. The assessment of the different scopes of application is complex making it difficult to identify the requirements lying with the taxpayers.

A – DOCUMENTATION

The level of requirements depends on the size of the French taxpayer as well as its direct or indirect parent companies/subsidiaries. However, this documentation is still more than advisable for all companies with cross-border intra-group transactions.

1 - Mandatory transfer pricing documentation [Article L. 13 AA of the French Tax Procedure Book (“FTPB”)]

The French transfer pricing documentation requirement applies to all French taxpayers (including French permanent establishment of foreign enterprise):

- a) With at least €400 million of turnover, excluding tax, and/or total gross assets of at least 400 million euros; or
- b) That own at financial year end, directly or indirectly, more than half of an entity's capital or voting shares meeting one of the conditions defined in a) above; or
- c) With more than half of its capital or voting shares belonging directly or indirectly, at financial year end, to an entity meeting one of the conditions outlined in a) above; or
- d) Belonging to a group subject to the French National Tax Consolidation regime, where this group has at least one legal entity meeting one of the conditions above (i.e., a, b or c).

These thresholds are to be assessed based on standalone financial statements.

The French Finance Bill for 2018 has broadly aligned the French transfer pricing documentation requirements with the OECD BEPS Action 13

recommendations by amending Article L. 13 AA (Master File and Local File).

The transactions that must be reported in the Local File are those between the French entity and one or more related parties and whose amount, as derived from the French entity accounts, aggregated by category exceeds €100,000 for the fiscal year. Such amount must be assessed without offsetting income and expenses, or acquisitions and disposals of assets.

The transfer pricing (“TP”) documentation must be available on the first day of a tax audit. French entities within the scope of Article L. 13 AA and failing to meet their obligation in this respect are subject to a penalty, per audited year, up to the highest amount between (i) 0.5% of the amount of the transactions that have been omitted or incompletely documented or (ii) 5% of the reassessed basis in relation to those same transactions, with a minimum of €10,000 per audited year.

2 - Non mandatory transfer pricing documentation [Article L. 13 B of the FTPB]

For those French taxpayers that do not fall within the scope of Article L. 13 AA, the French Tax Authorities (“FTA”) is allowed to require, under conditions, information regarding the transfer pricing policy applied (in practice FTA may ask for a TP documentation that is a bit lighter than the one stated in article L. 13 AA). Such documentation must be provided to the FTA within 60 to 90 days.

Failure to respond to the request made pursuant to Article L. 13 B of the FTPB results in the application of a fine of €10,000 for each fiscal year covered by this request.



B – ANNUAL DECLARATION

Transfer pricing disclosure requirements are stated in Article 223 quinquies B of the French General Tax Code (“FGTC”).

The transfer pricing form (*i.e.* form 2257-SD) has to be filed electronically on an annual basis by certain French taxpayers within six months following the filing of their annual corporate income tax returns.

It applies to French taxpayers with a €50 million turnover or gross assets as well as to the ones owning a subsidiary (with a stake higher than 50%) or being held by a direct or indirect shareholder (by more than 50%) meeting such thresholds.

These thresholds are also to be assessed on a standalone basis.

The form must include a description of the taxpayers’ transfer pricing policy as well as information related to the intangible assets. Details regarding the jurisdictions where the related counterparts are established, as well as the amounts of the cross border intra-group transactions at stake are also required.

In the event of failure to submit the return as well as in the event of omissions and inaccuracies, the following fines are applicable:

- Failure to subscribe within the prescribed time limits results in a fine of 150 € ;
- Except in cases of “force majeure”, the omissions or inaccuracies shall result in a fine of €15 per omission or inaccuracy, without the total fines being less than €60 or more than €10,000.

These penalties shall not apply in the event of a first offence committed during the current and the three preceding calendar years, where the taxpayer concerned has remedied the offence, either spontaneously or within 30 days of a request from the FTA.

C – COUNTRY-BY-COUNTRY REPORTING

The Country-by-Country Reporting (“CbCR”) obligations are defined in Article 223 quinquies C of the FGTC.

French companies must declare, within 12 months of the end of a financial year, their activities, as well as their profits on a country-by-country basis and various economic, accounting and tax aggregates. French companies subject to this obligation are those :

- Drawing up consolidated accounts; and
- holding or controlling, directly or indirectly, one or several legal entities established out of France or having branches abroad; and
- achieving an annual consolidated turnover of at least €750 million; and
- not being held by one or several legal entities established in France and subject to such country-by-country reporting obligation or established out of France and subject to a similar country-by-country reporting obligation pursuant to foreign legislation.

Non-compliant companies may be subject to a penalty of up to €100,000. In addition, under certain conditions,

French taxpayers also may be subject to a notification requirement in the annual corporate income tax return in addition to or without the filing requirement of the CbCR.

Such return should not be confused with the public CbCR provided for by Directive 2011/2501 of 24 November 2011, which entered into force on 22 December 2011, and which must be transposed before 22 June 2023 by the Member States.

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