

Transfer Pricing: French requirements

8 February 2024

In terms of transfer pricing obligations, France imposes three fundamental obligations, those of documentation (A), the annual declaration (B), and Country-by-Country Reporting (CbCR) (C). These obligations were introduced with the aim of preventing indirect transfers of profits abroad between companies in the same group and of reducing aggressive tax optimization practices. Due to the complex assessment of the scope of application of these obligations, it is difficult for taxpayers to clearly identify which ones they are liable to.

A – DOCUMENTATION

The size of a company or of those which make up the group to which they belong, will determine the level of obligations imposed. Independent of the obligation in itself, all companies are strongly advised to establish the defined documentation.

[Mandatory documentation \[Articles L. 13 AA / L.13 AB of the French Tax Procedure Book \(FTPB\)\]](#)

The obligation in France to document transfer pricing applies to all French taxpayers (including permanent establishments of foreign companies) which:

- a) Generate annual turnover (excluding VAT) or gross balance sheet assets of at least €400 million (€150 million for financial years beginning on or after 1 January 2024); or
- b) Hold directly or indirectly, at the end of the financial year, more than half of the capital or voting rights of a legal entity meeting one of the conditions defined in a) above; or
- c) Have more than half of their capital or voting rights held directly or indirectly, at the end of the financial year, to a legal entity meeting one of the conditions defined in a) above; or
- d) Is a member of a tax consolidation group, where this group includes at least one legal entity meeting one of the above conditions (i.e. condition a, b or c).

These thresholds should be assessed on the basis of the statutory financial statements.

Since 2018, the obligations in France are in line with the recommendations of Action 13 of the OECD BEPS plan (Master File and Local File). The transactions to be documented in the Local File are those between the French entity and one or more associated companies whose aggregate amount by category exceeds €100,000 in respect of the fiscal year.

This documentation must be provided by the company on the first day of a tax audit, or failing this, within the 30 days on receiving formal notice to meet this obligation. French entities that fail to fulfil the obligation will be subject to a penalty, per financial year equal to the higher of (i) 0.5% of the transactions that were omitted or insufficiently documented or (ii) 5% of the adjustments made relating to the transactions, with a minimum amount of €50,000 applied per financial year.

The Finance Act 2024 now renders transfer pricing documentation enforceable and establishes a presumption of an indirect transfer of profits where the method used by the company to determine transfer prices differs from the method set out in the documentation. The taxpayer can challenge this presumption by any means.

[« Documentation » subject to conditions \[Article L. 13 B of the FTPB\]](#)

For other taxpayers in France, the tax inspectors are authorised to request information concerning the transfer pricing policy applied by the company, subject to certain conditions.

In effect, this entails the provision of simplified documentation within a period of 60 to 90 days. Failure to comply with the request will result in a fine of €10,000 for each fiscal year covered by the request. In addition, the French tax authorities are authorised to reassess the taxable income on the basis of the information available to them.

B – ANNUAL DECLARATION

Article 223 quinquies B of the French General Tax Code (FGTC) provides for the obligation to declare transfer prices.

This declaration (Cerfa form 2257-SD) must be filed electronically each year by certain French taxpayers and within six months of the filing of their tax return. This obligation applies to French taxpayers whose turnover or total gross assets are equal to or greater than €50 million, as well as to those who hold a subsidiary or who are held by direct or indirect shareholders (holding of capital or voting rights equal to or greater than 50%) reaching these same thresholds. These thresholds must also be assessed on a statutory basis.

The declaration should include more particularly, a description of the transfer pricing methods used, information relating to the operations and location of the major intangible assets, as well as the amounts of cross-border intra-group transactions recorded in the statutory accounts together with the jurisdiction in which the relevant counterparty is established.

Failure to file the declaration, as well as any omissions and inaccuracies, are subject to the following penalties:

- A fine of €150 if the declaration is not filed within the prescribed time limit;
- A fine of €15 per omission or inaccuracy, except in the event of a *force majeure*,

the total amount of said penalties may not be less than €60 or more than €10,000.

These penalties are not applicable in the event of a first offence committed during the current calendar year or in the three preceding calendar years, where the taxpayer has remedied the failure to comply either spontaneously or within 30 days of a formal request from the French tax authorities.

C – COUNTRY BY COUNTRY REPORTING

The Country-by-Country Reporting ("CbCR") obligation is defined in Article 223 quinquies C of the French General Tax Code.

Within 12 months of the fiscal year-end, French companies must declare their activities, as well as their profits on a country-by-country basis together with a number of economic, accounting and tax aggregates (Cerfa form 2258-SD).

French companies subject to this obligation are those which:

- Establish consolidated accounts; and
- hold or control, directly or indirectly, one or more legal entities established outside France or that have branches abroad;
- Have consolidated annual sales of at least 750 million euros; and
- not held by one or more legal entities located in France subject to this country-by-country reporting requirement or located outside France and subject to a similar reporting requirement under foreign law.

Companies that fail to comply with this obligation are liable to a penalty up to €100,000.

In addition, under certain conditions, French taxpayers may be subject to a notification requirement in their corporate income tax return (form 2065-SD).

This declaration should not be confused with the public CbCR applicable in France for the financial years beginning on or after 22 June 2024, the content of which is comparable to the CbCR (2258-SD). The statutory auditors will be required to state whether the company is subject to this public CbCR and, if this is the

case, certify that the relevant report has been published and made available to the public for the financial year preceding that for which the accounts are certified.

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