

# Finance Act for 2024 - Transfer pricing under the spotlight of the tax authorities

10 January 2024

The Finance Act for 2024 was published in the Official Journal on 30 December 2023 following the decision of the French Constitutional Court on 28 December 2023. In line with Gabriel Attal's announcements as part of the anti-fraud plan dated June 2023, Article 116 of the Finance Act for 2024 reinforces the taxpayers' documentation obligations, increases penalties and strengthens the tax authorities' means of controlling intangible assets. This is bad news for all groups but for small and mid-sized companies in particular, which usually do not have the resources of large groups to deal with these issues.

## A lower threshold for mandatory documentation

- Article L.13 AA** of the French Tax Procedure Book (« FTPB ») which requires transfer pricing documentation to be made available to the tax authorities **on the first day of a tax audit has been amended.**
- The obligation currently in force applies to French taxpayers with a €400 million **turnover or gross assets** (or which own or are owned [with a stake higher than 50%], directly or indirectly, by a legal entity meeting this threshold, or are members of a French tax consolidation group in which one company exceeds this threshold).
- The threshold has now been lowered to **€150 million** in order to broaden the scope of the companies concerned and increase the transparency of transfer pricing policies.
- This new threshold applies to financial years beginning on or after **1<sup>er</sup> January 2024.**

## Opposability of transfer pricing documentation

- Article 57 of the French General Tax Code (« FGTC ») has been amended by adding a paragraph making the documentation enforceable against the taxpayer for fiscal years beginning on or after 1<sup>er</sup> January 2024.
- This addition creates a rebuttable **presumption** of an indirect transfer of profits abroad when the method used to determine transfer prices deviates from the one set out in the documentation provided to the tax authorities.
- The taxpayer may **rebut this presumption** by demonstrating, **by any means**, that no transfer by way of increasing or decreasing the purchase or sale price has occurred.
- The taxpayer will therefore have to make every effort to **apply strictly the documented policy** or to justify any discrepancies between the implemented policy and the documented policy. It should be remembered that the taxpayer is already required to reconcile its transfer prices with the statutory accounting in its documentation.

## Minimum penalty increase

- Article 1735 ter of the French General Tax Code, relating to the **penalties applicable in the event of failure or insufficiency** concerning the availability of transfer pricing documentation on the first day of the tax audit, has also been amended.
- The **minimum fine has been** increased from €10,000 to **€50,000 per financial year audited.** This is a minimum and the fine can be up to the greater of 0.5% of the amount of the undocumented transactions or 5% of the amount of the adjustments based on Article 57 of the FGTC.
- Recent case law, in particular the Lyon Administrative Court of Appeal's decision of 25 May 2023 (n° 21LY03690) "**SAS WEG France**" illustrates that the **penalties** provided for in Article 1735 ter of the FGTC are not hypothetical **but are actually applied by the French tax authorities.**
- The aim of the text is to **strengthen sanctions against multinational groups** that fail to document or only partially document their transfer prices.

## Control of transfers of hard to value intangible assets and rights

- A new article 238 bis-0 I ter of the French General Tax Code has been introduced to cover **transfers of intangible assets and rights that are hard to value** between entities belonging to the same multinational group.
- Based on the OECD Guidelines on "**Hard-to-Value Intangibles**" or "**HTVI**", it seeks to ensure that the value retained at the time of transfer of a HTVI corresponds to **its real value.**
- To achieve this, the tax authorities may, under certain conditions, use information **subsequent to the transfer**, such as the financial flows generated by the asset, to make an adjustment. There are, however, exceptions to this rule.
- In addition, the French tax authorities will be granted an extended **right of reassessment** up to the **end of the 6th year following the one in respect of which the tax is due** (new Article L. 171 B of the French Tax Procedure Book), as well as a new **exception to the guarantee of non-renewal of a tax audit** (new Article L. 51, 8° of the FTPB).

## Our comments

After years without any new legislation, **the transfer pricing regulations have been substantially amended by the Finance Act for 2024**. These changes do not go towards reducing the burden on businesses, with the **extension of documentation obligations** to new taxpayers as a result of the lowering of the threshold for triggering this obligation. This extension comes with the **opposability of the documentation** (reversal of the burden of proof on the taxpayer), a **very significant increase in the applicable penalties** (minimum fine multiplied by 5), and a **strengthening of the Tax Authorities' audit tools** for hard to value intangible assets and rights (possibility of valuation on the basis of results subsequent to the fiscal year of the transaction, extension of the reassessment period from 3 to 6 years and possibility of renewing an accounting audit).

The end the COVID years marked a significant increase in the attention paid by the French tax authorities to transfer pricing. There is no doubt that **tax inspectors will seize on the new arsenal** at their disposal to increase the pressure on multinational groups, particularly through the more systematic **application of increased documentation-related penalties**. In addition, the **opposability of transfer pricing documentation** is likely to change the face of future disputes, which often focus on the burden of proof of the abnormal nature of transfer prices.

Our team remains at your disposal to assess the impact of these changes on your documentation strategy and your internal reorganisation operations.

## Contacts



### Pascal Luquet

**Partner, Attorney-at-law**  
Transfer pricing  
E : pluquet@avocats-gt.com  
T : +33 1 41 16 27 41  
M : +33 6 10 12 12 17



### Mickaël Duquenne

**Director, Attorney-at-law**  
Transfer pricing  
E : mduquenne@avocats-gt.com  
T : +33 1 41 16 27 42  
M : +33 6 84 22 42 93



### Nadia Boudaoud

**Tax advisor, Senior Manager**  
Transfer pricing  
E : nboudaoud@avocats-gt.com  
T : +33 1 41 16 27 17  
M : +33 7 57 44 26 48



### Caroline Lebon

**Attorney-at-law**  
Transfer pricing  
E : clebon@avocats-gt.com  
T : +33 1 41 16 27 44  
M : +33 6 73 06 49 59



### Louis Grandvaux

**Tax advisor**  
Transfer pricing  
E : lgrandvaux@avocats-gt.com  
T : +33 1 41 16 27 24  
M : +33 7 57 44 26 39



### Anthony Huard

**Tax advisor**  
Transfer pricing  
E : ahuard@avocats-gt.com  
T : +33 1 41 16 20 67  
M : +33 6 84 32 97 72



#### About Grant Thornton Société d'Avocats

Grant Thornton Société d'Avocats supports its clients in all their strategic operations, whether in national or international context through multidisciplinary expertise in all areas of business law.

The firm offers national and international customers all required services for the legal, tax and business management of companies. We deal in all business law matters: legal, tax, labour and contractual due diligences, mergers and acquisitions, tax law, VAT and international trade, global mobility, commercial law, employment law and finally business litigation.

NOTE: This memorandum is of a general nature and no decisions should be taken without further advice. Grant Thornton Société d'Avocats shall not accept any legal liability relating to the consequences of any decision or any action taken as a result of the information above. You are encouraged to seek professional advice. We would be happy to discuss the application of any of these changes to your situation.

© 2023 Grant Thornton Société d'Avocats. All rights reserved. Grant Thornton Société d'Avocats is a law firm related to Grant Thornton in France, which SAS Grant Thornton is a member firm of Grant Thornton International Ltd (GTIL). "Grant Thornton" is the brand under which the member firms of Grant Thornton provide Audit, Tax and Advisory services to their clients and / or designates, depending on the context, one or more member firms. GTIL and the member firms do not constitute a global partnership. GTIL and each of the member firms are independent legal entities. Professional services are provided by member firms. GTIL does not provide any service to customers. GTIL and its member firms are not agents. There is no obligation between them.

#### Grant Thornton Société d'Avocats

29, rue du Pont  
92200 – Neuilly-sur-Seine  
France

[www.avocats-gt.com](http://www.avocats-gt.com)

T : +33 (0)1 41 16 27 27

F : +33 (0)1 41 16 27 28

E : contact@avocats-gt.com

#### Bureau de Lille

91, rue Nationale  
59045 – Lille, France

[www.avocats-gt.com](http://www.avocats-gt.com)

