

FRANCE

NEWS DOCUMENTATION REQUIREMENTS

The law relating to the prevention of tax fraud and serious economic and financial crimes (the "Tax Fraud Law" No. 2013-1117 adopted on 6 December 2013 and published in the French Official Journal on 7 December 2013) and the Budget Law for 2014 (adopted by the French Parliament on 19 December 2013 and published in the French Official Journal on 30 December 2013) introduced two new transfer pricing documentation requirements.

These modifications aim to strengthen the enquiry powers of the French tax authorities by requiring the routine submission of transfer pricing documentation to the French Tax Administration.

1. New obligation for large companies to submit a light version of their transfer pricing documentation

Under the new Tax Fraud Law provisions, large companies must provide to the French Tax Administration their transfer pricing documentation within six months after filing the French Corporate Income Tax return (Article 223 quinquies B of the French Tax Code).

Consequently, transfer pricing documentation needs to be provided voluntarily by French companies each year, and not solely upon request of the French Tax Administration during a tax audit.

However, these new requirements are lighter than those in a tax audit under Article L 13 AA of the French Tax Procedure Code (FTPC). Indeed, such transfer pricing documentation notably includes general information about the group, and specific information on the targeted company such as (i) a list of the intangible assets (trademarks, licenses, etc.), or (ii) a summary statement of intragroup transactions exceeding EUR 100,000. The transfer pricing method should also be detailed.

This obligation only applies to companies meeting the criteria set out under Article L 13 AA of the FTPC, which are as follows:

- Having an annual turnover or net equity exceeding EUR 400 million;
- Owning directly or indirectly, or being owned directly or indirectly by a company meeting the above threshold;
- Being a member of a tax group which includes a company meeting the above threshold.

Penalties for companies that do not comply with this new obligation are very low. Indeed, no specific penalties have been implemented for these new requirements. Hence, currently, the applicable penalties are the standard penalties for failure to fill in a tax return, as follows:

- EUR 150 for failure to submit; or
- EUR 15 for each omission or misstatement.

For fiscal years ending from 31 December 2013, this transfer pricing documentation will need to be provided to the French Tax Administration before the following 5 November.

2. Extended list of information to be included in the transfer pricing documentation

The second provision strengthening the transfer pricing documentation requirements is provided under the Budget Law for 2014.

As a reminder, under Article L 13 AA of the FTPC, since 1 January 2010, large companies (i.e. those meeting the criteria set out under Article L 13 AA of the FTPC) must make their transfer pricing documentation available to the French Tax Administration upon request in a tax audit.

Under the Budget Law for 2014, the list of information to be included in the transfer pricing documentation is extended. French companies need to provide to the French Tax Administration, together with their transfer pricing documentation, all copies of any rulings and advance tax agreements obtained from foreign tax authorities by related companies, irrespective of whether the ruling is linked to the transfer pricing policy.

Although the Budget Law for 2014 introduced a new penalty equal to 0.5% of the turnover of the company which would apply for a failure to provide their transfer pricing documentation, this measure was repealed by the Constitutional Council ("Conseil Constitutionnel") by way of its decision No. 2013-685 DC of 29 December 2013.

Therefore, currently, the penalties applicable under Article 1735 B of the French Tax Code are the only applicable penalties, as follows:

- A fine amounting to EUR 10,000; or
- 5% of the profits transferred (depending on the seriousness of the infringement).

It should be noted that a requirement for French businesses operating in France to demonstrate that they had received an "arm's length price" for a deemed transfer of risks or functions, as if such a business restructuring had been made with a non-related party, has been repealed by the Constitutional Council.

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