PwC's Law Firm Services

The French Tax Authorities have released the final version of the "light" transfer pricing documentation form

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Background

The Law against tax fraud and economic financial crime dated December 6, 2013, introduced new transfer pricing documentation filing obligations. French entities subject to the contemporaneous transfer pricing documentation requirements, pursuant to Article L13AA of the French Tax Procedures Code, are required to file with the French Tax Authorities ("FTA") a document providing specific information on their transfer pricing policy.

A new form has been issued for complying with this requirement. For most US law firms operating in France, for fiscal year 2013 this form must be filed by November 20, 2014.

French Entities Affected by this Requirement

The new disclosure requirement applies to all French entities with revenue or gross assets on the balance sheet exceeding €400 million, or with a more than 50% direct or indirect shareholder or subsidiary meeting this threshold.

Where a US law firm operates in France using a corporate entity, the €400 million threshold will apply alternatively to the revenue (turnover) or assets of the French legal entity, or to the revenue (turnover) or assets of its US head office.

If a US law firm has a branch in France, this €400 million threshold will be applied at the parent/head office level to determine whether the light transfer pricing documentation form is required.

The Filing Deadline

The FTA released on September 16th, 2014, form n°2257 (and corresponding guidelines) to be used by taxpayers to comply with this new obligation.

The form must be submitted no later than six months after the deadline for filing the annual corporate income tax return to the FTA. An exception exists for taxpayers with a year-end closing at December 31, 2013 as they are allowed until November 20, 2014 to submit the form.

The New Form

Form n°2257 is in French and consists of a table to be completed per legal entity that falls within the scope of the obligation. The following information must be provided:

- General information on the group:

    - A general description of the Group activity, the nature and the country of location of the Group intangibles used by the French entity or branch;

    - A broad description of the Group transfer pricing policies related to intercompany transactions involving the French entity or branch.

- Specific information on the French entity or branch:

    - The aggregated amounts of intercompany transactions by nature (sales, services provided, commissions received, purchases, services purchased, commissions paid, royalties paid, financial interests paid, etc.). A single amount should be provided for each type of transaction (i.e. the detail by type of products / services or by counterparty is not required).

    - Only those transactions for which the total aggregated amount exceeds €100,000 shall be documented.

    - For each kind of transaction, the company shall provide:
        - The countries of origin of the related companies involved in the transaction;
        - The main transfer pricing method used for the calculation of the transfer pricing (only the "other methods" must be broadly described).

    - A broad description of the firm's activity and the changes that occurred during the tax year in relation to the transfer pricing policy, the nature and the country of location of the assets (if any) shall be provided.

Penalties Applicable for Failure to File Form No. 2257

The law does not provide for a specific penalty for lack of filing. It is anticipated that a failure to file will, in practice, trigger a tax audit, wherein the complete transfer pricing documentation will likely be requested. If the complete documentation is not produced, a maximum penalty of 5% of the assessed amount would apply and there would also be a risk of arbitrary reassessments. It is therefore strongly advised that law firms meet the deadline for filing the light transfer pricing documentation, if applicable.

What does this mean for your Firm's office in France?

Legal services provided to a client by your firm's attorneys both within and without France which are invoiced to the client by only one of the offices, resulting in an interfirm transaction from the billing office to the other office, will fall within this filing requirement if the aggregate 100,000 Euro threshold is met in this category. In such cases, only those interfirm transactions for which the aggregate amount exceeds 100,000 Euros must be mentioned on Form no. 2257 (i.e., on the form you must list the countries where the related providers or recipients are located, and name of the TP method applied). All intra-group transactions must also be documented in your firm's file in the event of a tax audit.

Similarly, any loans, overhead allocations and other intercompany charges from your law firm's head office outside of France, to your office within France, may be affected if the relevant thresholds are exceeded. This new documentation requirement is in line with a trend demanding more transparency from taxpayers. Although filing the form provides significant information to the FTA to perform risk assessments, not filing it is likely to trigger transfer pricing audits in France.

Contact PwC's Law Firm Services for Further Details

For more information on how this new form may impact your reporting requirements in France, please contact:

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