The French law 'Sapin II' on transparency significantly affects transfer pricing documentation requirements in France

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In brief

The French law — 'Sapin II' — on transparency has been definitively adopted by the French Parliament on November 8, 2016.

Provisions impacting transfer pricing provide for the widening of the scope of companies subject to the 'light' transfer pricing documentation obligation in France for all multinational enterprises (MNEs).

In detail

Current documentation rules

The 'light' documentation obligation

The current Article 223 Quinquies B of the French General Tax Code states that all French entities with turnover or gross assets on the balance sheet exceeding EUR400 million, or with a more than 50% direct or indirect shareholder or subsidiary meeting this threshold, are required to provide the French Tax Administration with a 'light' documentation on a yearly basis.

This e-declaration (form n°2257), consisting of a table, must provide the following information:

General information on the group

- Information about the Group's activity and the intangibles used by the French entity.
- A broad description of the Group's transfer pricing policies that are related to intercompany transactions involving the French entity.

Specific information on the French entity

- The aggregated amounts of intercompany transactions by nature (sales, services provided, commissions received, purchases, services purchased, commissions paid, etc.) if the total amount by nature exceeds EUR100,000.
- For each kind of transaction: the countries of origin of the related companies involved in the transaction and the main transfer pricing method used for the calculation of the transfer pricing.
- A broad description of the entity'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 also be provided.

Proposed new regime

The law on transparency definitively adopted on November 8, 2016 provides for a reduction of the above-mentioned threshold which companies are subject to the light documentation obligation from EUR400 million to EUR50 million.

The takeaway

All MNEs as well as small and medium enterprises (SMEs) (especially French) with international operations are now subject to a contemporaneous transfer pricing obligation.

This obligation must not be mixed up with the full report obligation (Local File), the threshold of which is still EUR400 million, according to article L13 AA of the French Tax Procedures Code.

The modifications set by this Law accelerate the trend to demand more transparency from all taxpayers with international operations. This new requirement will require SME's to review the appropriateness of their transfer pricing policy.

Although filing the form provides significant information to the French tax authority to perform risk assessments and select companies for the tax audit program, not filing it is likely to trigger transfer pricing audits.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact:

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