

# France adopts new transfer pricing documentation requirements

August 27, 2018

## In brief

The entry into force of decree n°2018-554 and the publication of the related implementation circular published in the French Public Finance Official Bulletin (BOFIP - BOI-80-10-40-20180718), confirm the 'French singularity' in terms of transfer pricing documentation.

## In detail

### Current documentation rules

Article L13 AA of the French Tax Procedure Code (FTPC), dedicated to so-called 'large companies,' states that French entities with turnover or gross assets on the balance sheet exceeding EUR 400 million, or with a more than 50% direct or indirect shareholder or subsidiary meeting these thresholds, must prepare transfer pricing documentation.

### Recent developments on documentation rules

Decree n°2018-554 on transfer pricing documentation was published on June 29, 2018, entering into force on June 30, and subsequently was complemented by its implementation circular (BOFIP - BOI-80-10-40-20180718), issued on July 18.

Applicable for fiscal years beginning on or after January 1, 2018, these norms — through

amended article L13 AA of the FTPC — aim to clarify the structure and the content of the French transfer pricing documentation further to the OECD's BEPS (Base Erosion and Profit Shifting) Action 13 - 2015 Final Report and to its revised Transfer Pricing Guidelines of July 2017.

**Observation:** While the new norms intend to reinforce the existing legal framework and clarify the scope, they also impose new transfer pricing documentation requirements, making the French documentation approach more complex and burdensome.

Article L13 AA of the FTPC previously had removed the concept of 'brevity' formulated by the OECD regarding information embedded into the Master file. The new norms extend the scope of information to be considered, differentiating French transfer pricing documentation from the template recommended by the

OECD, which was intended to provide a standardized and harmonized format across member countries.

### Master file

With respect to the Master file, the new French rules include the following specifications:

- **General information on the group:** The French decree specifies that the description of the main services providers within the group, other than R&D services, shall include information on related human capital, equipment, financial and logistic resources of the inter-company service providers.

**Observation:** This new description is not limited to a global description of the service providers' substance, but rather requires additional information relating to inter-company services.

- Information relating to intangible assets held by the group: The description of the group's strategy in respect of intangible assets shall include information on transactions subcontracted to unrelated R&D sub-contractors.

**Observation:** This new requirement is not in the scope of transfer pricing and results in additional administrative burden.

- In addition to the list of intangible assets or categories of intangible assets used for establishing transfer prices, a description of the transfer pricing policies applied to R&D activities should be included.

**Observation:** This requirement, which is redundant with information to be provided in the Local file requirements, differentiates the French Master file format from the more synthetic and concise OECD format.

### Local file

With respect to the Local file, the new French rules include the following specifications:

- Information relating to the local entity: Regarding the local entity's business strategy, it should consist of "the business objectives, the choices regarding the allocation of resources, financing and the risks assumed in order to achieve these objectives."

**Observation:** This measure seems disproportionate, as it may induce a potential requirement for taxpayers to provide additional information, triggering potential questions around breaching both principles of (i) the French Tax Administration should not interfere in the conduct of taxpayers' business and management and (ii) commercial confidentiality.

- Information relating to controlled transactions: In line with the transfer pricing reporting requirement stated by article 223 *quinquies b* of the French Tax Code, a EUR 100,000 threshold per category and nature of transaction is established. The local entity must provide information on payment terms and conditions by type of intercompany transaction.

**Observation:** While in most cases, this information is not materially impacting the analysis of taxpayer's transfer prices, this requirement further increases the taxpayer's compliance burden.

- Other financial information: The local entity must provide the reconciliation of management accounts eventually used for transfer pricing purposes and of statutory accounts.

**Observation:** This new requirement is significantly burdensome for many taxpayers. It departs from the OECD recommendations, which require taxpayers to be prepared to provide such reconciliation rather having to document it systematically. The request of such information typically would be more appropriate during the course of the tax audit process, rather than for purposes of transfer pricing documentation.

### The takeaway

Generally speaking, the new rules are drafted in a way that leaves room for interpretation, generating uncertainties.

However, it is clear that French taxpayers that are part of 'large companies' are subject to a significant increase in transfer pricing documentation requirements. As a result, this variation from BEPS

Action 13 will impose additional burden for French taxpayers to adapt their group documentation to specific French standards.

## Let's talk

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

### Transfer Pricing

Chaïd Dali-Ali, *Paris*  
+ 33 1 56 57 58 05  
[chaid.dali.ali@pwcavocats.com](mailto:chaid.dali.ali@pwcavocats.com)

Susana Rodriguez, *Paris*  
+ 33 1 56 57 44 72  
[susana.rodriguez@pwcavocats.com](mailto:susana.rodriguez@pwcavocats.com)

Yasmina Fahim, *Paris*  
+ 33 1 56 57 47 76  
[yasmina.fahim@pwcavocats.com](mailto:yasmina.fahim@pwcavocats.com)

### Transfer Pricing Global, Americas, and US Leaders

Isabel Verlinden, *Brussels*  
Global Transfer Pricing Leader  
+32 2 710 44 22  
[isabel.verlinden@be.pwc.com](mailto:isabel.verlinden@be.pwc.com)

Horacio Peña, *New York*  
Americas Transfer Pricing Leader  
+1 646 471 1957  
[horacio.pena@pwc.com](mailto:horacio.pena@pwc.com)

Paige Hill, *New York*  
US Transfer Pricing Leader  
+1 646 471 5192  
[paige.hill@pwc.com](mailto:paige.hill@pwc.com)

**Stay current and connected.** Our timely news insights, periodicals, thought leadership, and webcasts help you anticipate and adapt in today's evolving business environment. Subscribe or manage your subscriptions at: [pwc.com/us/subscriptions](https://pwc.com/us/subscriptions)

Tune into **TP Talks**, PwC's global Transfer Pricing podcast series. Listen to PwC professionals sharing perspective and the latest insights on today's key transfer pricing developments around the world.

### SOLICITATION

© 2018 PwC. All rights reserved. PwC refers to the PwC network and/or one or more of its member firms, each of which is a separate legal entity. Please see [www.pwc.com/structure](https://www.pwc.com/structure) for further details.

This content is for general information purposes only, and should not be used as a substitute for consultation with professional advisors.

At PwC, our purpose is to build trust in society and solve important problems. We're a network of firms in 158 countries with more than 236,000 people who are committed to delivering quality in assurance, advisory and tax services. Find out more and tell us what matters to you by visiting us at [www.pwc.com](https://www.pwc.com).