

Transfer pricing documentation in France, towards an increase of taxpayers' administrative burden

August 28, 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) states that 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 these thresholds, are required to prepare transfer pricing documentation.

Recent developments on documentation rules

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

Applicable for fiscal years beginning as of January 1st, 2018; these norms - through an amended article L13 AA of the FTPC- aim at clarifying 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. 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 had previously removed the concept of “brevity” formulated by the OECD regarding information embedded into the Master file (i.e. functional analysis, description of services agreements, description of advanced pricing agreements, etc.). 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 supposed to provide a highly standardized and harmonized format across member countries.

The following paragraphs list the main differences between French and OECD formats.

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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. Therefore, this new description is not limited to a global description of the service providers' substance; but rather requires additional information with no direct impact on the transfer prices of 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. 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. This requirement, which is redundant with information to be provided in the local file requirements, differentiates the French Master file format from the one of the OECD, which is more synthetic and concise.

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 in: "the business objectives, the choices regarding the allocation of resources, financing and the risks assumed in order to achieve these objectives". This measure seems disproportionate as it may induce a potential requirement for taxpayers to provide a full business plan, triggering potential breach of both principles, (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 TP reporting requirement stated by article 223 *quinquies b* of the French Tax Code, a €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, increasing thus the compliance burden on the taxpayer. In most cases, this information is not relevant for the analysis of taxpayer's transfer prices.
- Other financial information:
 - The local entity must provide the reconciliation of management accounts eventually used for transfer pricing purposes and of statutory accounts. This new regulation is extremely restrictive for taxpayers and departs from the OECD recommendations, which require taxpayer to be prepared to provide such reconciliation rather having to document it systematically. The provision of such information should be part of the tax audit process, and not of a documentation exercise.

The takeaway

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

To sum up, while the introduction of a threshold – even low- limits the number of transactions to be documented, the other specifications above-mentioned increase significantly TP documentation requirements for French taxpayers. As a result, this deviation from BEPS Action 13 will constraint taxpayers to adapt their group documentation to specific French standards.