

Transfer Pricing Country Summary

France

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1. Introduction	3
2. Laws & Regulations	3
a) References to OECD/EU/Local Rules	3
b) Definition of Related Party	4
c) Nature of Transfer Pricing Documentation	4
d) Tax Havens & Blacklists	4
e) Advance Pricing Agreement (APA)	5
f) Audit Practice	5
3. Transfer Pricing Documentation.....	6
a) Level of Documentation	6
b) Industry Analysis	7
c) Company Analysis	7
d) Functional Analysis	8
e) Choice of Transfer Pricing Method.....	8
f) Economic Analysis – Benchmark Study.....	8
g) Inter-company (IC) Legal Agreement.....	9
h) Financial Statements.....	9
i) Production Process for TP Relevant Returns, Documents, Forms and Financials	9
j) Mandatory Language	11
k) Notification Requirement	11
l) Record Keeping	12
m) Penalties and Interest Charges	12

1. Introduction

France was one of the first member countries of the Organisation for Economic Co-operation and Development (OECD) to introduce transfer pricing regulations, as early as 1933. French transfer pricing laws and policies generally follow the OECD guidelines and principles. Multinational companies with French operations must ensure that the pricing of intercompany transactions meets the arm's length standard.

Transfer pricing documentation rules were introduced into French law in 2010. For the purpose of documentation requirements, there are distinctions between large, medium and small companies.

The French Parliament adopted country-by-country reporting (CbCR) in 2016. This new requirement was incorporated in section 223 quinquies C of the French Tax Code, and entered into force in September 2016.

2. Laws & Regulations

a) References to OECD/EU/Local Rules

The French transfer pricing regulations are based primarily on:

- 1) Internal law in particular:
 - a) French Tax Code (Code Général des Impôts): article 57, article 223 quinquies B;
 - b) French Tax Procedure Code (Livre des Procédures Fiscales): articles L13B, L13AA, L13AB, L189A and 1735 ter. On 21 December, 2017 the French Finance Bill for 2018 was approved and is dated 30 December, 2017. Its' main aim is to align the transfer pricing documentation requirements with the OECD BEPS Action 13 recommendations by amending Article 13 AA.
- 2) Administrative Doctrine in particular:
 - a) Instruction BOI-BIC-BASE-80-10-20-20170301 relating to transfer pricing documentation;
 - b) Instructions BOI-BIC-BASE-20-10-20-20170301, BOI-SJ-RES-20, BOI-SJ-RE-20-10, BOI-SJ-SJ-20-20 and BOI-SJ-20-30 relating to APAs;
 - c) Transfer Pricing Guidelines for SMEs BOI-SJ-RES-20-30-20140218.

Therefore, French regulations are generally in line with the OECD Transfer Pricing Guidelines.

Regarding primary legislation, Article 57 of the French Tax Code (Code Général des Impôts), which was revised in January 2010, allows tax reassessments when profits are directly or indirectly transferred to related parties. Under Article 57, the conditions applied to parties that are dependent on each other, or exercise control over each other's financial or commercial relations, must reflect the conditions that prevail between unrelated parties. If it cannot be established that transactions between a French company and its related or controlled foreign companies are carried out at arm's length, the French Tax Administration (FTA) can determine the company's profits for corporate tax purposes, based on a

comparison with independent comparable companies. Where information on comparable transactions is insufficient, the FTA can use the level of profits of third parties in a similar position to make a reassessment.

In terms of secondary legislation, there are administrative guidelines that provide information on how to comply with transfer pricing provisions. Specifically, an instruction paper dated 23 December 2010 provides details on the documentation requirements.

The last update to these administrative guidelines was published on 2 February 2014. The consolidated administrative guidelines are published under the reference BOI-BIC-BASE-80-10-10-20140218.

The administrative guidelines mostly follow the OECD Transfer Pricing Guidelines and do not provide a great amount of detail. However, they are a good summary of the OECD Transfer Pricing Guidelines.

b) Definition of Related Party

When referring to Article 57, the French tax administration must prove both the subordination between the entities taking part in the transaction and a transfer of profit to the foreign associated company. This subordination can be legal, or based on mere facts. There is an extensive list of court cases. Moreover, the tax authorities do not have to prove the relationship of dependence or control in respect of profit transfers to enterprises located in a foreign jurisdiction or territory that has a preferential tax regime as defined by article 238 A of the Internal Revenue Code.

c) Nature of Transfer Pricing Documentation

Statutory rules on transfer pricing adopt the arm's-length principle for cross-border related party transactions. In addition, a considerable number of court cases deal with issues relevant to transfer pricing, which aids in the interpretation and application of the legislation. In parallel with increased resources within the tax administration, recent legislative developments emphasise the focus of the French Tax Administration (FTA) on transfer pricing issues through new rules for documentation as well as tax measures against tax evasion.

d) Tax Havens & Blacklists

The French Tax Code provides two other mechanisms that can be used to combat tax avoidance, in addition to the abuse of law and the abnormal management action principles. These two mechanisms are as follows:

- Interest, royalties and other remuneration paid in a tax haven or into a bank account located in a country with a favourable tax regime are deemed to be fictitious (Article 238A, French Tax Code). Consequently, deductibility is denied unless the paying company can prove that the

transaction was valid and complied with the arm's length principle. A country is considered to have a favourable tax regime if the actual tax paid is at least 50% lower than the tax that would have been paid in France in the same circumstances.

- Profits generated by the foreign branch of a French company, or a foreign company in which the French company has an interest (shareholding or voting rights of at least 50%), are subject to corporate income tax in France if the foreign company or branch carries out its business in a country with a favourable tax regime (Article 209B, French Tax Code).

e) Advance Pricing Agreement (APA)

Advance Pricing Agreements may be signed either unilaterally, bilaterally or multilaterally with States having executed a tax convention with France.

Before actually filing a request, companies should contact the competent French authority to assess the circumstances in which an arrangement could be requested and examined. Then, a full request must be sent to the competent French authority at least six months prior to the start of the first financial year concerned by the requested arrangement. The effective period of an APA is between 3 to 5 accounting periods. No fee is charged on APA application.

The French competent authority undertakes not to disclose any information provided by the group as part of its request for an APA to third parties other than the competent authority that is party to the arrangement. France has however executed a number of international agreements (treaties, directives) that provide for the exchange of information in various contexts (tax conventions, EU, OECD). In some cases, certain information set out in the arrangements may be sent to the country where a foreign enterprise associated with a French enterprise is based.

The APA procedure is independent of any tax audit. This means that a taxpayer subject to an audit may file an APA request for his or her future transactions at any time. No information will be provided to the audit department.

f) Audit Practice

The transfer pricing audit is carried out by local tax authorities. Companies are audited on a discretionary basis.

The tax authorities have issued guidance on when behavior is likely to fall into the scope of Article 57. The following factors are listed as transfer techniques in the "Documentation de base" published on 12/09/2012 in the Bulletin Officiel des Finances Publiques (BOI-BIC-BASE-80-20-20150902) °, and in an extensive bibliography of court cases:

- Either increasing or decreasing purchase or selling prices;

- The payment of excessive fees or without consideration in terms of benefits;
- Granting loans without interest or at a reduced rate;
- Debt forgiveness (waiver of interest stipulated in the loan agreements);
- The award of a benefit out of proportion to the service received;
- Free guarantees to foreign subsidiaries;
- Lump-sum payments for the foreign subsidiary's expenses;
- Miscellaneous.

The procedure for transfer pricing audit is stated in French Tax Procedure Code Article L 13 B. Tax authorities can request transfer pricing audit on the basis of French Tax Procedure Code Article L 13 AA (Article regarding the TP documentation requirements) and L 13 AB (additional documentation to Article 13AA).

In order to have access to the relevant information, the Tax Administration can use Art L 13 B of the Tax Procedure Code or, for the large enterprises, Art. L13 AA or Art. L13AB of the Tax Procedure Code (see below, Section Documentation requirements). In addition, a new obligation of reporting intercompany transactions 6 months after the tax return has been introduced for large enterprises (as defined hereafter) under Art. 223 quinquies B of the French Tax Code. This new obligation can facilitate the selection of taxpayers to be audited.

3. Transfer Pricing Documentation

a) Level of Documentation

Requirement of documentation for large corporates were reinforced by the Amended Bill for 2018 of 30 December 2017 introducing Article 13 AA in the French Tax Procedure Code. Large enterprises are defined as companies based in France:

- 1) Whose annual turnover excluding VAT or gross assets in the balance sheet is greater than or equal to EUR 400 million; or
- 2) Holding at the close of the financial year, directly or indirectly, more than half of the capital or voting rights of a legal entity -legal person, organization, trust or comparable institution established; or
- 3) Of which more than half the capital or voting rights is held at the end of the year, directly or indirectly, by a legal entity satisfying one of the conditions mentioned in a; or
- 4) Part of a fiscal group under Article 223 A of the General Tax Code when this group comprises at least one legal entity satisfying one of the conditions referred to in a, b, c.

The documentations required for large corporates include the following:

1. A “master file” that includes the information listed in Annex I of the OECD final report on BEPS Action 13 (2015), with very minor adjustments (for instance, the transposed version does not expressly require to provide” a general description of the group’s transfer pricing policies related to R&D and intangibles”).
2. A “local file” that includes in extenso the information listed in Annex II of the OECD final report on BEPS Action 13 (2015).

As a result of the new Bill, the information formally required by law is much more detailed than that of the previous regime. As of the content of the complete transfer pricing documentation, the changes relate essentially to the information which must be provided on intangibles and intercompany financial activities of the group. In addition to the list of intangibles (already required), large enterprises must now provide:

- 1) A general description of the group’s overall strategy for the development, ownership and exploitation of intangibles, including location of principal R&D facilities and location of the R&D management;
- 2) A list of important agreements among identified associated enterprises related to intangibles, including cost contribution arrangements, principal research service agreements and license agreements; and,
- 3) A general description of any important transfer of interest in intangibles among associated enterprises during the fiscal year concerned, including the entities, countries, and compensation involved. In addition to details on the intercompany financing between group affiliates (already required), large enterprises must now provide information on “how the group is financed, including important financing arrangements with unrelated lenders” (external financing).

b) Industry Analysis

By identifying value drivers for the relevant industry, a first indication of the level of profitability common in the industry is being given.

c) Company Analysis

A description of the management structure of the local entity, a local organisation chart, and a description of the individuals to whom local management reports and the country(ies) in which such individuals maintain their principal offices.

A detailed description of the business and business strategy pursued by the local entity including an indication whether the local entity has been involved in or affected by business restructurings or

intangibles transfers in the present or immediately past year and an explanation of those aspects of such transactions affecting the local entity.

d) Functional Analysis

In conducting a functional analysis, an assessment is made of the significant activities and responsibilities that are performed by the related parties relevant to the Intercompany Transactions under review, the tangible and intangible assets that are employed and the risks that are borne in undertaking the business activities. Such an assessment is consistent with the recommendations that have been made in the OECD Guidelines at paragraph 1.51.

e) Choice of Transfer Pricing Method

France relies on the 2010 OECD Transfer Pricing Guidelines for transfer pricing methods. In particular, the following methods are accepted:

- Comparable uncontrolled price (CUP) method;
- Resale price method;
- Cost plus method;
- Profit split method;
- Transactional net margin (TNMM) method.

The choice of transfer pricing method depends on circumstances, but generally should be the most appropriate method.

f) Economic Analysis – Benchmark Study

Tax authorities prefer French comparables but can accept regional ones such as pan European benchmarks.

For financial years starting on or after 1 January 2018, only the “most important intra-group transactions” need to be benchmarked. A separate decree, published in July 2018, specifies that the “most important intra-group transactions” are cross-border intra-group transactions that exceed EUR100,000 by type of transactions. A “type of transaction” is, for example, tangible goods purchase, tangible goods sale, service provision, trademark royalty, IT license, sale of a tangible asset or purchase of an intangible asset.

g) Inter-company (IC) Legal Agreement

Although an Inter-company legal agreement formalizes the business and financial relationship between group entities, the legal agreements have a lower ranking since the OECD 2017 Guidelines made the “conduct of parties” the prevailing concept.

h) Financial Statements

In April 2016, the European Commission published a draft amendment to Directive 2013/34/EU on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, which will create an EU country-by-country reporting (CbCR) requirement. A specific feature of this CbCR is that it will be public (that is, published on a company's website). This provision, partially voted for by the French Parliament on 4 July 2017, could become effective some time in 2018 or later.

i) Production Process for TP Relevant Returns, Documents, Forms and Financials

In the chart below, the existence of the filing requirements with the details of which format is used, the latest filing date, notification requirement and its deadline, thresholds to be applied in case it exists, and the required languages are demonstrated. This information can be seen respectively for CIT, master file, local file, CbCR, local forms, annual accounts and segmented P&L documentations.

	Prepare or File?	Format	Deadline	Notification Deadline*	Threshold* (Yes/No)	Local Language (Yes/No)* (If “No”, it can be filed in English)
Corporate Income Tax	File	Local GAAP	This form needs to be submitted at the latest within six months after the legal deadline for submitting	N/A	No	No

			the tax return itself.			
Master File	File	Form 2257-SD	Within 30 days upon request	N/A	Yes	No
Local File	Prepare	Form 2257-SD	Within 30 days upon request	N/A	Yes	No
CbCR	File	OECD's XML format for submission has not been implemented yet.	Within twelve months of the end of the reporting fiscal year.	No later than second working day following 1 May for entities with fiscal year on 31 December, or within 3 months following the fiscal year end. It is possible to extend for 2 weeks due to electronic filing.	Yes	No
Local form X	N/A	N/A	N/A	N/A	N/A	N/A

Local form Y	N/A	N/A	N/A	N/A	N/A	N/A
Local form Z	N/A	N/A	N/A	N/A	N/A	N/A
Annual Accounts	N/A	N/A	N/A	N/A	N/A	N/A
Segmented P&L	N/A	N/A	N/A	N/A	N/A	N/A
* France has signed the MCAA agreement for the filing of CBCR.						
* France does not request as much and detailed information from smaller and less complex enterprises (SME's included) than it does from large and complex enterprises.						

j) Mandatory Language

Documentation for submission to the tax authority should be in French, English is also accepted, but FTA can require to translate.

k) Notification Requirement

As mentioned above:

- For the large enterprises under L13 AA regulations:

The complete Transfer Pricing Documentation has not to be submitted to the Tax Administration but must be remitted at the first day of a tax audit. If this documentation is considered as insufficient the taxpayer has a 30 day delay to remit a complete version. In some specific cases this delay may be extended to 60 days. The Form 2257-SD ("abridged" documentation) must be submitted not later than six months after the tax return;

- For other enterprises under L13B regulations:

No submission of transfer pricing documentation is required, but if the tax auditor can assess a presumption of profit shifting abroad, upon request, the taxpayer is required to present documentation within a two months delay (extension possible until three months upon motivated request). Submission of Form 2257-SD is not required.

l) Record Keeping

Documentation must be kept for a period of at least 6 years following the end of the financial year to which the documentation relates.

m) Penalties and Interest Charges

There are specific penalties applicable to lack of Transfer Pricing Documentation under Articles 1735 and 1735 ter of The General Tax Code:

- For SMEs, in the case of failure to respond to a request for information under Art. L13 B of the Tax procedure Code: flat fine of EUR 10,000 per fiscal year;
- For large enterprises, failure to comply with the requirement to provide complete documentation within required timeframes under Art. L13 AA or L13 AB: the greater of
 - 0,5% of the amounts of the transactions for which insufficient documentation has been presented, or
 - 5% of the transfer pricing reassessments, and the penalty amount cannot be less than EUR 10000 for each fiscal year under audit.

These penalties for failure to provide information or documentation apply in addition to any other tax penalty.