Transfer Pricing Country Summary
France

July 2018
Legislation

Existence of Transfer Pricing Laws/Guidelines

The French transfer pricing regulations are based primarily on:

a) Internal law in particular:
   - French Tax Code (Code Général des Impôts): article 57, article 223 quinques B;

b) Administrative Doctrine in particular:
   - Instruction BOI-BIC-BASE-80-10-20-20170301 relating to transfer pricing documentation;
   - Transfer Pricing Guidelines for SMEs BOI-SJ-RES-20-30-20140218.

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

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.

Transfer Pricing Scrutiny

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) or 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.

**Transfer Pricing Penalties**

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 10 000 for each fiscal year under audit.

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

**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.

Documentation and Disclosure Requirements

Tax Return Disclosure

Based on Art L 13 AB of the Tax Procedure Code, when transactions of any kind are made with one or more associated enterprises or incorporated in a non-cooperative country or territory within the meaning of Article 238-0 A of the General Tax Code, additional documentation must be provided for each of these entities beneficiary of these transfers, including all documents that are required of companies liable to corporate tax in France, including the balance sheet and income statement prepared in accordance with the IV of Article 209 B of the General Tax Code.

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:

a) Whose annual turnover excluding VAT or gross assets in the balance sheet is greater than or equal to EUR 400 million; or

b) 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

c) 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
d) 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").

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).

Additional Disclosure Requirements

Article 223 quinquies B introduced in the French General Code by Law 2013-1117 includes a new obligation for large taxpayers subject to the French documentation requirements under Article L13 AA of the French Procedure Code, to file annually an "abridged" version of their transfer pricing documentation.

A new form (n° 2257-SD) has been released to be used by the taxpayers to comply with the new obligation. Form 2257-SD is in French and consists in a table to be filled with the following information:

- General information on the group:
  - A general description of the group activity, of the nature and location of the group intangibles used by the French entity;
- A broad description of the group transfer pricing policies that are related to the intercompany transactions involving the French entity.

● Specific information on the French company:
  - The aggregated amounts of intercompany transactions by nature; a single amount by nature is to mention for each type of transaction;
  - Only the transactions for which the aggregated amount by nature exceeds 100,000 € shall be documented;
  - For each type of transaction the company must provide:
    ▪ The countries of origin of the related companies involved in the transactions;
    ▪ The main transfer pricing method used for determining the transfer prices (only the “other methods” have to be broadly described);
    ▪ A broad description of 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.

The 2257-SD Form must be submitted not later than six months after the deadline for filing the annual corporate income tax return.

The law does not provide for specific penalty for lack of filing, but in practice this is likely to trigger a tax audit.

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.

Language for Documentation

Documentation for submission to the tax authority should be in French, otherwise, translation is recommended. In some cases, when the documentation is in a foreign language, the tax administration can ask for a translation in French.

Small and Medium Sized Enterprises (SMEs)

A guide to transfer pricing for small and medium enterprises (SMEs) is available online on the Tax Administration’s website at the following address:
http://www2.impots.gouv.fr/documentation/prix_transfert/index.htm

This guide explains the concepts of transfer pricing, and compliance thereof with the principle of full competition. It also deals with the control of transfer pricing, APAs and elimination of double taxation. This guide is available in French.
According to this guidelines, SMEs are define as companies that
   a) have fewer than 250 employees and either having achieved total annual turnover of less than
      EUR 50 million during the fiscal year, with a total balance sheet of less than EUR 43 million; and
   b) the capital or their voting rights are not owned as to 25 percent or more by a company or by
      several companies not meeting the conditions of a).

In addition as from 28 of November 2006, the Administrative Guideline (BOI-SJ-RES-20-30-20140218)
offers medium-sized companies a simplified APA procedure (see above).

Deadline to Prepare Documentation

In theory there is no deadline to prepare contemporaneous documentation as documentation must only
be made available upon request by the French tax authorities according to the rules mentioned below.

Deadline to Submit Documentation

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.

Statute Of Limitations

Generally the French tax authorities must open an enquiry within 3 years from the end of the accounting
period in which the transfer pricing issue arose. In cases of fraud or negligence this can be extended to
10 years from the end of an accounting period. There is no real limit if losses have been offset against
taxable income.
Transfer Pricing Methods
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.

Comparables
Various databases are available that contain the financial accounts of most of the companies, whether or not listed on the stock exchange. These include InfoGreffe, Diane and Amadeus databases. The FTA has extensive access to Diane and Amadeus. The inspectors specializing in transfer pricing commonly use these tools to check taxpayer’s benchmarks or produce their own alternative comparable studies. The DVNI is increasingly inclined to accept or even perform pan-European benchmarks.

Secret comparables, being provided that the taxpayer is provided with sufficient qualitative and quantitative information pertaining to these comparables in order to pronounce on their comparability, are accepted by the French tax courts.