

**TP ALERT 2010-003****Contacts**

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France Enacts Transfer Pricing Documentation Requirements

In spite of strong opposition from the French business community, the French Tax Administration (FTA) on December 30 finally succeeded in issuing a decree introducing a transfer pricing documentation requirement in France (the French Rectified Financial Act for 2009). This new legal requirement is applicable effective January 1, 2010.

Under the new decree, and in compliance with the European Joint Transfer Pricing Forum recommendations, transfer pricing documentation must include two sets of information:

- General information about the group and its subsidiaries (the Masterfile); and
- Detailed information on the French audited entity (the country file).

The main characteristics of the transfer pricing documentation requirement are:

- The contemporaneous nature of the documentation, requiring an annual update;
- The dynamic approach, which requires explanation of any major changes or special circumstances that occurred either during the audited period or between audited and nonaudited periods; and
- Specific additional documentation that must be provided in case of transactions entered into with parent entities located in "uncooperative tax havens."

Scope

The new documentation requirement applies to :

- French companies with a gross annual turnover or gross assets equal to or exceeding €400 million;
- French subsidiaries when more than 50 percent of their capital or voting rights are owned, directly or indirectly, by French or foreign entities meeting the €400 million criteria;
- French parent companies that directly or indirectly own at least 50 percent of companies meeting the €400 million criteria; or

- Worldwide consolidated (without any financial threshold) or tax consolidated French companies (with at least one tax consolidated entity meeting the €400 million criteria within the perimeter).

Audited companies should be able to provide the French tax authorities with transfer pricing documentation substantiating efficiently the selected and applied transfer pricing method and its arm's length character.

Penalties

In case of a tax audit, transfer pricing documentation must be prepared and provided to the tax authorities on the day when the tax audit begins. Failure to provide the information on a timely manner, or providing only partial information will incur a penalty amounting to 5 percent of the transfer pricing reassessment basis, per audited year, with a minimum of 10,000 Euros.

Because transfer pricing documentation could be requested by experts appointed by the Works Council in connection to their role regarding the control of compulsory profit sharing, the lack of documentation could generate the risk of criminal offense for the company's legal representatives.

Recommendations

Considering the significant penalties at stake and the short time period to produce the documentation, we recommend that French groups, as well as the French subsidiaries of international groups, be ready to provide the transfer pricing documentation to the tax authorities fully in line with the new requirement.

French companies without current transfer pricing documentation should document their transfer pricing flows without delay to avoid penalties and overbooking of internal/external transfer pricing specialists at the end of FY 2010.

French companies that already have transfer pricing documentation compliant with the OECD model should review their existing documentation to meet the new legal requirements, including its customization for local purposes;

Translations into French of transfer pricing documentation and of intercompany agreements are likely to be requested. Finally, documentation and benchmark should be updated on an annual basis going forward.