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France publishes decree on new transfer pricing documentation requirements

Global Transfer Pricing Alert 2018-023

The French government on June 29 issued a decree that provides comprehensive guidance on its transfer pricing documentation requirements, applicable for fiscal years that begin on or after January 1, 2018.

The new decree, together with the Finance Bill 2018 approved on December 30, 2017, generally aligns the French transfer pricing documentation requirements with the guidance resulting from the OECD's final report on BEPS action 13. However, the decree introduces some additional -- and burdensome -- requirements.

The entities in France that are subject to the transfer pricing documentation requirements remain unchanged:

- Entities with statutory net sales or gross assets of EUR 400 million and above;
- Entities directly or indirectly owned at more than 50 percent by an entity with statutory net sales or gross assets of EUR 400 million and above;
- Entities that directly or indirectly own more than 50 percent of an entity with statutory net sales or gross assets of EUR 400 million and above; or
- Entities in a French tax consolidated group if a least one member of the tax unity is required to prepare transfer pricing documentation.

The documentation must include all items listed by the OECD in BEPS action 13. French documentation requirements follow the master file/local file approach.

However, the new decree included additional requirements, discussed below.

Format requirements

The new decree requires that a complete documentation report must be provided in an electronic format. Moreover, tables containing financial information (for example, volumes of intercompany transactions, financial data used in the economic analyses, etc.) must be provided in a format that would allow the French tax authorities to check the calculations performed, sort and filter data, and in general make any type of calculations.

The decree provides the format that must be used for some tables. For example, intragroup transactions must be summarized in a table presenting transactions by categories and showing the amounts, the names of the related parties, their roles, and the ISO 3166 codes of their tax jurisdictions. Taxpayers may be familiar with this format, because it closely resembles the format of the transfer pricing form they currently send to the French tax authorities within six months of the deadline for filing the corporate income tax return.

Throughout the documentation report, information must be grouped under specific titles. The master file must have five sections: organizational structure, overview of the group's activities, intangible assets, financial intragroup activities, and financial and the group's tax situation. The local file must have three sections: entity in France, related-party transactions, and financial information.

Additional content and differences with BEPS action 13 requirements

Under the new French documentation rules, the master file must contain information on R&D activities subcontracted to unrelated parties. The guidance under BEPS action 13 does not systematically request this information.

The master file also must include details on the providers of the main intragroup service transactions (including R&D services) regarding specifically employees, equipment, financial resources, and logistics.

For the local file, the decree provides a materiality threshold of EUR 100,000 per type of transactions (for example, provision of services, receipt of services, sales, purchases, etc.). This is the same materiality threshold applicable for the transfer pricing form companies currently send to the French tax authorities within six months of the deadline for filing the corporate income tax return.

The new decree adds a requirement to the effect that the local file must identify the statutory accounts impacted by the intragroup transactions. This requirement will be particularly time consuming for taxpayers.

Comments

The decree is a missed opportunity for the French government to fully align French documentation requirements with the proposed OECD documentation format. Some format requirements – such as the requirement for specific sections in the master file and local file, or the format of certain tables – will create additional work for taxpayers, without providing any value added to the French tax authorities. Moreover, noncompliance with some of the format requirements (for example, the provision of tables in a spreadsheet-based electronic format) and additional content requirements not specifically requested by OECD BEPS action 13 (such as the list of French statutory accounts affected by transfer pricing) will trigger penalties for incomplete documentation, once the French tax authorities have given taxpayers 30 days to comply with a request for information during a tax audit.

Back to top

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Back to top

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Back to top

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