Global Transfer Pricing

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France Enacts Additional Documentation Requirements

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After a series of discussions and exchanges between the two chambers of the French Parliament, legislation was enacted in December 2013 that adds a new transfer pricing documentation requirement to the French tax regime. This legislation, which is part of a new law on fraud and tax evasion, introduced new Article 223 *quinquies* B into the French Tax Code.

The spirit of the law is to provide the French tax authorities additional tools to select more efficiently companies to be subject to a dedicated transfer pricing audit.

New documentation requirement

Under the new obligation, taxpayers are now required to submit some extracts from their full transfer pricing documentation to the tax authorities.

The information that must be submitted includes:

- General information regarding the group and group-related companies:
  - A general description of all business activity, including any changes during the last fiscal year;
  - A list of the taxpayer's principal intangible assets, including patents, brands, commercial names and know-how, related to the French entity; and,
  - A general description of the group's transfer pricing policy and any changes that occurred during the last fiscal year.

- Specific information regarding the French affiliate:
  - A description of the taxpayer's entire activity, including any changes during the last fiscal year;
  - A summary of transactions with other related parties, classified by transaction type and by amount, when the aggregated amount per transaction type exceeds €100 000; and
  - A presentation of the method(s) used to determine the taxpayer's transfer pricing policy (following the arm's length principle), including the main method used and any changes that occurred during the last fiscal year.

Taxpayers must submit this documentation within six months following the submission of their annual tax return.

Companies subject to new requirement

Article 223 quinquies B of the French Tax Code applies to any legal entity (including permanent establishments in France) that meet the criteria specified under Article L.13 AA of the Tax Procedure Code, which governs general transfer pricing documentation requirements. Specifically, one of the following conditions must be met:

- The entity has a gross annual turnover or gross assets equal to or exceeding €400 million;
- The entity owns, directly or indirectly, at least 50 percent of companies that meet the €400 million criteria;
- More than 50 percent of the entity's capital or voting rights are owned, directly or indirectly, by French or foreign entities that meet the €400 million criteria; or
- The entity is in a consolidated tax group in France and at least one group company meets any of the above criteria.

The new obligation is effective as of December 8, 2013. Thus, French affiliates of multinational groups that submit their annual tax return on or after December 8, 2013 -- i.e., companies whose fiscal year ends in September 2013 -- are subject to this additional documentation requirement.

Analysis & recommendations

The additional documentation requirement calls for taxpayers to submit an extract from the transfer pricing documentation that must be prepared according to the current documentation requirements (per article L.13 AA). As such, the new transfer pricing requirement does not replace the existing regulation, but represents an additional obligation for affiliates of multinational groups in France.

It should be noted that under current law the tax authorities are allowed to request the full documentation report as of the first day of a tax audit (theoretically, this could be a few days after submission of the tax return). From a practical standpoint, the company's full documentation report should be prepared in a timely manner, to allow and facilitate extraction of the necessary information to comply with the new documentation requirement.

As with all taxpayer submissions to the French tax authorities, this additional documentation should be provided in French. In the absence of specific agreement from the tax authorities, providing a document in English would likely be viewed as insufficient to meet the requirement.

In terms of deadlines for submitting the additional documentation, it should be noted that in France companies have a three-month period following the closing of their accounts to submit their annual tax return, or four months when the closing date is December 31. For example:

FYE	Tax return filing deadline	TP documentatio deadli
March 31 year N	June 30 year N	December 3
Dec 31 year N	May 1 year N+1	Nov 1 yea

The new law does not impose a penalty directly on taxpayers that default on their obligation to file the transfer pricing documentation extracts, which may tempt some to overlook the new measure. However, taxpayers should not forget that:

(i) the spirit and intent of the new requirement is to increase the efficiency of the transfer pricing audit selection process for the tax authorities and, as such, the possibility of a potential tax audit for the selected companies should be considered the genuine penalty for noncompliance with the new requirement; and

(ii) in the case of such an audit, the main penalty linked to the nonsubmission of transfer pricing documentation as defined by article L.13 AA (up to 5 percent of the tax reassessment amount, with a minimum of €30,000 for a standard French tax audit period of three years) would be applied.

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