

## Global Transfer Pricing

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## France Publishes New Transfer Pricing Documentation Form



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The French Tax Administration (FTA) on September 16 published the official form taxpayers must file to comply with the new transfer pricing documentation requirements imposed by Article 223 *quinquies* B of the French Tax Code. Companies subject to this new requirement must submit the new form, covering fiscal year 2013, by November 20, 2014.

The official form is very similar to the draft document that had been circulated in May.

The form is a four-page table, with the following main requirements:

- A short description of the company (name, tax identification number, address) and the activities of its corporate group. In this section, companies now must list the name of their chartered accountant, as well as the name of their tax advisor;
- A list of the group's intangibles used by the French entity (stating the country of residence of the owner of those intangibles);
- A general description of the transfer pricing policies of the taxpayer's group;
- A list of all intragroup flows involving the French company, by nature of flows. For each flow, the information to be provided includes:
  - The nature of the transaction:
    - Revenues/expenses: sales/purchase of goods, services, commissions, patent royalties, trademark royalties, know-how royalties, other intellectual property revenues/expenses, financial revenues/expenses, etc.;
    - Purchase/sale of assets: patents, trademarks, going concerns, tangible assets, intangible assets, real estate properties.
  - The aggregated amounts per type of transaction if they exceed €100 000;
  - A list of the countries involved in the transactions; and
  - The transfer pricing method applied to the transactions (the comparable uncontrolled price method, the resale minus method, the cost plus method, the transactional net margin method, profit splits, or other methods).

Taxpayers also must disclose whether any major changes in their transfer pricing policy occurred during the year, and provide enough details on the potential changes.

The tax authorities also published a notice that provides detailed instructions for filling out the form.

The form must be completed in French, and sent to the FTA's department in charge of supervising the company. The FTA had mentioned previously that the form must be filed in an electronic format. However, the FTA has not provided

specific instructions in this regard thus far; therefore, we believe that, for this first year, the form may be submitted in hard copy.

The automated review of this form will allow the FTA to perform analyses to identify potential discrepancies in a taxpayer's filings (errors, significant variations from past years, or differences with peers). This will give the FTA a large database on flows and transfer pricing methods applied by international groups, as well as a tool to better prioritize audits.

Taxpayers should proceed with caution in filling out the new form, and should consider the potential consequences of their statements. We strongly suggest that transfer pricing documentation be prepared in advance prior to the filing of the form. Indeed, having transfer pricing documentation will provide French taxpayers a full view of their transfer pricing situation, allowing them to fully anticipate and appreciate the consequences of the information provided in the Article 223 *quinquies* B form.

Penalties for noncompliance with this new requirement are €150 for failure to file and €15 per instance of missing or erroneous information, with a €10,000 limit. We believe the penalties for failure to comply with this new obligation will be significantly increased in the next Finance Act for 2015.

Taxpayers should also be aware that this new transfer pricing documentation requirement does not replace the original requirement (under Section L13AA of the French Tax Procedure Code), which requires that full transfer pricing documentation be available at the time of a tax audit of a French company, and for which French law imposes specific penalties.

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