

Global Transfer Pricing

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France Increases Penalties for Lack of Compliance With Documentation Rules



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France's 2015 Finance Bill, enacted on December 29, 2014, increased the penalties applicable in cases of failure to comply with the French transfer pricing documentation rules.

According to newly drafted Article 1735 ter of the French Tax Code, companies that fail to provide sufficiently detailed documentation regarding their intragroup transactions following an official request by the French tax authorities will be subject to penalties equal to the higher of two amounts:

- 0.5 percent of the amount of the transactions for which insufficient documentation has been presented; or
- 5 percent of the transfer pricing reassessments related to those transactions.

The penalty amount cannot be less than €10,000 for each fiscal year under audit.

There is no clear provision in the law describing precisely what constitutes a lack of compliance; thus, this might be subject to discussion with the French Tax Administration.

The new rule is applicable to any tax audit started after January 1, 2015.

In the previous version of Article 1735 ter, the penalty was not related to the amount of the transaction under review. In essence, this introduces significant penalties for lack of or insufficiency of documentary compliance, even if transfer prices are contracted at arm's length.

This new statement demonstrates a much stricter attitude by the French tax authorities regarding the level of documentation that French entities should prepare and present in case of a tax audit. We believe that specific instructions will be provided to tax inspectors to challenge more vigorously the level of compliance with transfer pricing documentation requirements in line with the stipulations of Article L13AA of the French Tax Procedure Code, and thus, to apply these penalties on a more regular basis.

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