



Overview

Arsene, Taxand France

Arsene's Transfer Pricing and Business Structuring team is composed of thirty lawyers and economists, including four partners. Arsene's expertise covers all issues relating to intragroup transactions, including design and implementation of transfer pricing policies, (re)structuring of activities and transactions, economic analyses (including benchmarking studies and valuation of assets or activities), legal and transfer pricing documentation, compliance, assistance to tax audit, litigation, mutual agreement procedure, advance pricing agreement procedure.

General : Transfer Pricing Framework

The arm's length principle as defined by the OECD and the OECD's Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations are recognised and applied in France.

Article 57 of the French Tax Code "FTC" allows the French Tax Authorities "FTA" to reassess the taxable result declared by entities when they are involved in transactions with related parties that have not been made at arm's length.

The FTA have issued administrative comments (BOFiP database) to clarify their position and provide recommendations on specific topics (e.g., financial transactions).

Furthermore, a guide on transfer pricing for small and medium-sized enterprises ("SMEs") has been issued by the FTA in a view to help SMEs to understand the applicable transfer pricing standards and the FTA's expectations in terms of transfer pricing policies and compliance.

Finally, it is important to note that transfer pricing standards are also used by the FTA to audit domestic transactions between French related entities. In this regard, certain exceptions to the arm's length principle are allowed for transactions between entities belonging to the same tax consolidation group.

Accepted Transfer Pricing Methodologies

There is no specific French legislation or regulation on transfer pricing methodologies and French transfer pricing standards are based on OECD methodologies (i.e., CUP, Resale Price, Cost Plus, Transactional Net Margin Method and Profit Split).

French administrative comments indicate that OECD-based methodologies are most commonly applied, but that other approaches may be accepted provided that they are duly justified and that the price set is compliant with the arm's length principle.

There is no preferred method. Nevertheless, the CUP method is considered the most reliable method when it can be reliably applied, and certain methods have been confirmed as appropriate by case law in certain cases.

Transfer Pricing Documentation Requirements

Transfer pricing documentation requirements are based on the OECD Transfer Pricing Guidelines. Article L.13 AA and L.13 AB of the French Tax Procedure Code "FTPC" require the transfer pricing documentation, including a Master file and a Local file report, to be made available to the FTA from the start of the tax audit or at the latest 30 days upon formal request from the tax authorities (can be extended by a further 30 days).

The content of the Master file and Local file reports is broadly in line with OECD standards and is detailed in administrative comments issued by the FTA.

Transfer pricing documentation requirements apply to French entities, if (i) themselves, (ii) an entity owning them directly or indirectly (majority ownership), (iii) a direct or indirect subsidiary (majority ownership) or (iv) another entity belonging to the same the French tax consolidation group has revenues or gross assets above € 150 million (for fiscal years starting on or after January 1st, 2024) or above € 400 million (for previous fiscal years).

The FTA has specified in their administrative comments that only cross-border transactions with related entities higher than €100,000 per type of transactions for a given fiscal year should be documented.

In practice, since TP documentation is always requested by the FTA at the beginning of the tax audit, it is strongly recommended that transfer pricing documentation also be prepared for taxpayers who do not meet the above criteria.

In addition to transfer pricing documentation, taxpayers may be required to file a transfer pricing return. Article 223 quinquies B of the FTC states that a "simplified" transfer pricing documentation is mandatory for entities with a turnover or gross assets value in excess of €50 million. It is based on a dedicated form delivered by the FTA (form 2257-SD). The 2257-SD form must be submitted within six months following the corporate income tax return filing deadline.

Finally, Country-by-Country Reporting "CbCR" requirements have been adopted by the French legislation and are governed by Article 223 quinquies C of the FTC. CbCR requirements are in line with OECD standards.

Local Jurisdiction Benchmarks

French benchmark requirements follow OECD principles. The taxpayer must provide a benchmarking study most likely to justify the arm's length character of the transaction to which the study relates. Contemporaneous benchmarks are requested, meaning that the benchmarking study should be fully reviewed every three years and financial data of comparable companies (when applicable) should be updated every year.



In this regard, it is strongly recommended to first assess whether internal comparables can be used (in any case, it is important to justify for which reasons they may be rejected).

Comparability adjustments are accepted provided that they result in making comparables more relevant for the transaction to be documented.

As far as searches for comparable companies are concerned, regional benchmarks may be accepted provided that it can be demonstrated that there are no differences between the markets in which the comparable companies operate, or that differences have no impact on the profit level indicator.

Focus on financial transactions

Under French law, the tax authorities' specific guidance on intercompany financial transactions places strong emphasis on the accurate delineation and economic justification of the transaction. More specifically, the tax authorities and case law require that intercompany financial transactions be assessed by reference to the interest of the beneficiary entity: the transaction must satisfy a real economic need and correspond to what an independent enterprise would have agreed to under comparable circumstances. This entails a detailed creditworthiness analysis of the borrower (often through a stand alone credit rating approach), verification that the quantum of debt is consistent with what the borrower could have obtained on the market, and benchmarking of the interest rate and other financial terms against comparable uncontrolled transactions.

In addition, the French tax authorities' doctrine—reflecting the OECD 2020 guidance—requires a close examination of treasury functions and substance within the group: entities performing limited financial intermediation functions (e.g. cash pooling leaders without decision-making capacity) should only earn a routine return, whereas the assumption of financial risks (e.g. funding risk) must be supported by actual decision-making capability and capital at risk.

Finally, this transfer pricing analysis operates alongside specific French rules on financial expenses (notably Articles 39 and 212 of the French Tax Code), which may further restrict the deductibility of intragroup interest irrespective of arm's length pricing.

Advance Pricing Agreement "APA"/Bilateral Advance Pricing Agreement "BAPA" Overview

APAs may be unilateral, bilateral, or even multilateral. They are based on tax treaties concluded between France and other jurisdictions, which means that this procedure is only available with jurisdictions having concluded a tax treaty with France and containing a provision similar to Article 25 of the OECD Model Tax Convention on Income and Capital.

The competent authority is the Bureau de Prévention et résolution des différends internationaux (SJCF-4B). No filing fees are due for this procedure.

The agreement comes into force on the date agreed by the parties, and the duration of the agreement is set as part of the negotiation procedure. It may not be less than 3 years or more than 5 years. The FTA updated their administrative doctrine in January 2025, introducing a retroactive extension to the APA (if requested by the taxpayer), which cannot exceed 3 years.

Transfer Pricing Audits

Transfer pricing audits are always part of a tax audit, and there is no audit focusing solely on transfer pricing issues. In practice, transfer pricing is systematically audited, and transfer pricing documentation systematically requested by the FTA in the first questionnaires at the beginning of the tax audit.

Transfer pricing issues may be dealt with directly by the tax inspector, or the tax inspector may request assistance from the tax authorities' team of transfer pricing consultants.

Burden of Proof in Transfer Pricing: Theory versus Practice

For fiscal years starting as from January 1st, 2024, the transfer pricing documentation becomes binding for the taxpayer, meaning that any deviation from the methods set out in the documentation that results in a lower taxable result is presumed to constitute a transfer of profits, unless the taxpayer can prove otherwise, by any means.

Provided the taxpayer complies with documentation requirements and that the transfer pricing policy has been properly implemented, in theory, the FTA must then establish—typically through a comparability analysis—that a material discrepancy exists between the prices applied by the taxpayer and those expected under the arm's length principle, as required under Article 57 of the French Tax Code.

In practice, however, the FTA has increasingly been challenging the functional profiles of the related parties involved in transactions with French taxpayers. Rather than focusing on the economic analyses provided by taxpayers, the FTA often questions the economic reality of the transactions and the substance of the entities involved. Moreover, the FTA increasingly rely on international administrative assistance mechanisms under bilateral tax treaties to support their position in transfer pricing assessments.

This shift in approach effectively places the burden of proof on the taxpayer to substantiate the actual economic substance of the transactions and the allocation of roles and responsibilities within the group. As a result, French taxpayers are increasingly required to provide supplementary materials—such as internal emails, job descriptions, and other supporting documents—evidencing the actual allocation of roles and responsibility and supporting the functional analysis and conclusions reached from the said analysis.



This trend emphasizes the importance of not only meeting formal documentation requirements but also being prepared to substantiate the economic substance of intercompany transactions. Therefore, in some cases, beyond the standard documentation package, it may be crucial for taxpayers to have backup documentation (e.g., internal communications, evidence of decision-making processes, operational reports, etc.) ready to support the economic reality of their transfer pricing arrangements. For complex organizations or high-stakes transactions, the use of APAs could help mitigate future risks and facilitate smoother audits.

Transfer Pricing Penalties

Where the audited taxpayer fails to produce the required documentation, or produces partial documentation, within 30 days of receiving formal notice from the FTA (or within the period duly extended), it is liable to the penalties provided for in Article 1735 ter of the FTC.

The penalties are decided by the FTA and they depend on the seriousness of the infringement. In particular, the penalties may be the higher of the following two amounts:

- ❖ 0.5% of the amount of the transactions for which no or partial documentation has been provided.
- ❖ 5% of the income tax adjustments based on Article 57 of the FTC and relating to the transactions for which no or partial documentation has been provided.

In any case, the penalties cannot be less than €50,000 (for fiscal years starting on or after January 1st, 2024) or €10,000 for previous fiscal years) and they apply to each of the fiscal years covered by the tax audit.

As far as the transfer pricing return is concerned, in the event of failure to file a return and in the event of omissions or inaccuracies, the penalties provided for in Article 1729 B of the FTC are as follows:

- ❖ failure to file the 2257-SD form: penalties of €150.
- ❖ omissions or inaccuracies in the 2257-SD form: penalties of €15 per omission or inaccuracy, with the total penalties not less than €60 and not more than €10,000.

As far as CbCR is concerned, penalties up to €100,000 may be imposed by the FTA in the event of failure to file the CbCR.

Local Hot Topics and Recent Updates

"Roll-back" for APA

In January 2025, the BOFIP officially introduced a retroactive extension to the scope of the APA. The APA may cover past fiscal years ("roll-back") notably in cases where a transfer pricing reassessment has been notified by one or both States (for a BAPA).

The retroactive extension of the agreement will then allow for the resolution of double taxation without initiating a mutual agreement procedure. However, this extension period may not exceed 3 years.

Transfer Pricing documentation requirements

The threshold for transfer pricing documentation requirements was lowered from €400 million to €150 million for fiscal years starting on or after January 1st, 2024. In addition, the minimum amount of penalties for failure to provide the transfer pricing documentation was increased from €10,000 to €50,000.

Enforceability of transfer pricing documentation

Under the new rule, transfer pricing documentation is now binding for the taxpayer and any deviation from the methods set out in the documentation that results in a lower taxable result is presumed to constitute a transfer of profits, unless the taxpayer demonstrates, by any means, the absence of a transfer of profits.

Increase in the limitation period for the disposal of some intangible assets

The French Government decided to extend the period within which the FTA can reassess taxpayers' taxable result beyond the common statute of limitations for transfers of hard-to-value intangible assets (6 years vs. 3 years).



Documentation threshold

Master file	Revenues or gross assets above €150 million (€400 million for fiscal years starting up to December 31st, 2023) for the relevant fiscal year (taxpayer or shareholder or subsidiary).
Local file	
CbCR	Annual consolidated group revenues above €750 million in the immediately preceding fiscal year.

Submission deadline

Master file	Should be available at the start of the tax audit and provided upon request.
Local file	
CbCR	No later than 12 months after the last day of the reporting fiscal year of the MNE group.

Penalty provisions

Documentation – late filing/late provision	The highest of the following amounts: ❖ 0.5% of the amount of the transactions for which no or partial documentation has been provided. ❖ 5% of the income tax adjustments based on Article 57 of the FTC and relating to the transactions for which no or partial documentation has been provided. ❖ €50,000 per audited fiscal year (€10,000 for fiscal years starting up to December 31st, 2023).
Tax return disclosure - late/incomplete/no filing	Transfer pricing return (form 2257-SD): ❖ failure to file the 2257-SD form: penalties of €150. ❖ omissions or inaccuracies in the 2257-SD form: penalties of €15 per omission or inaccuracy, with the total penalties not less than €60 and not more than €10,000.
CbCR – late/incomplete/no filing	Penalties up to €100,000.



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