# TRANSFER PRICING :
# AN INCREASINGLY RESTRICTIVE LEGAL FRAMEWORK

It is considered that approximately 60% of cross-border transactions are intragroup transactions. It is not surprising, therefore, that countries are now devoting more and more attention to these transactions, in particular where pricing is concerned.

The OECD has issued recommendations to prevent misuse by companies in this field and, at the same time, governments have implemented penalties that are much more substantial so as to dissuade companies from not complying with market prices.

In France, tax reassessments can result in substantial financial consequences and can concern: company income tax, tax on added value (CVAE), withholding tax on income “deemed to have been distributed”, VAT, and penalty for wilful neglect.

Fixing arm’s length prices within a group – and being able to justify them – is therefore a difficult task, considering the risks involved. As a reminder, it is the tax authorities’ responsibility to prove that the relationship between the companies concerned is not arm’s length and that an unjustified benefit exists in comparison to arm’s length prices.

In practice, the tax authorities tend to reverse the burden of proof in the absence of any “convincing” evidence.

Since the 1990s, the tax authorities’ powers of investigation have been extended constantly. Their powers were again extended recently with the creation of new requirements to automatically file summary transfer pricing documentation (1) and a computer file of cost accounts (2).

## 1. Automatic filing of summary transfer pricing documentation

The French Law dated 6 December 2013 for the prevention of tax fraud and large-scale economic and financial crime, which came into force on 8 December 2013, imposes new requirements on companies (Article 223 quinquies B of the French Tax Code).

These requirements concern companies established in France and whose annual turnover (excluding VAT) or gross assets booked on the balance sheet is equal to or exceeds M€ 400, or which belong to a group of companies, where said group contains at least one legal entity fulfilling one of the above conditions.

In addition to the existing requirement to put full transfer pricing documentation at the disposal of the tax authorities in the event of a tax audit, the Law dated 6 December 2013 imposes on the above companies a requirement to automatically file “summary documentation” concerning transfer prices.

Said documentation is to be filed within six months of the date the company is due to file its tax return package and must contain:

- on one hand, general information on the group of affiliates (i.e. a general description of the group's transfer pricing policy and any amendments made to the policy over the financial year), and
- on the other hand, specific information on the company itself (i.e. details of the method(s) used to calculate transfer prices compliant with arm's length principles, indicating the main method used and any amendment made to it over the financial year).

It is essential to set up the required documentation. Indeed, tax audits could potentially be avoided or, on the contrary, implemented after the preliminary analysis of this documentation by the tax authorities.

### 2. Computer file of cost accounts and consolidated accounts

Article 97 of the 2014 Finance Act stipulates that tax-payers who keep cost accounts and/or consolidated accounts are required to submit these to the tax authorities in any of the following circumstances:

- if their turnover exceeds:
  - M€ 152.4, in the case their main activity is the sale of goods, articles, supplies and eat-in or take-away foodstuffs, or the supply of accommodation; or
  - M€ 76.2, in the case of other companies;
- if their total gross assets are equal to or exceed M€ 400 at year-end;
- under certain circumstances, if they belong to a group in which certain companies fulfil the conditions referred to in paragraphs (a) or (b)

The company must be in a position to justify its pricing practices up-front.

## CONCLUSION

There is a strengthening of administrative resources in France to control transfer pricing. In addition, companies will be required to submit to the tax inspector a copy of their accounting entries ("Fichier des Ecritures Comptables" or "FEC"), and the tax authorities will be able to analyse accounting entries, adjustments and restatements carried out within a group.

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