Insights:
Transfer Pricing

CRA Charles River Associates

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France tightens transfer pricing regulations

France introduced several new transfer pricing regulations in December 2013. These related to additional transfer pricing documentation obligations, additional disclosure obligations, limitations to double taxation relief during a Mutual Agreement Procedure (MAP), and limitations to interest deduction. Several additional measures had been approved by Parliament, but were then invalidated by the French Constitutional Council.[1]

This article summarizes the new regulations, describes the measures that have not been implemented, and comments on the new rules and how they could impact multinational groups operating in France. It also covers the difficult climate developing in France regarding transfer pricing and taxation of multinational groups.

Additional transfer pricing documentation requirements

A new obligation to file a simplified version of documentation within six months after filing the tax return was created. This does not alter the existing requirement to prepare a full documentation package that must be available on the first day of an audit. Similarly to the pre-existing requirements, the new obligation only applies to entities having at least EUR 400 million of revenue or total assets at the company level or its parent companies or subsidiaries. The new rules apply to tax returns due as of December 8, 2013.

The list of information that must be provided is split between general information about the group and specific information about the local entity.

1. General information about the group:
    a) General description of the activity, including changes that occurred during the fiscal year;
    b) List of main intangibles, with particular reference to patents, trademarks, trade names, and know-how; and
    c) General description of the group transfer pricing policy and any changes during the fiscal year.

[1] The new regulations are not part of a specific new law on transfer pricing matters, but were inserted, along with many other new tax regulations, into two large legislative documents. The new documentation requirements are included in a law on fighting tax fraud and serious economic and financial crime, published in early December. All other new regulations have been included in the Finance Bill for 2014, published at the end of December.

2. Specific information about the local entity:
    a) Description of the activity, including changes that occurred during the fiscal year;
    b) Summary of transactions with related entities, by nature and amount, for each transaction or group of transactions, by nature, exceeding EUR 100,000; and
    c) Presentation of the transfer pricing method(s), consistent with the arm's length principle and its changes during the fiscal year.

It is expected that French tax authorities will provide guidance about the practical implementation of the new rules.

Other new provisions related to transfer pricing matters

Several new regulations were introduced at the end of December relating to:

- Limitation of the deductibility of interest paid to a related entity, which is subject to tax rates below a certain minimum threshold (25% of the corporate income tax that would normally be due in France);
- Obligation to disclose rulings obtained by related entities from foreign tax authorities;
- Obligation to provide tax auditors the management and consolidated accounts; and
- Abolition of the automatic suspension of the collection of assessed amounts for which the taxpayer has requested a MAP.

Provisions rejected by the Constitutional Council

The French Constitutional Council rejected and invalidated a number of new regulations that were approved by the French Parliament:

- Changes to the rules establishing the burden of proof principles, i.e. shifting the burden of proof from the tax administration to taxpayers for business restructurings;
- Increase in the penalties related to transfer pricing documentation up to 0.5% of revenue;
- Obligation for tax advisors to disclose the tax optimization schemes that they develop for their clients; and
- The change to the general anti-abuse rule wording from "exclusively" to "mainly tax driven."

Comments

The new regulations appear to be largely influenced by a report published in June 2013 by the French Ministry of Finance, entitled "Task force for comparing international practices in fighting tax avoidance realized via intra-group economic and financial transactions."[2] The report appeared to be quite aggressive and used expressions such as France's "weapons" in the area of transfer pricing

[2] See *Insights: Transfer Pricing* for an article about the report "Proposed measures to tighten transfer pricing regulations in France." Accessed on January 13, 2014, **http://crai.com/uploadedFiles/Publications/TP-Insights-Proposed-measures-to-tighten-transfer-pricing-regulations-in-France(1).pdf**.

audits are weaker than those of the countries visited by the task force.[3] On the other hand, the new documentation requirements are included within the provisions of a law whose main purpose and title is fighting tax fraud and serious economic and financial crime.[4] This reinforces the feeling of an unbalanced climate. Multinational groups should consider a review of their French operations, not only for the practical aspects of complying with the new rules, but also for reassessing the potential challenges that they could face in the near future, taking into account the interrelations between transfer pricing issues and other areas where French tax authorities appear to be increasingly aggressive: business restructuring, digital economy, and permanent establishment.

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[3] Germany, Canada, US, the Netherlands, and the UK.

[4] Loi n° 2013-1117 du 6 décembre 2013 relative à la lutte contre la fraude fiscale et la grande délinquance économique et financière.