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Companies are now subject to a new filing requirement with respect to their transfer pricing policy

This annual filing requirement is the last part of an increasingly stringent body of rules that aims at defeating tax optimization schemes that the French Tax Authorities (the “FTA”) consider as excessive and responsible for the reduction of the tax base in France.

Article 223 quinquies B of the French Tax Code introduced by Article 45 of the Law 2013-1117 of December 6, 2013 adds a new requirement to an already complex piece of legislation. For the first time, however, this new requirement imposes the systematic and annual disclosure of a number of information on the filing company and its group.

Companies subject to the new filing requirement

Companies subject to the new requirement to file the new transfer pricing return form (Return Form 2257-SD) made available online by the FTA are those already subject to the obligation to establish transfer pricing documentation (Article L 13 AA of the Tax Procedure Code).

As such, the obligation to establish transfer pricing documentation and to file Return Form 2257-SD applies to:

- legal entities based in France with a gross annual turnover or gross assets equal to or exceeding €400 million,
- legal entities that own at the close of their financial year, directly or indirectly, more than 50% of the

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share capital or voting rights in legal entities based in France or abroad that meet the above €400 million criteria,

- legal entities that have more than 50% of their share capital or voting rights directly or indirectly held by a legal entity based in France or abroad that meets the above €400 million criteria,
- legal entities that are part of a tax consolidated group in which at least one company meets the requirements of any of the above three bullet points.

The transfer pricing documentation must justify the transfer pricing policy applied to all kind of transactions with affiliated entities based outside France.

A light filing requirement to deal with a complex reality

The information to be disclosed to the FTA can be divided into two categories:

- Information on the group's activities and on its intangible assets;
- Information on the amount and calculation of the transfer prices that have been applied.

The FTA has decided to impose a light filing requirement that primarily consists in providing an inventory of intra-group transactions and methods used to calculate transfer prices.

Yet, when filing Return Form 2257-SD, companies will have to make careful choices and decisions to make sure they classify their transactions with other group entities as per the tax nomenclature imposed by the FTA. They should also pay particular attention to ensure that the information disclosed is in line with their transfer pricing documentation and accounting.

If they fail to do so, the FTA could try to rely on any apparent inconsistencies to attempt to conduct a transfer pricing audit and, possibly, to order transfer pricing adjustments.

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