

# ARTICLE

## TAX NEWSFLASH - 2

Private Equity Private Clients Droit fiscal | 10/03/10 | Xavier Rohmer



### 2010 – New rules in France for documenting in connection with transfer pricing

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We inform you that the amended finance act for 2009 introduces documentation requirements in the area of transfer pricing applicable to transactions carried out in the course of financial years commencing on or after January 1, 2010.

Henceforth, pursuant to new Article

L 13 AA of the French Tax Procedure Code (FTPC), affected businesses must maintain at the disposal of the French tax authorities documentation to support the transfer pricing policies employed in connection with transactions of any kind carried out with related companies.

#### 1. Businesses concerned by the documentation requirement

The new requirement provided in Article

L 13 AA of the FTPC concerns any legal entity established in France that meets any one of the following conditions:

it has annual turnover excluding VAT or gross assets listed on the balance sheet over greater than or equal to €400 million<sup>1</sup>;

it holds directly or indirectly, at the end of the fiscal year, more than one half of the capital or voting rights of a legal entity established or incorporated in France or outside of France meeting any of the abovementioned conditions; more than 50% of its capital or voting rights are held, at the end of the financial year, directly or indirectly, by a legal entity meeting the first condition above;

it has been granted the benefit of worldwide tax consolidation regime (Article 209 quinquies of the French Tax Code (FTC)), in which case all legal entities taxable in France within the scope of consolidation are subject to the requirement; It belongs to consolidated group (Article 223 A of the FTC) having at least one legal entity meeting one of the preceding criteria.

#### 2. Transactions covered by the transfer pricing documentation requirements

Article 13 AA of the FTPC concerns all transactions carried out by related legal entities within the meaning of Article 39-12 of the FTC<sup>2</sup>.

#### 3. The scope of the documentation

Pursuant to Article L 13 AA of the FTPC, the documentation must contain two main parts:

General documentation (MasterFile) concerning the group of related businesses which must enable the French tax authorities to understand the economic, legal, financial and tax environment of the group;

Specific documentation on the company subject to an audit containing the items of information enabling the tax authorities to determine compliance with the principle of arm's-length transfer pricing at the level of the audited company.

Furthermore, we draw your attention to the fact that new Article L 13 AB of the FTPC requires the maintaining of additional documentation where transactions are carried out with entities located in a non-cooperative State or territory within the meaning of Article 238-0 A of the FTC<sup>3</sup>.

#### 4. Sanctions

The new regulations provide that the documentation must be made available to the French tax authorities from the beginning of the tax audit.

Where the audited company does not provide the requested documentation or provides incomplete documentation, the tax authorities will notify a demand to produce or complete the documentation within a period of 30 days.

In the case of failure to respond or a partial response to the demand, the audited company is subject to significant sanction: for each fiscal year audited, a fine in the amount of €10,000 or, depending on the gravity of the violations, a fine of up to 5% of the transferred profits, within the meaning of Article 57 of the FTC (if such amount is greater than €10,000) (New Article 1735 ter of the FTC adopted by the amended finance act for 2009).

## **5. Entry into force**

The documentary requirements apply to transactions occurring in the course of fiscal periods commencing on or after January 1, 2010. Therefore, in practice, the documentation may be required as of the first tax audits relating to fiscal periods commencing in 2010, i.e., at the earliest, after the filing date for company tax returns in 2011.

In light of the foregoing, we recommend preparation beginning immediately of the documentation required under the new rules.

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