

France

TRANSFER PRICING PROFILE

1. Reference to the Arm's Length Principle

Article 57 of the General Tax Code (Code Général des Impôts), which is the transposition into domestic law of Article 9 of the OECD Model Tax Convention.

Bulletin Officiel des Finances publiques - Impôts (Official Tax Bulletin of the French General Public Finances Directorate), on Article 57 of the General Tax Code:

- *BOI-BIC-BASE-80-10-10* :

<http://bofip.impots.gouv.fr/bofip/5549-PGP.html?identifiant=BOI-BIC-BASE-80-10-10-20140218>

- *BOI-INT-DG-20-40* :

<http://bofip.impots.gouv.fr/bofip/5341-PGP.html?identifiant=BOI-INT-DG-20-40-20120912>

2. Reference to the OECD Transfer Pricing Guidelines

Bulletin Officiel des Finances publiques - Impôts (Official Tax Bulletin of the French General Public Finances Directorate):

(in addition to the aforementioned references)

- *BOI-SJ-RES-20* on APAs:

<http://bofip.impots.gouv.fr/bofip/1097-PGP.html?identifiant=BOI-SJ-RES-20-20120912>

- *BOI-INT-DG-20-30* on MAPs :

<http://bofip.impots.gouv.fr/bofip/7643-PGP.html?identifiant=BOI-INT-DG-20-30-20120912>

3. Definition of related parties

Associated enterprises are those that depend on or control enterprises outside France.

Article 57 of the General Tax Code refers to the notion of dependence but does not define it; dependence can be either de jure or simply de facto. Moreover, Article 57 dispenses the tax authorities from having to prove the relationship of dependence or control in respect of profit transfers to enterprises located in a foreign State or territory outside France that has a preferential tax regime.

Administrative doctrine stipulates that:

1. De jure dependence is established if a French enterprise is dependent on a foreign enterprise, which is the case if the foreign enterprise holds a preponderant share of the French enterprise's equity or an absolute majority of the voting rights at its shareholders' meetings. The same holds true if, within the French enterprise, the foreign enterprise is empowered to perform functions that include decision-making, either directly or through intermediaries.

2. De facto dependence may either be contractual or stem from conditions underlying the dealings between the two enterprises (there is abundant case law illustrating this notion of de facto dependence).

4. Transfer pricing methods

The OECD Transfer Pricing Guidelines.

5. Transfer pricing documentation requirements

The documentation requirements of the EU TPD Code of conduct is mandatory at the time of an audit for any French entity which belongs to a group which contains a legal entity whose annual turnover or balance sheet assets is/are at least € 400 million (Article L 13 AA of the Tax Procedure Code).

Entities having dealings with related parties located in non-cooperative jurisdictions are subject to additional requirements (Article L 13 AB of the Tax Procedure Code).

In any case (whatever the size of the enterprise), Article L 13 B of the Tax Procedure Code implies an obligation for enterprises to co-operate with the tax administration at the time of an audit regarding transfer pricing documentation.

Implementation of the Code of Conduct on Transfer Pricing documentation for associated enterprises in the European Union (EU TPD) - summary of Member States' responses to the 2013 JTPF questionnaire on the implementation of the EU TPD:

https://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/taxation/company_tax/transfer_pricing/forum/jtpf/2013/summary-ms.pdf

Companies whose turnover or balance sheet assets is at least 50 million euros are subject to file every year a simplified version (form CERFA 2257-SD) of the master and local form (Article 223 quinquies B of the General tax code).

Multinational enterprise (MNE) groups meeting the threshold of €750 million of consolidated revenue are subject to communicate the data contained in the group's Country-by-Country Reporting (CbCR), as required by Article 223 quinquies C of the General Tax Code.

Declarations must be filled on the tax forms provided by the administration and electronically sent (form CERFA 2258-SD).

6. Specific transfer pricing audit procedures and / or specific transfer pricing penalties

There are no specific transfer pricing audit procedures.

There are however specific transfer pricing documentation-related penalties:

- in the event an enterprise fails to respond to a request for information under Article L 13 B of the Tax Procedure Code, it is liable for a flat €10 000 fine for each financial year covered by the request (II of Article 1735 of the General Tax Code);
- a failure to respond to a request for information under Article L 13 AA or Article L 13 AB of the Tax Procedure Code leads to a €10 000 fine, or to a maximum of 5% of the profits transferred under Article 57 (Article 1735 ter of the General Tax Code).

7. Information for Small and Medium Enterprises on TP

Information relevant for SMEs in tackling transfer pricing matters is available on the JTPF webpage at: https://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/taxation/company_tax/transfer_pricing/forum/profiles/profile-fr.pdf

8. Information on dispute resolution

Competent Authority	APA and MAP : Direction générale des finances publiques (DGFIP) Service juridique de la fiscalité Mission d'expertise juridique et économique internationale (MEJEI) Teledoc 849
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	<p>64-70 allée de Bercy 75574 Paris cedex 12 FRANCE Tel.: +33 1 53 18 09 23 E-mail: mejei@dgfip.finances.gouv.fr</p>
Organization	APA and MAP: Mission d'expertise juridique et économique internationale, within the Legal Department of the DGFIP - Ministry of Economy and Finance
Scope of MAP & MAP APA	Relief of taxation not in accordance with tax treaties, such as double taxation.
Domestic guidelines & administrative arrangements	<p>Bulletin officiel des finances publiques – impôts</p> <p>MAP: BOI-INT-DG-20-30: http://bofip.impots.gouv.fr/bofip/7643-PGP.html - bilateral MAP: section 1, BOI-INT-DG-20-30-10; - MAP pursuant to the European Arbitration Convention : section 2, BOI-INT-DG-20-30-20; - arbitration procedures: section 3, BOI-INT-DG-20-30-30.</p> <p>APA: BOI-SJ-RES-20-10 + BOI-SJ-RES-20-20 http://bofip.impots.gouv.fr/bofip/1048-PGP.html</p>
Time for filing	<p>MAP: Determined by the provision of the double taxation treaty applicable (many French double taxation conventions contain OECD Model Article 25). APA: six months before the start of the first tax year covered by the filing * APA cannot be retroactive</p>
Form of request	<p>MAP: No specific form; see BOI-INT-DG-20-30- aforementioned. APA: In a mutually agreed format; see BOI-SJ-RES-20-10 aforementioned.</p>
Documentation requirement	<p>MAP: See BOI-INT-DG-20-30 aforementioned APA: See BOI-SJ-RES-20-20-aforementioned. - Documents needed to analyze the method; - Accounting or non-accounting documents that may help the officials examining the application.</p>
User fees	None
Tax collection / penalty / interest	No favorable treatment for taxpayers in MAP.
Other dispute resolution mechanisms	<p>Convention on the elimination of double taxation in connection with the adjustments of profits of associated enterprises (90/463/EEC). Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union (in effect from July 1st 2019 for fiscal years beginning in 2018) Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (in force from January 1st 2019, in effect depending on tax treaties)</p>
Government Website	http://www.impots.gouv.fr

Dispute resolution under the Arbitration Convention may not need to be initiated and may be suspended if one of the enterprises involved is subject to a 'serious penalty' for the transactions giving rise to the profit adjustment (Article 8).

According to the unilateral declaration of France on Article 8 of the Arbitration Convention (*Official Journal L 225, 20/08/1990 P. 0010 – 0024*): "The term 'serious penalties' includes criminal

penalties and tax penalties such as penalties for failure to make a tax return after receiving a summons, for lack of good faith, for fraudulent practices, for opposition to tax inspection, for secret payments or distribution, or for abuse of rights.”

9. Relevant regulations on Advance Pricing Arrangements

Bulletin Officiel des Finances publiques- impôts, BOI-SJ-RES-20-10 on bilateral APAs.

Bulletin Officiel des Finances publiques- impôts, BOI-SJ-RES-20-20 on unilateral APAs.

Bulletin Officiel des Finances publiques- impôts, BOI-SJ-RES-20-30 on transfer pricing guidelines for SMEs.

10. Links to relevant government websites

<http://www.impots.gouv.fr>

11. Other relevant information