
France: Annual
Transfer Pricing Form
2257-SD

September 16, 2014

Background

On 16 September, 2014, the OECD released its first tranche of seven BEPS deliverables, including “*Guidance on Transfer Pricing Documentation and Country-by-Country Reporting*” which included an improved version of the ‘Country-by-Country Reporting Template’ (‘CBCRT’).

On the same day, France released the final version of its new annual transfer pricing disclosure return, effectively expanding France’s domestic reporting requirements beyond those to be required in the OECD’s recommended Country-by-Country Reporting.

The French filing requirements

The return consists of three spreadsheet-type forms covering:

- 1) Group activities and intangible assets: broad descriptive information about the nature and ownership of group intangible assets used by the French reporting business.
- 2) Income statement: descriptive and financial information in respect of intragroup trading transactions by amount, category of income or expenditure, and applied transfer pricing methodologies.
- 3) Balance sheet: descriptive and financial information in respect of intragroup asset transactions (intangible and tangible) by amount, category of acquisition or disposal, and applied transfer pricing methodologies.

These new measures apply to French entities:

- 1) with either sales revenues or gross assets of at least €400 million (\$540 million) in their own right, or
- 2) which control an entity (whether French or foreign) that satisfies one of the €400 million criteria, or
- 3) of any size controlled by a foreign entity which satisfies one of the €400 million criteria.

For forms 2) and 3), transactions only need to be reported if the aggregated amounts of all transactions per category exceed €100,000.

For large businesses, these new transfer pricing reporting requirements are in addition to the comprehensive transfer pricing documentation requirements introduced in 2010.

The annual filing deadline is within 6 months of the due date for the business’s normal tax return. As a transitional measure, French businesses with tax return filing deadlines between June and November this year have until 20 November to file the transfer pricing return. For example, a business with a 31 December 2013 fiscal year-end must file the return by November 20th.

Late-filing penalties are very modest at €150. However, further penalties of €15 can be applied for each additional error or omission, up to a maximum total of €10,000.

Implications

In terms of content, it is important to appreciate that the information required by the return is not purely domestic and will allow France to build a reasonable picture of many of multinational group’s key intragroup transfer pricing flows, together with the nature and ownership of intangible assets, by country.

Critically, in today’s age of information exchange, it would be a mistake to believe that this information will remain in France: transfer pricing information received by France will be capable of being shared with other taxing jurisdictions under various international exchange of information provisions.

Recommendations

At the time of preparing the return, groups should assess the possible implications of this for non-French group entities. It should be assumed that transfer pricing information provided in the French return will not remain in France.

Best practice will be for groups reporting in France under the new transfer pricing requirements to establish a centralised oversight process to collate and classify the information required, and to draft the return forms, in order to:

- Ensure accuracy, completeness and consistency of presentation
- Identify potential gaps and to assess risks and possible mitigating actions, as necessary
- Identify potential 'touch points' that could arise group-wide once the French tax authorities receive information and 1) ask their own questions, and 2) share it with other tax authorities.

**UNOFFICIAL TRANSLATION:
DISCLOSURE OF TRANSFER PRICING POLICIES – EXPLANATORY NOTICE
ARTICLE 223 QUINQUIES B OF THE GENERAL TAX CODE (GTC)**

Businesses covered by the mandatory filing requirement and filing deadline

Businesses mentioned in Article L 13 AA of the Tax Procedures Code are required to file return no. 2257-SD in respect of their transfer pricing policies, as required by Article 223 quinquies B of the French General Tax Code, regardless of the volume of transactions undertaken with associated enterprises.

The transfer pricing return must be submitted within 6 months following submission of the tax return. It should be submitted to the business tax office which deals with the filing entity. By way of derogation, the submission deadline has been extended to November 20th 2014 for businesses required to submit their tax return between June and November 2014.

Content of the return

The return must be completed in French.

PART 1 - General information about the group of associated enterprises:

1) Main activities

The objective of this part is to identify the group's main activities, as well as the nature and location of exploited intangible rights.

The main character of an activity is assessed by the amount of either its generated income, or the degree of its deployed resources.

2) and 3) Intangible assets

Only the assets used by the filing company should be mentioned.

The nature of the intangible asset must be specified literally without any abbreviation. It is unnecessary to specify the title of each patent or brand, but rather to indicate the type of intangible assets used by the business (such as "patent", "brand", etc), fully in writing. If the reporting company uses several intangible assets for the same activity, their nature should each be specified on separate lines in column (2).

The territory of establishment of the entity owning or co-owning the intangible asset must be stated. Territories must be identified by a 2-letter code, in accordance with the ISO 3166 norm (www.iso.org).

Example: An American company owns a patent and makes it available to the filing company against the payment of a licence fee. The nature of the asset is stated in column (2). On the same line in column (3), the state in which the company owning the patent is located is indicated.

4) General description of transfer pricing policies

The company summarizes the group's methodology (ies) for setting transfer prices in relation to the filing entity, that is, the methodology(ies) which affect the value of intragroup transactions in which the filing entity is involved.

PART 2: Specific information regarding the disclosing business:

Transactions with associated enterprises: Associated enterprises are those specified in Art. L 13 AA of the Tax Procedures Code. This concerns legal entities established or incorporated outside France and which are related, within the meaning of Article 39-12 of the General Tax Code, to the filing company.

Nature of transactions with associated enterprises: Transactions must be classified according to their type (sales, services, commissions, etc) and the same transaction should not be shown under different headings.

Example: For a business which pays a global royalty for the use of a patent and a brand, only the heading "Royalties: other intellectual property rights" should be checked and not the headings "Royalties: patents" and "Royalties: brands".

The heading "Derivative financial instruments" refers to the financial flows related to derivative financial instruments as defined in Article L.211-1 of the Monetary and Financial Code. For the completion of this return, these flows should be differentiated from the flows mentioned under the headings "Financial income" and "Financial expenses".

5) Aggregate amount of transactions with associated enterprises.

The company should indicate the aggregate amount of income, expenses and asset disposals exceeding €100,000, as recorded in its accounting records. These items must be detailed according to their flow type. There is therefore no need to provide, for each type of flow, the detail of each individual transaction included in the €100,000 amount. Only one aggregate amount should be recorded under each heading for each type of transaction.

Examples:

1) If there are 10 services transactions of €11,000 each, only the aggregate amount of €110,000 should be entered in column (5), and not the detail of each €11,000 transaction.

2) A business manufactures automotive accessories in France. These accessories are sold to distribution subsidiaries in Spain, Germany and Italy. The total amount of sales to subsidiaries amounts to €500,000. The filing company does not need to specify the income from each market, and should only mention a single amount of €500,000 under the heading "sales" in column 5.

6) Countries covered by transfer pricing flows

It is not necessary to indicate the name and address of each associated enterprise. Only the territory of establishment of the associated enterprise concerned by the transaction should be mentioned. Territories must be identified by a two-letter code, in accordance with the ISO 3166 norm (www.iso.org).

7) 8) 9) 10) 11) 12) Applied methods

The company should check the box corresponding to the main transfer pricing method applied for each type of transaction.

If column (12) "Other methods" is checked, the filing company must briefly describe this method in the box "Activity of the filing company" in column (14).

13) Changes during the fiscal year

Changes which affect the French company, whether about the group's transfer pricing policy, or about the nature and location of assets, should be indicated by checking the last column of the table.

A brief explanation of such changes should be provided in the box "Activity of the filing company" in column (14).

**UNOFFICIAL TRANSLATION:
FRENCH TRANSFER PRICING RETURN 2257-SD (DISCLOSURE OF TRANSFER PRICING POLICIES)**

Directorate General:
Public Finances

Cerfa
No 15221*01
Mandatory Form
(art. 223 quinquies B of the General Tax Code)

No 2257-SD
2014

DISCLOSURE OF TRANSFER PRICING POLICIES

Fiscal year beginning :		and ending :	
-------------------------	--	--------------	--

A - IDENTIFICATION OF THE ENTITY			
Company name:		Head office address:	
Registration number			
Address of the main place of business		Former address if changed	

B - ACTIVITY			
Activities carried on		If you have changed activity, check this box	

Name and address of accountants:		Name and address of advisors:	
<i>Tel :</i>		<i>Tel :</i>	
Business Tax Office :		Identity of the filing entity :	
		Date : Location:	
		Function and name of the signatory	
		Signature :	

UNOFFICIAL TRANSLATION: FRENCH TRANSFER PRICING RETURN 2257-SD (DISCLOSURE OF TRANSFER PRICING POLICIES)

2 Description of the activity in summary format, by nature and amount, of operations exceeding €100,000 undertaken with associated enterprises, with indication of the transfer pricing methods

Nature of transactions with associated enterprises	Aggregate amount of transactions exceeding €100,000, by category (5)	Territories covered by the transaction (ISO code) (6)	Indicate methods applied (by checking the corresponding box)						Check the box if a change occurred during the fiscal period
			CUP (7)	Resale price (8)	Cost-plus (9)	TNMM (10)	Profit split (11)	Other (12)	
INCOME									
Sales									
Services									
Commissions									
Royalties: patents									
Royalties: brands, trademarks/tradenames									
Royalties: know-how									
Royalties: other intellectual property rights									
Financial									
Derivative financial instruments									
Other income									
EXPENSES									
Purchases									
Services									
Commissions									
Royalties: patents									
Royalties: brands, trademarks/tradenames									
Royalties: know-how									
Royalties: other intellectual property rights									
Financial									
Derivative financial instruments									
Other expenses									

UNOFFICIAL TRANSLATION: FRENCH TRANSFER PRICING RETURN 2257-SD (DISCLOSURE OF TRANSFER PRICING POLICIES)

Nature of transactions with associated enterprises	Aggregated amount of transactions exceeding €100,000, by category (5)	Territories covered by the transaction (ISO code) (6)	Indicate methods applied (by checking the corresponding box)					Check the box if a change occurred during the fiscal period
			CUP (7)	Resale price (8)	Cost-plus (9)	TNMM (10)	Profit split (11)	
ASSET ACQUISITIONS								
Patents								
Trademarks/tradenames								
Goodwill								
Intangible personal property								
Tangible personal property								
Real property								
ASSET DISPOSALS								
Patents								
Trademarks/tradenames								
Goodwill								
Intangible personal property								
Tangible personal property								
Real property								

Activity of the company filing this return (14):

- description of changes during the period if indicated in column 13
- description of the method applied if indicated in column 12
- and/or supplementary comments