



France

WTS Global Country TP Guide

Last Update: September 2018

1. Legal Basis	
Is there a legal requirement to prepare TP documentation?	Yes
Since when does a TP documentation requirement exist in your country?	2010
Are TP policies of multinational enterprises in principle accepted by the tax authorities, if they are in line with the OECD TP Guidelines?	Yes
Have the documentation requirements of OECD BEPS Action 13 already been implemented (i.e. the LF, MF and CbCR concepts)?	Yes CbC Report standard format and TP documentation standard format have been implemented (i.e., MF and LF standard is in line with OECD templates). However, additional requirements apply concerning transactions with a non cooperative state and IP.
Reference to documentation and statements of local-government or tax authorities regarding OECD BEPS implementation status	Administrative guidelines: Bofip, BOI-BIC-BASE-80-10 and BOI-BIC-BASE-80-20; Transfer Pricing manual for SME (Prix de transfert - Guide à l'usage des PME); Code of conduct and other works of the Joint Transfer Pricing Forum of UE.
Reference to relevant articles of law, legislative regulation or applicable administrative guidance that are in place for TP documentation in general	Article 57 of the FTC; Articles L. 13 AA and L. 13 AB of the Procedure Tax Code (hereafter, "PTC"): Master File and Local File; Article 223 B quinquies of the French Tax Code (hereafter, "FTC") : Local simplified form for TP purposes; Article 223 C-quinquies of the FTC: CbC Report; Art. 1729 B, 1729 F and 1735 ter of the FTC: penalties and fine in cas of non-compliance with CbC Report, local simplified form for TP purposes and MF and LF requirements.

2. Master File (MF)	
What is the (consolidated revenue) threshold requirement for the obligation to prepare a MF?	Yes EUR 400 million
As from which year does this obligation exist?	For the FY for which the threshold is reached.
When does the Master File need to be available?	No requirement of filing of the MF. However, in case of a tax audit, the taxpayer is requested to present to the French Tax Authorities, a MF for each audited tax year. If the taxpayer does not comply or provide for incomplete TP documentation, the French Tax Authorities send a formal request and the taxpayer has 30 days to comply with its obligation to present a complete TP documentation. In practice, it is recommended that the MF is available on the date the taxpayer is filing the simplified form n°2257 (i.e, when the CIT form is filed or end of October).
When does it need to be submitted?	No requirement of submission of the MF. French tax law provides for an obligation to present the MF upon French Tax Authorities request when a tax audit is opened.

Does the MF have to be prepared in the relevant local language ?	Yes, according to articles L123-22 of commercial code and 54 of the FTC. However, TP documentation in a foreign language is permissible. In such case, French tax authorities can request a certified translation into French.
Is documentation in English permissible?	Yes
What are the possible consequences of not having the MF available?	
Penalties?	Yes, default of providing any TP documentation or incomplete TP documentation after having received a formal request is punished by a fine of a minimum amount of EUR 10,000 and a maximum amount corresponding to the highest amount between 0.5% of the undocumented transactions and 5% of the transferred profits (Art. 1735 ter of FTC).
Imprisonment?	No
Shifting of the burden of proof?	No
Other?	Yes, if taxpayers (i) submit insufficient or no documentation and/or (ii) have not recorded extraordinary transactions contemporaneously, FTA will estimate the income deriving from the transactions with related parties and the taxpayer will have to rebut the presumption
To which extent do the local rules differ from the OECD standard regarding the OECD content requirements for the MF as shown in the BEPS implementation overview chart?	Consistent with OECD requirements.

3. Local File (LF)	Yes
What is the threshold requirement for the obligation to prepare a LF?	EUR 400 million
As from which year does this obligation exist?	For the FY for which the threshold is reached.
When does the LF need to be available?	No requirement of filing of the LF. However, in case of a tax audit, the taxpayer is requested to present to the French Tax Authorities, a LF for each audited tax year. If the taxpayer does not comply or provide for incomplete TP documentation, the French Tax Authorities send a formal request and the taxpayer has 30 days to comply with its obligation to present a complete TP documentation. In practice, it is recommended that the LF is available on the date the taxpayer is filing the simplified for n°2257 (i.e, when the CIT form is filed or end of October).
When does the LF need to be submitted?	No requirement of filing of the LF and no requirement of submission of the LF. French tax law provides for an obligation to present the LF upon French Tax Authorities request when a tax audit is opened.
Does the LF have to be prepared in the relevant local language?	Yes, according to articles L123-22 of commercial code and 54 of the FTC. However, TP documentation in a foreign language is permissible. In such case, French tax authorities can request a certified translation into French.
Is documentation in English permissible?	Yes

What are the possible consequences of not having the LF available?	
Penalties?	Yes, default of providing any TP documentation or incomplete TP documentation after having received a formal request is punished by a fine of a minimum amount of EUR 10,000 and a maximum amount corresponding to the highest amount between 0.5% of the undocumented transactions and 5% of the transferred profits (Art. 1735 ter of FTC).
Imprisonment?	No
Shifting of the burden of proof?	No
Other?	Yes, if taxpayers (i) submit insufficient or no documentation and/or (ii) have not recorded extraordinary transactions contemporaneously, FTA will estimate the income deriving from the transactions with related parties and the taxpayer will have to rebut the presumption.
To which extent do local rules differ from the OECD standard regarding the OECD content requirements for the LF as shown in the 2017 OECD TP Guidelines?	Consistent with OECD requirements.

4. Country-by-Country Reporting	Yes
What is the threshold requirement for the obligation to prepare Country-by-Country Reporting?	EUR 750 million
As from which year does this CbCR obligation exist?	For the FY for which the threshold is reached. The CbC Report must be filed within the 12 months following the end of the FY (e.g. 31 December 2017 for FY ending on 31 December 2016).
When and how do the tax authorities need to be notified who the reporting entity is?	On the date of filing of the CIT's return. The French taxpayer has to indicate in its CIT's return if it is the company filing a CbC Report or if not, the name of the MNE's headquartered entity that will file the CbC Report. Failure to provide that information on the CIT's form may cause the French subsidiary to be required by French Tax Authorities to submit CbC Report by itself, if it cannot be evidenced which company of the group is filing the CbC Report.
If the reporting entity (ultimate parent or surrogate parent) is in your country, what is the CbCR submission deadline?	12 months from the end of the FY to which the CbC Report relates to.
Are there any deviating submission deadlines for the secondary mechanism?	No
Does your country have a requirement that the financial figures of the group need to be aligned with?	No
Does your country have a requirement that the financial years of the group need to be aligned with?	No
Where is the CbCR to be submitted ?	CbC Report must be submitted electronically to the French Tax Authorities.
How is the CbCR to be submitted, specifically, is there any prescribed standard?	CbC Report standard is the form n°2258 SD that must be submitted electronically to the French Tax Authorities.

What are the possible consequences of not having the CbCR available?	
Penalties?	Yes, default of filing is punished by a fine the maximum of which is EUR 100,000 (Art. 1729 F of FTC).
Imprisonment?	No
Shifting of the burden of proof?	No
Other ?	Yes, if taxpayers (i) submit insufficient or no documentation and/or (ii) have not recorded extraordinary transactions contemporaneously, FTA will estimate the income deriving from the transactions with related parties and the taxpayer will have to rebut the presumption.
To which extent do your local rules differ from the OECD standard regarding the content requirements for the CbCR as shown in the 2017 OECD TP Guidelines?	Consistent with OECD requirements.
Did your country sign the Multilateral Competent Authority Agreement on the Exchange of CbC Reports ("CbC MCAA")?	Yes
Did your country enter into other information exchange agreements, such as on a bilateral basis?	Yes
Please specify the country involved and date the agreement came into force.	France has implemented the following Directives: EU Directive 2016/881/EU (European Union Automatic Information Exchange Directive), EU Directive 2015/2376/UE (European Union Automatic Information Exchange concerning Rulings), EU Directive n2014/107/UE (European Union Automatic Information Exchange Directive concerning tax matters). All DTT signed by France include a clause relating to the exchange of information.
Can a taxpayer in your country fulfil his CbCR requirement by referring to the reporting entity in the same or another country?	A French taxpayer has no obligation of filing a CbC Report if he indicates that another company within the group is complying with such obligation.

5. TP disclosure in tax return or transfer pricing specific returns

Does a taxpayer need to disclose information regarding TP documentation in his tax return?	Yes, information that need to be disclosed is who is filing the CbC Report.
Does a taxpayer need to file TP-specific returns?	Yes, according to Art. 223 quinquies B of the FTC. A French taxpayer having a turnover or assets equal or exceeding EUR 50 million (including PE) must file a specific tax form n°2257-SD giving a general description of the TP policy and of the transactions with related companies the taxpayer is involved into. All transactions exceeding EUR 100,000 must be reported. Yes according to Art. 223 quinquies B of the FTC. A French taxpayer having a turnover or assets equal or exceeding EUR 50 million (including PE) must file a specific tax form n°2257-SD giving a general description of the TP policy and of the transactions with related companies the taxpayer is involved into. All transactions exceeding EUR 100,000 must be reported.
What would be the filing deadline?	The tax form n°2257 must be filed within the 6 months following the filing of the CIT's return.

<p>When a taxpayer files a tax return for which he understands or should understand that the result reported in that tax return is too low due to incorrect transfer pricing, what could be the legal consequences?</p>	<p>In such a case, the taxpayer exposes himself to be sued for tax fraud (Art. 1741 of the FTC). Incurred tax penalties are a fine of EUR 500,000 to EUR 3,000,000 and imprisonment up to 5 years. Pursuits for tax fraud require that the FTA file a special claim with a commission named "Commission des Infractions Fiscales". The person that is liable is the legal representative. The taxpayer also exposes himself to a tax search procedure where the tax authorities together with police officers will conduct a tax search in the premises used by the taxpayer (Art. L16 B of the FTC).</p>
<p>What could be the consequences for the tax advisor/accountant/administrator drafting and filing the tax return of a client where that advisor/accountant/administrator understands or should understand that the result reported is too low due to incorrect TP?</p>	<p>According to Art. 1742 of the FTC, tax advisors, accountants and administrator can be pursued as accomplices of tax fraud. They also can be pursued for disciplinary sanctions. According to Art. 1745 of the FTC, tax advisors, accountants and administrator can also be considered as jointly and severally liable for the eluded taxes.</p>

6. Benchmarking

<p>Is there any local guidance or requirement with regard to the preparation of a benchmark study?</p>	<p>Yes (administrative guidelines BOFIP: BOI-BIC-BASE-80-10-10).</p>
<p>Are there any materiality thresholds that apply for the requirement to have a benchmark study available?</p>	<p>No</p>
<p>Does your country apply the general guidance by the OECD to prepare a new benchmarking search every three years and an update of the financial data of the accepted comparable in year 2 or 3?</p>	<p>Yes (administrative guidelines BOFIP: BOI-BIC-BASE-80-10-40).</p>

7. Year-end adjustments

<p>Are year-end adjustments permissible?</p>	<p>Yes</p>
<p>Does the taxpayer have to comply with any specific features or guidance?</p>	<p>No</p>

8. Transfer Pricing Audit and Dispute Resolution Mechanisms

<p>What are currently the main TP areas of scrutiny by the tax authorities in your country?</p>	<p>Intercompany loans, royalties, management fees, arm's length remuneration of the routine distributor especially when it is in a position of tax loss, R&D services, e-commerce, TP method applied and its adequation to the transaction with a special consideration for the cost + method.</p>
<p>Based on your experience, are joint or multilateral audits initiated and carried out?</p>	<p>No</p>

<p>Does the taxpayer have the option to apply for bilateral or multilateral APAs?</p>	<p>Yes</p>
<p>Are there any restrictions?</p>	<p>No. APA request must contain the following information and documents:</p> <ul style="list-style-type: none"> - The organisation chart for the whole group with a list of entities covered by the request; corporate name, address, tax ID number - A description of the group's industrial or commercial transactions, its world-wide organisational structure, shareholding, the main transaction flows between the parties - Financial and tax data regarding the parties for the last three tax years, and any other information or document in support of the proposed transfer pricing methodology - A functional analysis of each party setting out their business activities, the assets used, the financial costs incurred and risks assumed - An economic analysis or study of price setting practices and of the business activities carried on, as observed in the professional sector within the geographic areas covered by the arrangement - A list of the taxpayer's competitors and a case study of a number of transactions, type of activity or non-controlled companies, which may be comparable or similar to those referred to in the request - Details of appropriate measurements of investment profitability and return - A detailed study of the research carried out and the criteria applied to identify and choose the independent data able to be compared, and the way in which the criteria were applied to the potential points of comparison.

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