

Transfer Pricing Country Profile
(to be posted on the OECD Internet site www.oecd.org/taxation)

Name of Country: FRANCE Date of profile: March 2009

No.	Item	Reference to and wherever possible text of the provisions; Wherever needed and possible, a translation into one of the OECD official languages would be welcome
1	Reference to the Arm's Length Principle	Section 57 of the General Tax Code (<i>Code Général des Impôts</i>) is the transposition into domestic law of Article 9 of the OECD Model Tax Convention (See Annex 1).
2	Reference to the OECD Transfer Pricing Guidelines (if any)	<p><i>Le Bulletin Officiel des Impôts</i> (Official Tax Bulletin of the French General Tax Directorate) No. 4 A-8-99 of 17 September 1999, on APAs.</p> <p><i>Le Bulletin Officiel des Impôts</i> No. 4 A-11-05 of 24 June 2005, on unilateral APAs.</p> <p><i>Le Bulletin Officiel des Impôts</i> No. 4 A-13-06, on transfer pricing guidelines for SMEs.</p>
3	Definition of related parties	<p>Associated enterprises are those that depend on or control enterprises outside France.</p> <p>Section 57 of the General Tax Code refers to the notion of dependence but does not define it; dependence can be either <i>de jure</i> or simply de facto. Moreover, Section 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.</p> <p>Administrative doctrine stipulates that:</p> <ol style="list-style-type: none"> 1. <i>De jure</i> 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 <i>Transfer Pricing Guidelines</i> .

5	Transfer pricing documentation requirements	<p>Enterprises are not required to provide any particular transfer pricing documentation. However, Section L.13 B of the French Tax Procedure Manual (<i>Livre des procédures fiscales</i>) (see Annex 2) implies an obligation for enterprises to co-operate with the tax administration regarding transfer pricing documentation. To that end, and in connection with corporate tax audits, Section L.13 B empowers the administration to use a special written procedure to request legal, economic, tax, accounting and methodological information about how the prices of transactions between an enterprise and enterprises outside France have been set.</p> <p>Before it can activate the procedure provided for in Section L.13 B, the administration must have gathered elements to support a presumption that the enterprise in question has made a profit transfer within the meaning of Section 57 of the General Tax Code.</p>
6	Specific transfer pricing audit procedures and / or specific transfer pricing penalties.	<p>There are no specific transfer pricing audit procedures.</p> <p>There is a specific penalty applicable under Section 1735-II of the General Tax Code: in the event an enterprise fails to respond to a request for information under Section L.13 B of the Tax Procedure Manual, it is liable for a flat €10 000 fine for each financial year covered by the request.</p>
7	Relevant regulations on Advance Pricing Arrangements	<p><i>Le Bulletin Officiel des Impôts</i> No. 4 A-8-99 of 17 September 1999, on APAs.</p> <p><i>Le Bulletin Officiel des Impôts</i> No. 4 A-11-05 of 24 June 2005, on unilateral APAs.</p> <p><i>Le Bulletin Officiel des Impôts</i> No. 4 A-13-06, on transfer pricing guidelines for SMEs.</p>
8	Link to relevant Government Internet sites	<p>http://www.impots.gouv.fr/portal/dgi/public/documentation. => “international” tab</p>
9	Other relevant information	

Note

1. Relevant provisions of domestic legislation referring to the Arm's Length Principle.
2. Reference if any to the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations in domestic legislation or regulations.
3. Relevant legislation or regulations containing a definition of related parties or associated enterprises.
4. Relevant legislation or regulations containing guidance on transfer pricing methods including hierarchy among them if any.
5. Relevant regulations if any in relation to transfer pricing documentation requirements.
6. Relevant regulations if any on specific transfer pricing audit procedures and / or specific transfer pricing penalties.
7. Relevant regulations if any on Advance Pricing Arrangements.
8. Addresses of the Internet sites of the relevant authorities in charge of transfer pricing policy, its administration and Advance Pricing Arrangements.
9. Other relevant information, for instance having gone through a peer review, or having new transfer pricing regulations in preparation.

General Tax Code

Section 57

To determine the income tax owed by companies that either depend on or control enterprises outside France, any profits transferred to those enterprises indirectly via increases or decreases in purchase or selling prices, or by any other means, shall be added back into the taxable income shown in the companies' accounts. The same procedure shall apply to companies that depend on an enterprise or a group that also controls enterprises outside France.

The relationship of dependence or control need not be established if the transfer is to enterprises in a foreign State or territory outside France that has a preferential tax regime within the meaning of Section 238 A, paragraph 2.

In the event of non-response to a request under Section L.13 B of the Tax Procedure Manual, the administration shall determine the taxable income to which the request refers on the basis of elements in its possession, and pursuant to the adversarial procedure set forth in Sections L.57 to L.61 of the Manual *[These provisions apply to audits undertaken as from the effective date of Act No. 96-314 of 12 April 1996 published in the Journal Officiel de la République française of 13 April]*.

In the absence of the specific elements needed to perform the corrections stipulated in the first, second and third paragraphs, taxable profit shall be determined by means of comparison with the profit of similar enterprises doing business normally.

Tax Procedure Manual

Section L.13 B

If, in the course of auditing corporate accounts, the administration shall have gathered evidence suggesting that an enterprise has made an indirect transfer of profits, within the meaning of Section 57 of the General Tax Code, it may ask that enterprise to provide information and documents specifying:

1. The nature of the dealings covered by the provisions of Section 57 of the General Tax Code, between that enterprise and one or more enterprises operated outside France or companies or groups established outside France;
2. The method for determining the prices of industrial, commercial or financial transactions that it conducts with the enterprises, companies or groups referred to in §1 and supporting elements, as well as any counterparts;
3. The activities carried out by the enterprises, companies or groups referred to in §1, in connection with the transactions referred to in §2;
4. The tax treatment of the transactions referred to in §2 and carried out by the enterprises it operates outside France or by the companies or groups referred to in §1 of which it directly or indirectly holds a majority of share capital or voting rights.

The requests referred to in the opening paragraph shall be specific and shall state explicitly, by line of business or by product, the country or territory in question, the enterprise, company or group in question, as well as any amounts. Furthermore, requests shall include notification to the enterprise being audited of the amount of time it has to respond. The time allowed for response, which shall be no less than two months, may be extended upon justification to a total of no more than three months.

If an enterprise has responded inadequately, the administration shall serve it with formal notice to supplement its response within thirty days. This notice shall specify the desired additional information and stipulate the penalties for non-response.

[These provisions apply to audits undertaken as from the effective date of Act No. 96-314 of 12 April 1996 published in the Journal Officiel de la République française of 13 April.]