

ADVANT

International tax transfer pricing

A Q&A on the regimes in France, Germany and Italy



INTRODUCTION

The dramatic increase in the volume and complexity of international intra-group trade, coupled with increased scrutiny of transfer pricing issues by tax authorities, makes transfer pricing documentation one of the top tax compliance priorities on the agendas of both tax authorities and businesses.

Drafting comprehensive transfer pricing documentation is now considered the 'minimum standard' for ensuring tax compliance, managing tax risk and promoting tax transparency purposes in multinational groups.

However, transfer pricing audits are increasingly scrutinizing the consistency between a company's transfer pricing policies and the documentation provided.

As a result, it has become crucial for multinational groups to proactively assess and validate their transfer pricing arrangements through stress testing, ensuring robust compliance and minimizing potential audit risks.

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FRANCE

1. Does your legislation or regulations require the taxpayer to prepare transfer pricing documentation?

French legislation requires taxpayers to prepare transfer pricing ("TP") documentation when certain thresholds are met. As of fiscal years starting on or after January 1, 2024, companies with revenues or gross assets exceeding €150 million are subject to this obligation (Article L.13AA of the French Procedural Tax Code). In the past, this obligation was only imposed on taxpayers whose revenues or gross assets were above €400 million.

The documentation must follow the OECD framework and includes a Master file and a Local file. The Master file provides a global overview of the group's activities, transfer pricing policies, and financial position. The Local file contains more detailed information on the French entity, its transactions, and supporting financial data, with a materiality threshold of €100,000 per transaction category.

The 2024 Finance Bill introduced a significant shift: in some cases, the burden of proof may shift to the taxpayer if the declared TP method is not properly applied, making the accuracy of the documentation critical. Furthermore, French authorities have expanded their audit powers, notably for hard-to-value intangibles (HTVI). They can now use ex-post results and reassess the same transaction within a 6-year period.

Companies not required to prepare full transfer pricing documentation under Article L.13AA of the French Procedural Tax Code are still subject to Article L.13B

of the French Procedural Tax Code. This allows the tax authorities, during an audit or review, to request information on how transfer prices were determined for transactions with foreign entities.

Finally, companies with revenues or gross assets exceeding €50 million must submit an annual transfer pricing declaration (Form 2257) within six months following the deadline for filing their corporate income tax return.

The country-by-country report (Form 2258), detailing the group's global allocation of income, taxes, and activities, must be submitted electronically within 12 months of year-end. As part of Pillar 2, in-scope groups must also complete Form 2065. This new form is integrated into the corporate tax return and filed within the same deadline.

2. Which are the relevant requirements related to filing the transfer pricing documentation (i.e. timing for preparation or submission, languages, etc.)?

Transfer pricing documentation must be available to the tax authorities at the start of an audit. If not provided or incomplete, the company has 30 days to comply, with a possible extension of up to two months. The documentation must be submitted in a readable electronic format (e.g. PDF, excluding scanned image PDFs), and data must be structured to allow verification.

It must be written in French, though translations may be required for foreign-language documents.

Documentation is considered complete if it enables a comprehensive assessment of the company's transfer pricing policy; it is partial if too general or incomplete.

Since 2024, the minimum penalty for non-compliance is €50,000 per audited year, and may reach 0.5% of undocumented transactions or 5% of reassessed profits.

3. Do you envisage any key department in your local transfer pricing rules from the OECD Guidelines?

Since the 2018 Finance Act, France has reinforced its transfer pricing documentation requirements in line with OECD recommendations (Action 13 of the BEPS project). French transfer pricing rules follow OECD guidelines, adopting the standardized structure of five sections for the Master file and three for the Local file. However, French authorities impose additional requirements that go beyond OECD standards, increasing the compliance burden for taxpayers. For instance, in the organizational structure section, French documentation must detail the exact name, jurisdiction, legal form, and main activity of each group entity, including permanent establishments—more than what the OECD requires.

Moreover, while the OECD recommends listing significant intangible assets, France extends this to all assets influencing transfer pricing, even if not used by the reporting company. In practice, these additions result in stricter obligations, making the French approach more demanding than the OECD's original framework.

These stricter requirements make French documentation more demanding and less flexible, particularly in the event of a tax audit. As a result, companies must anticipate, systematize data collection, and adapt global master files to meet French standards.

GERMANY

1. Does your legislation or regulations require the taxpayer to prepare transfer pricing documentation?

German legislation requires taxpayers to prepare transfer pricing ("TP") documentation. TP documentation represents an obligation for German taxpayers (Section 90 para. 3 Fiscal Code (AO)). There are exemptions for small companies whose remuneration for the supply of goods or merchandise from business relationships with related parties does not exceed six million euros and whose remuneration for other services does not exceed 600,000 euros, Section 6 of the Profit Accrual Recording Ordinance (GAufzV).

The TP documentation is almost in line with OECD framework and includes a Master and Local File. The Master file provides a global overview of the group's activities, transfer pricing policies, and financial position. The Local file contains more detailed information on the German entity, its transactions, and supporting financial data.

Finally, the country-by-country reporting is mandatory for multinational corporate groups with a total turnover of more than 750 million euros or the consolidated financial statements include at least one company with its registered office and management abroad or a foreign permanent establishment (Section 138a para. 1 AO). CbCRs have to be submitted one year after the end of the fiscal year.

2. Which are the relevant requirements related to filing the transfer pricing documentation (i.e. timing for preparation or submission, languages, etc.)?

Transfer pricing documentation must be available to tax authorities generally within 30 days in accordance with Section 90 (4) AO.

In exceptional cases, records must be prepared promptly, which is generally assumed to be the case if they are prepared within 6 months of the end of the financial year in which the transaction took place, Section 3 para. 1 GAufzV.

The TP documentation can be submitted either in paper form or electronically. The type, content and scope of the records to be created are determined by the circumstances of the individual case. Records must generally be prepared on a transaction-by-transaction basis.

The TP documentation must generally be prepared in German, but the tax authorities may authorise exceptions, Section 2 para. 5 GAufzV.

Since 2025, a penalty of at least EUR 5.000 will be imposed for failure to submit the transaction matrix, Section 162 para. 4 AO. The penalty may reach from 5 % up to 10 % of the additional amount if income if this results in a penalty of more than EUR 5.000.

If usable documents are submitted late, a penalty of up to EUR 1.000.000 can be imposed (at least EUR 100 per day). The exact amount of the penalty is within the discretion of the tax authorities.

3. Do you envisage any key department in your local transfer pricing rules from the OECD Guidelines?

Germany follows the OECD guidelines very closely. However, in some ways German transfer pricing rules differ from the OECD approach.

In particular, the taxpayer must document the date when transfer prices have been determined (price-setting approach) and record any information available at that time and used to determine the transfer price. In addition, specific requirements apply to intentional set-offs, cost sharing or cost contribution arrangements, losses, transfer price adjustments, functional changes in relation to research and development activities, and rulings, mutual agreement or arbitration procedures.

Additionally, the Ministry of Finance has issued administrative guidelines, notably the BMF letter dated December 3rd, 2020, which outlines how transfer pricing documentation should be handled in practice.

ITALY

1. Does your legislation or regulations require the taxpayer to prepare transfer pricing documentation?

Italian legislation does not require taxpayers to prepare transfer pricing (“TP”) documentation as an obligation. TP documentation is optional for taxpayers. In fact, taxpayers filing “proper” TP Documentation will benefit from the so called “penalty protection regime” (i.e., no application of penalties) in case of upward adjustments.

The form and content of the “proper” TP documentation, granting penalty protection regime, is provided by the Decision of the Commissioner of the Italian Revenue Agency dated 23 November 2020.

The Italian TP documentation is almost in line with the OECD framework and includes a Master File and a Local File. The Master file provides a global overview of the group’s activities, transfer pricing policies and financial position. The Local file contains more detailed information about the Italian entity, its intercompany transactions and supporting financial data.

There are some simplifications for companies belonging to “small” groups.

Lastly, the country-by-country reporting is mandatory for eligible taxpayers, as defined in the Ministerial Decree of 23 February 2017 and it must be filed for each reporting fiscal year within 12 months from the last day of the reporting fiscal year.

2. Which are the relevant requirements related to filing the transfer pricing documentation (i.e. timing for preparation or submission, languages, etc.)?

Companies opting for TP documentation (Master File and Country File) must file it for each fiscal year by the time of the income tax return. The communication of the availability of TP documentation must be made in the annual income tax return.

A 90-day extension to said deadline (i.e., the deadline to file the income tax return) is allowed to the extent a supplementary income tax return is filed, communicating the availability of TP documentation. The Master File and Country File must be signed by the legal representative or by a delegate representing the taxpayer by electronic signature with a time stamp to be put by the date of presentation of the income tax return.

The taxpayer shall submit the TP Documentation to the tax authorities in electronic form within 20 days upon the request.

The Master File and the Country File must be drafted in Italian. However, the Master File can be submitted in English. The taxpayer is allowed to rely on the Group’s Master File, written in English; in case the Group’s Master File does not provide the set of information required by the Italian guidelines, the taxpayer must integrate the Master File with a structure reconciliation document.

If the TP documentation is not considered “proper”, the penalty protection regime does not apply and there will be penalties applied, in case of TP adjustments (starting from September 1st, 2024, penalties apply at 70% of the additional taxes assessed). The TP documentation is “proper” to the extent it

provides the tax auditors with the data and information necessary to perform an analysis of the transfer pricing applied, with a specific accurate description of the material transactions and comparability analysis, including a functional analysis, regardless of the fact that the transfer pricing method or the selection of the comparable transactions or enterprises adopted by the taxpayer are different from those identified by the tax authorities.

3. Do you envisage any key department in your local transfer pricing rules from the OECD Guidelines?

As previously mentioned, Italian TP documentation aligns with the OECD guidelines. However, it is important to note that, to be considered “proper” by the Italian Tax Authorities, the Italian Country File must also include a reconciliation that addresses:

- The intercompany transactions detailed in the TP documentation and the corresponding information reported in the statutory financial statements;
- The taxpayer’s financial statements and any managerial reports used to verify compliance with the arm’s length principle (e.g., segmented profit and loss statements).

Furthermore, the Italian Tax Authorities are increasingly requiring comprehensive and detailed comparability analyses. This includes both an internal functional analysis—considering the organizational structure of the Italian taxpayer—and an external comparables analysis

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