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EU JOINT TRANSFER PRICING FORUM

Compilation of comments received on the revised discussion paper on the improvement of the functioning of the Arbitration Convention following the JTPF meeting on 5 November

Meeting of 6 March 2014

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I. Member States

Denmark

We have a few comments to the revised discussion paper on improving the functioning of the Arbitration Convention:

Re paragraph 7

Denmark supports a recommendation to advise taxpayers of both their domestic and convention rights and obligations at the time of the proposed adjustment.

Re paragraph 13

It is possible to appeal against a denied access to the AC in Denmark and we regard this as sufficient. We do not think that procedures should be implemented in the CoC.

Re paragraph 15

Denmark does not think it is desirable – in light of the considerations described – to make a recommendation for an early submission.

Re paragraph 20

Denmark can support that taxpayers send their requests to both CAs.

Re paragraph 22

We support that the questionnaire will be discussed between MS before the next JTPF-meeting (at the pre-meeting). We would like to omit some of the questions.

Re paragraph 24

Denmark can support a recommendation along the lines of the recommendation in MEMAP.

Re paragraph 27

Denmark would prefer not to include a recommendation to appoint only one representative for their competent authorities.

France

I would like to make a comment regarding section C.2 of the discussion paper on the improvement of the functioning of the Arbitration Convention, about the question "Is it possible in your MS for the taxpayer to appeal against denied access to the AC. If so, do you regard this as sufficient?"

In France, like most of decisions of the administration concerning a taxpayer, the decision of denying access to the AC can be challenged by the taxpayer concerned before Courts. The availability of that right of appeal appears as being sufficient.

Ireland

Some wording may be considered in relation to the box on page 8:

“Where a new MAP request is linked to issues which are already covered by an ongoing MAP from the same taxpayer, it is recommended that CAs consider treating the new MAP request as part of the ongoing MAP.

Where a MAP request is linked to issues which have already been covered in another MAP, it is recommended that CAs consider whether it is appropriate to apply the outcome in the earlier MAP to the new request and it is recommended that, where appropriate, CAs apply that outcome.”

Poland

Referring to point 8 of Discussion Paper *JTPF/011/REV1/2013/EN*, I would like to emphasis importance of the issue to some countries including Poland. In our opinion, this issue needs further discussion in order to develop strong recommendation denying blocking MAP access via audit settlements and unilateral APAs.

Thus, we propose further developments with regard to pt 19 ME MAP proposal. Some practical solutions should be developed which could help monitoring how countries will actually apply this recommendation, e.g. based on tax adjustment statistics. It should be noticed, that independence of CAs from audit may in some countries, including Poland, result in situation in which CAs are not aware that tax adjustment has been done, thus some kind of reporting is needed to evaluate of effectiveness of such recommendation.

Alternatively, recommendation should require MS to monitor the application of this recommendation by auditors.

Sweden

Issue 10. Improving the 'second phase' based on suggestions by members of advisory commissions

1) For discussion: A recommendation to appoint only one representative from the respective competent authority may be added to paragraph 7.2 (c) CoC after the first sentence.

   Proposed text: "For reasons of simplification, it is recommended that competent authorities appoint only one representative for their competent authorities."

Sweden does not agree with this recommendation. Sweden finds it very important to have two representatives appointed from each competent authority (CA). The representatives of the two CAs are the ones who know the case the best. If the number of representatives from the CAs would be limited to only one from each country the competence and knowledge of the case around the table would be reduced. Our experience is that it is preferable for a CA to be represented by both a lawyer and an economist. If the representatives of the CAs would be limited to only one the efficiency of the commission would be reduced. It would not in any way lead to a simplification of the process. Quite the contrary.

The argument to limit the number of members from the CAs to only one in order to "ensure that the independent persons of standing and the Chair could decide independently from MS" is not convincing. In the two cases that we so far have experienced we have had no problems in finding a majority. To weaken the competence of the commission with the only objective to accomplish the more or less academic ambition to make sure that the chairman and the two independent persons can outvote the CA members representing the two different CAs is not a strong argument.

2) For discussion: A recommendation that the advisory commission may in appropriate cases consider to hear the views of the taxpayer and the auditor (s) may be added at the end of paragraph 7.3 (d) CoC.

   Proposed text: "The advisory commission may request the taxpayer and/ or representatives of the Member States who were in charge of the adjustment (e.g. the auditors) to state at the outset of the procedure their opinion and to appear before the advisory commission (opening statement)."

Sweden would like to replace the text "at the outset of the procedure" with the text "at an appropriate time during the procedure" and to delete the words "(opening statement)".

Based on our experience from our two cases of arbitration it is often preferable not to hear the views of the taxpayer and the auditors at the very outset of the procedure. Many questions to be asked arise after the commission has processed the case for a while. It would also give the

independent members a better chance to acquaint themselves with all the details of the case before meeting the taxpayer and the auditors.

Issue 3. Cases not ´ripe´for the AC, disputes likely to arise

For discussion: Is it desirable to make a recommendation for an early submission?

Sweden does not find it desirable to make a recommendation for an early submission. The taxpayer has the possibility to submit a MAP request at an early stage but we do not see the point of having a recommendation that encourages this. It is up to the taxpayer to choose whether or not to submit a MAP request at an early stage.

Our experience in Sweden is that the case normally is premature when we receive a MAP request at an early stage. The case is still being investigated by the auditors during the audit process. At that point in time we do therefore often not receive as much information as we need about the case in order for us to review and try to solve the case according to the MAP request.

In case a recommendation for an early submission will be made it is important to describe what is meant by "early submission". What point in time does "early submission" refer to? For example, at what point in time during the audit process should a MAP request be submitted?

United Kingdom

As a general point, although some Member States are not members of the OECD, we don't see the value in repeating wording contained in the OECD MEMAP in a revised Code of Conduct for the Arbitration Convention ["AC"].

If those Member States that are not members of OECD are agreeable we would be content to make a general statement in the Code of Conduct that the best practice guidance in the MEMAP be followed.

However our preference would be that the EUJTPF develops distinct wording on the key issues. There are a number of reasons for this including an expectation that the MEMAP may be changed shortly as a result of the OECD BEPS project and because of a desire to go further than the MEMAP on some important issues.

Turning to the issues outlined in the EUJTPF discussion paper of October 2013:

1. Flexible interpretation of time limits

We agree with the comments at the forum meeting of 5 November that it is necessary to understand the practical problems encountered by Business in relation to the 3 year time limit before drafting any recommendation. We have encountered no problems in practice but we

would follow the approach advocated by the MEMAP when considering whether a time limit has passed in borderline cases.

2. Denying access to the AC

We agree with the first sentence of the proposed text however would like to delete the second sentence. Article 7(4) of the Convention is clearly worded and needs no interpretation. The second sentence of the proposed text as drafted would only change or, at the very least, confuse this meaning.

Practical problems caused by attribution of profits being covered by Article 4 of the AC but not the existence of a P.E.

As discussed during the November 2013 meeting there is unquestionably an issue with the fact that the existence (or not) of a P.E. is not covered by the Arbitration Convention. We believe clear guidance is needed to ensure both that double taxation is eliminated on attribution of profits issues within 2 years, and to ensure that the Competent Authority of the State of residence has sufficient time to consider the attribution of profits issue.

Clearly Competent Authorities would often not want to expend scarce resource on considering the attribution of profits before being satisfied that a PE genuinely exists in the other State. To a significant extent the practical problems this P.E. issue could give rise to are the same as those more generally that follow from a lack of a position paper being provided on time.

We would therefore favour a recommendation that the position paper on the existence of a P.E. is provided by the State making the adjustment within the same (4 month) period the Code of Conduct provides for and that discussion of the case is prioritised over others until that issue is agreed.

If agreement can't reasonably be reached the Competent Authorities and taxpayer can agree under Article 7(4) to extend the time-limit but we would not favour anything to give the States the power to do so without the taxpayer's permission. This would be contrary to the spirit of the Arbitration Convention and, we believe, a backwards step.

Appeals against denial of access to the AC

There is no formal right to appeal in the Arbitration Convention therefore we do not believe it is possible to put appeal procedures in the Code Of Conduct where access is denied by a Member State.

In the UK, where a person is denied access to their legal rights or believes the law is not being properly applied they may be able to challenge via a Judicial review. This would, we believe,

theoretically be the case if access to the Arbitration Convention was improperly denied although, in practice, it is likely that more informal representations would first be made by the taxpayer to HMRC.

3. Cases not 'ripe' for the AC, disputes likely to arise

The wording of Article 1 and Article 6(1) of the AC, in explicitly talking about double taxation "likely" to result, clearly allows cases to be presented before the adjustment giving rise to the double taxation has been made if the taxpayer so wishes. We believe that this is closely aligned to the way the OECD Model Convention allows a case to be presented for MAP before the taxation "not in accordance with the Convention" has been charged or notified.

There is of course a valid concern about the resource impact for Competent Authorities of this "early" presentation. It should be made clear therefore that the case should only be presented where double taxation is probable not merely possible[1]. This will be at a late stage[2] of any audit process and, in our view, will not impede efforts to solve the issue before MAP.

Rather our experience is that it is generally more efficient for Competent Authorities to resolve issues as close to the end of the relevant accounting period as possible. Also often Advance Pricing Agreement applications are submitted on the same issues for later years anyway given the potential exposure to double taxation in those later periods.

Where cases are presented early this does not, in our view, change the starting point of the 2 year time limit set out in Article 7(1) because of the requirements of Paragraph 5(b) of the Revised Code of Conduct. Therefore encouraging early presentation will provide the Competent Authorities with more time to consider the case should it be needed without a downside to the taxpayer.

Some further guidance defining the "action" starting the 3 year time limit for submission of a case under Article 6(1) the Convention may be requested although, in practice, we would favour an interpretation that gives the benefit of any doubt to the taxpayer. Consistent with this Paragraph 4 of the Revised Code of Conduct already defines that date as the date of the "first tax notice or equivalent" and we believe this may be sufficiently clear.

In other words we believe claims under the AC can be presented early without setting either time limit running and this would normally be productive for all parties. Both time limits would generally start when the formal notice was issued.

[1] Along the lines of Paragraph 14 of the Commentary to Article 25 of the OECD Model Convention etc.
[2] Of course, it is sometimes the case that an audit also covers a number of issues other than transfer pricing. In such audits a final position on the transfer pricing issue may be determined by the auditor long before other issues are finalised. This can potentially cause a long delay before a formal notice can be issued.

4. Implications of MAP results for other years

In our experience Competent Authorities of all Member States seek to take common sense views in respect of later years and would generally look to minimise their resource costs by applying the same result for later MAP or APA years where appropriate. Therefore we are not sure there is a material problem here in practice that warrants a change to the Code of Conduct.

Any recommendation that could be perceived as implicitly limiting the ability of a Tax Authority to take a different view in later years or implicitly obliging them to undertake a simplified approach beyond using common sense would not be welcome and may make it harder for Competent Authorities to pragmatically reach agreement in a MAP.

We therefore have no objection to the first two paragraphs of the recommendation as drafted although consider that the third paragraph should be deleted, both because it is risk assessment not appropriate to this paper, and because it could potentially be taken to imply a restriction on what issues could be audited.

5. Webpage with MS information on MAP

Any comments we have on the MS TP profile for the UK provided on 3 December will be provided by 31 January 2014 as requested.

6. MAP requests to both CAs

We agree the recommendation as drafted.

7. Independence of CA from audit

We strongly support the need to ensure CAs can decide independently from field auditors and a recommendation that reinforces this is welcome. We take this CA independence as a fundamental and uncontroversial principle of MAP although we do also recognise that the domestic law in some States may give rise to issues concerning empowerment etc.

We are not sure what the practical benefit of a questionnaire is and would therefore not support launching one before this benefit is clarified. Likewise we cannot have a view on the content of any questionnaire before understanding what it intends to achieve in relation to this issue. It may be that the forthcoming webpage with MS information (point 5 above) may provide what is needed.

8. No waiver of rights for audit settlement

We see this as an important issue and so worthy of a EUJTPF recommendation. However we believe the recommendation should go further than the "best practice" language of the MEMAP and make an unequivocal statement that blocking access to MAP and denying a taxpayer the benefits they are entitled to under a treaty is unacceptable.

9. Guidance on position papers

Again we would support developing new guidance here, in the interests of best addressing particular problems arising for taxpayers and Tax Administrations from claims made under the AC, rather than replicating the contents of the MEMAP.

10. Improving the 'second phase' based on suggestions by members of advisory commissions

1 rep. per CA

Article 9(1) of the AC says 2 representatives can be reduced to 1 with the agreement of Competent Authorities and we are content with the proposed recommendation which we view as uncontroversial.

Advisory Commission having possibility to request taxpayer's views

We are not sure further guidance is needed here but are content with the recommendation.

Use of the time taken to establish the commission by the Competent Authorities to collect information

No comment.

Remuneration of members of advisory commission

We see this as a very minor issue but would support remuneration rises in line with inflation. We don't think that meeting day needs to be more clearly defined.

Implementation of the agreement

We agree with the desire to protect Member States from a taxpayer seeking to arbitrage the AC and domestic procedures (although think the likelihood of this happening is very low in practice).

However there is no discretion under the AC (beyond the 6 month period specified for differing by agreement with the other CA) for CAs not to implement the Advisory Commission's decision. Therefore the second paragraph of the proposed recommendation cannot be agreed.

11. Serious penalties

It may be desirable to establish a common definition however we believe this is outside the remit of the EUJTPF. The AC already contains unilateral declarations from a number of Member States clarifying what they mean/meant by this term.

12. Implications of the new Article 7

The UK view Option I of JTPF/006/BACK/2011 as the only feasible option. The AC exists to prevent double taxation and it would not be appropriate to have a different standard applying under the AC than applies in MAP (when treaties dictate).

13. Issues foreseen for 2014/15

The BEPS work of the OECD on Dispute Resolution will cover many of these issues. Although the outcome (potentially amending the OECD Model Convention) is not expected to occur until September 2015, the OECD is likely to be ahead of the EUJTPF in discussing these issues. Therefore we propose to await the OECD drafts before commenting in detail.

However we believe "information not sufficient for MAP" is a particularly important issue for improving the functioning of the AC. We would therefore support further guidance being provided on when sufficient information has been provided to start the 2 year time period of Article 7 of the AC, particularly in respect of the State that has made the audit adjustment.

Although we recognise that Baseball Arbitration can be useful we do not believe that it is possible without changing the Convention itself.

II. Non-governmental Members

Isabel Verlinden

(contribution based on views collected from the network
of PwC Member Firms within the EU)

1. Flexible interpretation of time limits

We generally welcome the suggested addition after the first paragraph in point 4 of the AC CoC as we believe that advice provided by tax authorities to taxpayers on their rights under the AC following an adjustment or assessment of additional profits is clearly beneficial. Based on our PwC network consultation, the following additional insights could be further considered by the EU JTPF:

a. In spite of the work undertaken by the EU JTPF in the past with a view to better define the term *"first tax assessment notice or equivalent which results or is likely to result in double taxation [...] is considered as the starting point for the three-year period "* (AC CoC, point 4, para. 1), for the majority of countries responding under the PwC network consultation, there is *uncertainty around the definition and local interpretation of this term*. Establishing a consistent wording to avoid any misunderstanding on which basis a formal procedure may be initiated is therefore recommended.

b. With reference to point b. above, we furthermore notice that in practice, when it comes to the determination of the starting point for the three-year period, there is some inconsistency in the approaches of Competent Authorities as regards the notion of "double taxation". This is particularly the case where the entity subject to the transfer pricing adjustment has losses carried forward against which an upward adjustment could be offset. We notice that some Competent Authorities take the stance that only once a cash tax payment would become due, there is actually double taxation. This is in our view in contradiction to the spirit of the AC, which includes double taxation irrespective of the actual tax payments arising due to a reassessment. An alignment/recommendation in this respect as part of the current work of the JTPF would be highly welcomed.

c. We would also support the recommendation that due to these uncertainties, taxpayers should not be unduly prevented from obtaining assistance because of overly-strict interpretations of the AC's time limits for requesting MAP, and as far as possible, taxpayers should be given the benefit of the doubt in borderline cases.

2. Denying access to the AC

We consider the addition of the suggested recommendation after paragraph 6.1 (b) of the AC CoC to be useful. Please see below further observations and recommendations related to this subject:

a. We believe it to be of critical importance to have a discussion on the possible extension of the scope of the AC. For instance, there is a strong demand to also have permanent establishment qualification cases within the scope of the AC. Furthermore, it is in our view important to ensure that also cases of double taxation which have been caused by unilateral application of thin-cap rules are given access to the AC. We highly appreciate the work that the EU JTPF has undertaken in this respect in the past, but would welcome additional steps in order to ensure that double taxation arising due to thin-cap regimes can be addressed and

resolved under the AC. As such, we support an earlier recommendation to also consider profit adjustments arising from financial relations, including a loan and its terms, to be within the scope of the AC, especially in the view of the increased popularity of unilateral thin-cap measures, and the inherent risk of double-taxation arising thereof. Adding clarifications in the AC CoC that Competent Authorities should not refrain from accepting a case when it is in essence a transfer pricing dispute even though particular domestic law articles have been applied by field auditors is also recommended.

b. Procedures to address denied access to the AC should be implemented under the AC CoC as this is currently lacking in most Member States. A separate, permanent arbitration commission could be established within the framework of the AC whereby taxpayers submit their appeal to denied access. Such a commission would probably only handle denied access appeals and would perhaps need to operate on a permanent basis to avoid the delays that can occur in assembling a commission.

3. Cases not 'ripe' for the AC, disputes likely to arise

Overall, we would prefer that potential resource issues at the level of the Competent Authorities are resolved first where necessary prior to potentially expanding the opportunity for early submissions of MAP requests under the AC. In this respect, in our view, generally the claim should be submitted by the taxpayer only after an adjustment or final tax assessment has been made by the tax authorities. However, for certain cases, for example where adjustments or final tax assessments for previous years have been made, early notification of a later year may prove helpful in avoiding possible double taxation for this later year.

4. Implications of MAP results for other years

In order to improve the efficiency of the AC and provided the facts and circumstances are similar, we consider that it would be a beneficial approach to develop a simplified procedure for later MAP requests when a first MAP is already ongoing for previous years. This could also be treated through a "roll-back" or / and a forward looking (Bilateral) Advance Pricing Agreement in order to maximize the outcome of the procedure for the taxpayer, given the substantial administrative burden and cost. In this respect, further recommendations include:

a. It could be useful for the EU JTPF to collect the "bilateral Codes of Conduct for MAP treatment[3]" that could de facto exist between Members States/Members States or Members States/non-Members States in order to benchmark the best practices of existing procedures.

b. We support the addition of the proposed recommendation to be inserted after paragraph 6.1 (b) of the AC CoC.

5. Webpage with MS information on MAP

We very much welcome this suggestion as we observe material differences in how Member States deal with MAP. It is crucial for taxpayers to be knowledgeable upfront on how the Competent Authorities in question can be expected to handle their cases. Publishing the relevant information on the Commission website will increase transparency for the taxpayers

[3] For instance, the bilateral CoC between France and the Netherlands foresees an accelerated procedure in case a MAP is already ongoing for previous financial years, under a similar fact pattern.

and thus enable them to make more informed decisions on whether and how to initiate a MAP and should facilitate the procedure once initiated.

6. MAP request to both CA

We support this recommendation as providing a copy of the MAP request under the AC to the other Competent Authority at the same time will result in a level playing field for all parties involved. This may make the first phase of the MAP procedure more efficient, and also help to accelerate the process. However, implementing the recommendation should not hamper the opportunity for a Competent Authority to grant unilateral relief.

7. Independence of the Competent Authorities from audit

We fully concur with the suggested additional text of the AC CoC emphasising the autonomy of the work of the Competent Authorities from the field audit function. As regards the suggestion of Italy to launch a questionnaire on the institutional structure, legal framework, policy issues and internal dependencies within the tax administration, we do not immediately see the merits of launching such a broad survey to all Member States. As it is unlikely that a common denominator will be found it would in our view be best left to the responsibility of each individual Member State to ensure independence at Competent Authority level.

8. No waiver of rights for audit settlement

It is suggested to include a recommendation under the AC CoC stating that the inclusion of a waiver of access to MAP in audit settlements should generally be avoided. Albeit there may be arguments why such waivers are helpful as a means to conclude and settle on a tax audit, we would indeed welcome a general recommendation to strongly discourage such waivers under the AC CoC. This is based on two main observations:

a. In keeping with the spirit and purpose of the AC (the elimination of double taxation in connection with the adjustment of profits of associated enterprises) it is, in the long run, more beneficial for both the tax administrations and the taxpayers to resolve potential double tax related issues according to the taxpayers rights expressed in the applicable Double Tax Treaty or the AC.

b. It is furthermore questionable whether tax authorities have the authority to insist that such rights are waived.

Based on PwC's network consultation, this topic does not appear to be a general practice applied by Member States.

9. Guidance on position papers

We fully support the recommendation to supplement the current guidance on position papers in section 6.4 of the AC CoC with the additional items inspired by the OECD MEMAP.

10. Improving the 'second phase' based on suggestions by members of advisory commissions

The role and function of the advisory commission is in our view of paramount importance under the AC procedure. Below, we elaborate further on our respective views regarding the proposed additions to the AC CoC:

a. We sympathize with the suggestion to *reduce the number of members* of an advisory commission as compared to the current situation by means of allowing the appointment of only one representative per tax authority. For the avoidance of doubt, we would like to furthermore suggest slightly rewording the proposed addition to "*For reasons of simplification, it is recommended that only one representative per Competent Authority is appointed.*"

b. We furthermore recommend that the advisory commission may in appropriate cases consider hearing the views of both the taxpayer and representatives of the Member States. From our perspective it would however be important to ensure that the possibility of such hearing would not result in a substantial prolongation of the MAP.

c. We fully support the suggested recommendation to use the period during which the advisory commission is established for collecting and preparing relevant information.

d. We prefer refraining from commenting on the topic of the level of compensation of the chairmen and independent members of the advisory commissions. The same applies with regard to the definition of "meeting day" as we feel more fundamental items need to be addressed.

e. We generally support the recommendation on the remittance of and follow up to advisory commission's deliberations and opinions. Indeed, this would align the AC procedure with the procedures as foreseen under the OECD Model Tax Convention (explicitly under Article 25, paragraph 5) and its Commentaries. The wording of the recommendation confirms the rights of the taxpayer to pursue domestic remedies against a case of double taxation, in parallel with an AC procedure, whilst addressing the concern of the large majority of the Member States which legislation does not allow tax administrations to derogate from the decisions of their judicial bodies.

The second question on how to deal with situations where the taxpayer does not accept the agreement in the manner described in the recommendation, could be addressed as follows. It looks as if the options are open for the taxpayer: either the taxpayer accepts the agreement and withdraws from domestic remedies and appeals concerning those points settled in the MAP under the AC, or the taxpayer does not accept the agreement for example where it expects a better outcome under domestic remedies and appeals. For that reason, we do not consider it irrational to allow a Member State not to implement an agreement not accepted by the taxpayer in the manner described in the recommended addition of a paragraph 8 to the AC CoC, as long as it is without doubt that the taxpayer does not accept the agreement so as to pursue domestic remedies and appeals. In such a case, we would equally see no added value for allowing the taxpayer to appeal against the non-implementation, since the taxpayer themself has the key to the implementation of the agreement. A situation that should however be avoided is that an agreement that is not formally accepted by the tax payer remains without implementation because of ignorance by the taxpayer of what is expected in terms of procedure. This amplifies our plea for clear communication and transparency on the procedure and what is expected at what stage from the taxpayer.

11. Serious penalties

Based on the information provided by the different Competent Authorities, it appears that there are substantial differences between Member States as regards the interpretation and definition of "serious penalties".

a. As the (alleged) existence of a serious penalty has significant consequences (denied access to the AC), there should be a consistent approach on this matter.

b. As it is beyond the intentions and powers of the current initiative to establish a common/consistent penalty regime covering all Member States, it might be worthwhile considering the limitation of access to the AC only in cases of penalties resulting from criminal provisions, rather than in cases of administrative or civil penalties.

12. Implications of the new Article 7

We believe that the question as to how to apply article 4 (2) in the context of the modifications included in the new Article 7 of the OECD Model Tax Convention and its new commentary should be further discussed from a technical standpoint on the basis of the initial analysis and outline of options available as submitted by Belgium (JTPF/006/BACK/2011/EN). It should be determined as a result of this in-depth discussion whether a common standpoint can be identified between the representatives of the Member States and the Private Sector Members.

Additional considerations

a. The 2 year period under Article 7 AC

Albeit the 2 year period under Article 7 AC ("information not sufficient for MAP") is foreseen to be addressed only in 2014/2015, we take the liberty of already now voicing concerns on the room for interpretation the current wording of point 5 of the AC CoC leaves to Member States. It therefore certainly deserves consideration to (1) make it clearer for a cooperative taxpayer when sufficient information can be deemed to have been submitted and (2) create a clear framework in terms of timing and frequency of requests for additional information Competent Authorities may impose on taxpayers before the 2 year term starts running. We recommend that taxpayers should be notified by the Competent Authority of the country of claim immediately once this period commences.

b. Second phase of the AC procedure

In considering how the second phase of the AC procedure could be improved, we would recommend reflecting on the various sorts of binding arbitration mechanisms that currently exist in the framework of double taxation issues (such as e.g. advisory committee, baseball arbitration, etc). An analysis of the merits and deficiencies of each type of arbitration may potentially allow for aligning arbitration procedures and will likely yield valuable insights on how the procedure under the Arbitration Convention (and the second phase in particular) could be enhanced.

In addition, it might be worthwhile launching a survey amongst Member States to gather and evaluate experiences related to the establishment of the advisory commission. In particular, Article 7.2 (b) of the AC CoC foresees that the advisory commission should be set up within six months following the expiry of the 2 year period. It may be helpful to understand whether in practice, the six months period is usually respected and whether Member States encounter

any particular difficulties in establishing the advisory commission. This information could then be used to further improve the second phase of the AC procedure.

c. Language

PwC strongly advocates the use of a common working language for analysing and exchanging correspondence and position papers between Competent Authorities as this would contribute to a swifter and more efficient process. This could take the form of a universally understood language (e.g. English) to be applied amongst all Competent Authorities or a language agreed between Competent Authorities on a bilateral basis. Underlying documents from taxpayers are usually already prepared in such common working language. Too many delays are caused by translation efforts and high costs are incurred by taxpayers and administrations which could be avoided by implementing such a recommendation.

d. Consider pre-filing meetings

There is an expectation from the business community for greater transparency and accessibility of Competent Authorities since the procedure is currently often perceived as rigid and formalistic. In the context of APAs, it is a best practice to have pre-filing meetings between taxpayer and Competent Authority prior to introducing a formal request. This allows gaining a better understanding of the facts and can help clarifying the eligibility of a case. A pre-filing meeting typically also facilitates further interactions between taxpayer and Competent Authority during the process. PwC is convinced that the option for pre-filing meetings could also have its merits in the framework of making the Arbitration Convention more efficient and effective and we suggest analysing how this can be incorporated as a best practice in the CoC.