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EU JOINT TRANSFER PRICING FORUM

Contribution from Member States on the possible extension of the Forum's two years mandate

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NOTE ON SUGGESTED ISSUES FOR A POSSIBLE EXTENSION OF THE MANDATE OF THE JTPF.

This note represents the different suggestions received up to today for a possible extension of the mandate of the work of the Forum. It is not a paper that represents an agreement by the different experts from MS but individual suggestions that have been summarised, maintaining, as far as possible, the original wording suggested by each expert.

Not all experts from MS have made contributions at this point in time. There is one member who understands that the issue for a possible extension should be first discussed at the Council and a mandate from the Council is needed before this issue is discussed at the Forum.

Other members have made the following proposals:

1.- APA. Bilateral and multilateral APA. Practical issues. Operational aspects. Timing problems: Relationship between APA and MAP (or CA). Transparency: Exchange of information in relation to unilateral APA.

2.- Other ways to prevent double taxation: In special exchange of information in relation to TP. Simultaneous tax audits as an intensive way of exchanging information.

3.- International aspects of transfer pricing audits. Share of best practices. Guidance in TP area.

3.- Arbitration Convention:

Monitoring the implementation of the Code of Conduct.

Monitoring the ratification process of new members.

Interest.

Penalties.

Relationship with domestic law.

Further guidance on MAP: Suggested standardised models for position papers, responding papers etc.

4.-Documentation:

Issues related to the analysis of permitting European MNE groups to base TP documentation on the internal accounting system that they use for managing purposes.

Special documentation requirements for SME.

Further analysis on a possible European data base for Masterfile.

5.-Accession to Data Bases of comparables within EU.

6.- Development of a uniform system/hierarchy of applying transfer pricing methods, in particular in cases where complex functions and transactions are performed and comparables are not available, e.g. in cases of unique transactions or transactions involving intangibles.

The JTPF could examine if in such cases a uniform "residual approach", i.e. applying different transfer pricing methods in several consecutive steps should be recommended to businesses and tax administrations. This could mean, for example, that in complex functions/transactions in order to arrive at arm's length transfer prices the first step would be the attribution of comparable/market profit margins to "normal" or standard functions/transactions. In a second step the residual profit generated by the remaining "special" or unique functions/transactions would be attributed by using a different transfer pricing method. It would be helpful if the JTPF could establish a uniform hierarchy of transfer pricing methods for complex cases.