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EU JOINT TRANSFER PRICING FORUM

UPDATE OF THE FOLLOW-UP OF THE RE-ENTRY INTO FORCE OF THE ARBITRATION CONVENTION

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Background document

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**ANNEX III: MEMBER STATES 2006 REPLIES TO THE QUESTIONNAIRE ON
PENDING MAPs UNDER THE EU ARBITRATION CONVENTION**

**1. Total amount of pending MAPs under the EU Arbitration Convention in relation to
Member States as of 31/12/2005,¹**

	DK	DE	EL	ES	FR	IE	IT	LU	NL	AT	PT	FI	SE	UK
BE	0	11	0	0	10 6	0	2 1	1	1	0	0	0	1 0	0
	DK	4	0	0	0	0	0	0	0	0	0	0	0	0
		DE	0	4 3	22	2	4	0	15 17	3 4	4 1	0	0 2	6 12
			EL	0	0	0	1 0	0	0	0	0	0	0	0
				ES	10 6	0	1 0	0	0	0	1	0	0	2 3
					FR	1	3	0	6	0 1	4 3	1 0	0	8 16
						IE	0	0	0	0	0	0	0	0
							IT	0	1 0	0	0 1	0	1	0 1
								LU	0	0	0	0	0	0
									NL	0	1 0	0	1 2	5 1
										AT	0	0	0	0
											PT	0	0	0
												FI	2 1	0
													SE	0

Total number of cases: 163

¹ Discrepancies in the number of pending cases reported by Member States may result from cases considered closed on 31/12/2005 by one Member State but not yet formally closed by the other Contracting State.

Before 2000

	DK	DE	EL	ES	FR	IE	IT	LU	NL	AT	PT	FI	SE	UK
BE	0 0	4	0 0	0 0	2	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0
	DK	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0
		DE	0 0	2 0	5 3	1	0 1	0 0	1 2	0 1	1 0	0 0	0 0	1
			EL	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0
				ES	2 1	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0	1 0
					FR	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0	1
						IE	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0
							IT	0 0	1 0	0 0	0 0	0 0	0 0	0 0
								LU	0 0	0 0	0 0	0 0	0 0	0 0
									NL	0 0	0 0	0 0	0 0	0 0
										AT	0 0	0 0	0 0	0 0
											PT	0 0	0 0	0 0
												FI	0 0	0 0
													SE	0 0

Number of cases: 25

2000

	DK	DE	EL	ES	FR	IE	IT	LU	NL	AT	PT	FI	SE	UK
BE	0 0	0 0	0 0	0 0	1 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0
	DK	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0
		DE	0 0	0 1	0 1	0 0	0 0	0 0	0 1	0 0	0 0	0 0	0 0	0 2
			EL	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0
				ES	1 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 1
					FR	0 0	0 0	0 0	1 0	0 2	0 0	0 0	0 0	0 1
						IE	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0
							IT	0 0	0 0	0 0	0 0	0 0	0 0	0 0
								LU	0 0	0 0	0 0	0 0	0 0	0 0
									NL	0 0	0 0	0 0	0 0	0 1
										AT	0 0	0 0	0 0	0 0
											PT	0 0	0 0	0 0
												FI	0 0	0 0
													SE	0 0

Number of cases: 13

2001

	DK	DE	EL	ES	FR	IE	IT	LU	NL	AT	PT	FI	SE	UK
BE	0 0	1	0 0	0 0	1	0 0	1 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0
	DK	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0
		DE	0 0	0 1	1 0	0 0	0 0	0 0	1 0	0 0	1 0	0 0	0 0	0 0
			EL	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0
				ES	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0
					FR	0 0	0 0	0 0	1 0	0 0	1 0	0 0	0 0	0 1
						IE	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0
							IT	0 0	0 0	0 0	0 0	0 0	0 0	0 0
								LU	0 0	0 0	0 0	0 0	0 0	0 0
									NL	0 0	0 0	0 0	0 0	0 0
										AT	0 0	0 0	0 0	0 0
											PT	0 0	0 0	0 0
												FI	0 0	0 0
													SE	0 0

Number of cases: 10

2002

	DK	DE	EL	ES	FR	IE	IT	LU	NL	AT	PT	FI	SE	UK
BE	0 0	0 0	0 00	0 0	1 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0
	DK	0	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0
		DE	0 0	0 0	3 0	0 0	1 0	0 0	1 0	0 0	0 0	0 0	0 0	2 1
			EL	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0
				ES	3 1	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0
					FR	0 0	1 0	0 0	1 0	0 0	0 0	0 0	0 0	4 3
						IE	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0
							IT	0 0	0 0	0 0	0 0	0 0	0 0	0 0
								LU	0 0	0 0	0 0	0 0	0 0	0 0
									NL	0 0	0 0	0 0	0 0	2 0
										AT	0 0	0 0	0 0	0 0
											PT	0 0	0 0	0 0
												FI	0 0	0 0
													SE	0 0

Number of cases: 18

2003

	DK	DE	EL	ES	FR	IE	IT	LU	NL	AT	PT	FI	SE	UK
BE	0 0	1	0 0	0 0	1 2	0 0	0 0	0 0	1 0	0 0	0 0	0 0	0 0	0 0
	DK	2	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0
		DE	0 0	0 0	0 3	0 0	0 0	0 0	3 2	0 0	0 0	0 0	0 0	2
			EL	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0
				ES	0 1	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0	1 0
					FR	0 0	1	0	2	0	2	0	0	0 1
						IE	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0
							IT	0 0	0 0	0 0	0 0	0 0	0 0	0
								LU	0 0	0 0	0 0	0 0	0 0	0
									NL	0 0	0 0	0 0	1	0
										AT	0 0	0 0	0 0	0
											PT	0 0	0 0	0
												FI	0 0	0
													SE	0 0

Number of cases: 23

2004

	DK	DE	EL	ES	FR	IE	IT	LU	NL	AT	PT	FI	SE	UK
BE	0 0	1	0 0	0 0	1 0	0 0	0 0	1	0 1	0 0	0 0	0 0	0 0	0 0
DK	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0
DE		0 0	0 0	4 3	0 0	0 0	0 0	0 0	5	1 0	1 0	0 0	0 0	0 2
EL			0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0
ES				0 1	0 0	0 0	0 0	0 0	0 0	0 0	1 0	0 0	0 0	0 0
FR					0 0	0 0	0 0	0 0	1	0 0	0 0	1 0	0 0	0 1
IE						0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0
IT							0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0
LU								0 0	0 0	0 0	0 0	0 0	0 0	0 0
NL									0 0	1 0	0 0	0 1	0 0	1 0
AT										0 0	0 0	0 0	0 0	0 0
PT											0 0	0 0	0 0	0 0
FI												0 0	0 0	0 0
SE													0 0	0 0

Number of cases: 25

2005

	DK	DE	EL	ES	FR	IE	IT	LU	NL	AT	PT	FI	SE	UK
BE	0 0	4	0 0	0 0	3 1	0 0	1	0 0	0 0	0 0	0 0	0 0	1 0	0 0
	DK	2	0 0	0 0	0 0	0 0	0	0 0	0 0	0 0	0 0	0 0	0 0	0
		DE	0 0	2 1	9	1	3	0 0	4 5	2 3	1	0 0	0 2	1 4
			EL	0 0	0 0	0 0	1 0	0 0	0 0	0 0	0 0	0 0	0 0	0
				ES	3 2	0 0	1 0	0 0	0 0	0 0	0 1	0 0	0 0	0 2
					FR	1	1	0 0	0 0	0 1	0 1	0 0	0 0	3 8
						IE	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0
							IT	0 0	0 0	0 0	0 1	0 0	1	0 1
								LU	0 0	0 0	0 0	0 0	0 0	0
									NL	0 0	0 0	0 0	0 0	2 0
										AT	0 0	0 0	0 0	0
											PT	0 0	0 0	0
												FI	2 1	0 0
													SE	0 0

Number of cases: 68

2. Total amount of pending MAPs under the EU Arbitration Convention as of 31/12/2005 in relation to the year when the request was received by the tax administration

	Requests received prior to 2000	Requests received in 2000	Requests received in 2001	Requests received in 2002	Requests received in 2003	Requests received in 2004	Requests received in 2005	Total pending cases
2005	25	13	10	18	23	25	68	182
2004	24	8	12	24	23	16	0	107

Answers to question2:

For the cases pending more than two years for which no derogation has been agreed with the taxpayer (Article 7.4 of the Convention), what steps have been taken to comply with Article 7 of the Arbitration Convention?

AUSTRIA

In the case where the request was received prior to 1/11/2004 a comprise solution could be found. We expect that the procedure will be finalised within the next 2 weeks.

BELGIUM

Nihil

DENMARK

The conduct of particular mutual agreement procedures, including those undertaken under the Arbitration Convention, is a matter for the competent authorities involved.

FINLAND

No answer

FRANCE

Dans les cas dans lesquels le délai de 2 ans a été dépassé, des discussions se sont généralement poursuivies à l'occasion de commissions mixtes et/ou d'échanges de positions écrites. Certains de ces cas sont aussi liés à l'existence de contentieux en cours.

GERMANY

In some cases, the taxpayer had not provided all information so that the case could not be discussed or finalised during a MAP – meeting. In one case the taxpayer asked to keep the case on hold in order to try to come to an agreement with the tax office of the other country. In all other cases the taxpayer has agreed to await the further discussions of the competent authorities.

GREECE

No cases

IRELAND

No answer

ITALY

We included in the answer to question 1 both those requests where the procedure has been started and those where action has been postponed pending the re-entry into force of the Arbitration Convention.

According to the inventory as of 31st October 2004, we had only three pending cases for which the mutual agreement procedure with the other MS concerned had already started (under the relevant double tax treaty).

Presently, two cases are closed.

As a consequence, we have now just one case pending more than two years. According to what already stated in the Forum Report, Italy - in order to calculate the two years period – does not take into account the time already spent during the interim period (when the AC was not in force).

Moreover, in this particular case the taxpayer had recourse to the remedies available to it under domestic law. According to paragraph 3 of the Arbitration Convention, “where the domestic law of a Contracting State does not permit the competent authorities of that State to derogate from the decisions of their judicial bodies (and this is the case), paragraph 1 shall not apply unless the associated enterprise of that State has allowed the time provided for appeal to expire, or has withdrawn any such appeal before a decision has been delivered”.

We answered to the question n.2. Nevertheless, we agree with the concerns expressed by Roy Warden in his e-mail dated 13th of January. The conduct of particular MAPs, including those undertaken under the AC, is a matter for the CAs involved.

LUXEMBOURG

Not relevant

NETHERLANDS

a. Discrepancies in cases

The difference in total number of cases in the table is caused by registration differences between countries. Where one country e.g. does not register a case after a bilateral

agreement has been agreed, the other country concerned may close the case only where the national implementation is finalised. The differences thus can be explained and for the Netherlands it is acceptable that the differences in the table are not eliminated. If preferred, the Netherlands has no objection in following the pending number of cases as registered by the other country concerned.

b. Question 2: For the cases pending more than two years for which no derogation has been agreed with the taxpayer (Article 7.4 of the Convention), what steps have been taken to comply with Article 7 of the Arbitration Convention?

The Netherlands has one old case for which a possible Arbitration is being pursued. If the Member States concerned do not reach an agreement at the next CA meeting which is planned for May 2006, the Netherlands is of the opinion that Arbitration should take place. The other country concerned, however, does take the point of view that the 2 years term has not started yet or only recently, - in the opinion of that country - due to a lack of information by the taxpayer.

For other cases a formal issue has come up. The code of conduct provides that:

(ii) the two-year period starts on the latest of the following dates, :

a) the date of the tax assessment notice or equivalent;

b) the date on which the competent authority receives the request together with the minimum information as stated under item (i)

In practice, in several cases the date of the tax assessment notices (or equivalents) was not clear. For the "old cases" we sometimes only had the date of the request and now that we also exchange tax assessments dates, we see the two-year period in some cases started later than we initially thought (or has not started yet, due to outstanding appeals). As this is true for several cases, this is a formal problem for arbitration. The Netherlands is preparing working agreements with several Member States on periodic face to face meetings, whereby also the rules of the Code of Conduct are explicitly implemented. Thereby it is also agreed to exchange automatically copies of the assessments and the request(s) in order to avoid this formal issue in the future.

PORTUGAL

No answer

SPAIN

Spain continues working on the cases looking for the best possible solution.

On the other hand, there is an on going tax reform (not public yet) to adapt Spanish internal legislation to the Code of Conduct rules.

SWEDEN

Sweden have no MAP:s under the Arbitration Convention pending more than two years.

UNITED KINGDOM

The conduct of particular mutual agreement procedures, including those undertaken under the Arbitration Convention, is a matter for the competent authorities involved.