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EU JOINT TRANSFER PRICING FORUM

Secretariat information note the on the working program 2005-2006

Meeting of Thursday 16 September 2004

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1. BACKGROUND

After discussing the paper "Issues for debate" (doc. JTPF 003/2002/EN/FR/DE of 2 August 2002) at the meeting on 3 October 2002, the Forum adopted at its second meeting on 4 December 2002 its two year work program which is annexed to this document (see § 3 to 9 of doc. JTPF 002/2003 EN/FR/DE: "Summary record of the second meeting of the EU Joint Transfer Pricing Forum held in Brussels on 4th December 2002" of 7 March 2003).

The Forum also agreed by consensus that generally two topics should be discussed at each of the Forum's meetings.

Considering the intensive discussions held on the Arbitration Convention and related mutual agreement issues and in spite of holding an additional meeting on 19 June 2003, the Forum was unable to deal with all the issues as initially adopted in its work program. As it was agreed that the work program should be flexible to take into account progress, the initial work program should therefore be updated and revised.

Taking into account the remaining important issues in the Forum's work program adopted in 2002 that are still to be discussed, the Commission announced in its Communication to the Council, transmitting the Forum's report on its activities from October 2002 to December 2003, its intention to extend until the end of 2004 the initial period of two years foreseen for the activities of the Forum.

In the light of the overall results and further issues for discussion identified and proposed by the Forum, the Commission may decide to extend the Forum's mandate for a further period of two years i.e. until the end of 2006.

2. REVISING AND CONTINUING THE 2002 WORK PROGRAM

Considering that the discussions on this working document during the meeting of 18 March 2004 revealed that the majority of Members took the view that the Forum should try to complete its work on the issue of documentation requirements by the end of 2004 and, therefore, should not discuss an additional issue until then, the Forum agreed, therefore, by consensus to discuss only documentation requirements and its relevant report to the Commission, at its meetings in June and September 2004 and if necessary in December 2004. (see § 13 to 18 of doc. JTPF/010/2004/EN, draft minutes of the meeting of 18 March 2004)

3. A NEW 2-YEAR MANDATE FOR THE FORUM ?

As announced in the Commission's Communication (COM 2004) 297 of 23 April 2004 on the work of the EU Joint Transfer Pricing Forum in the field of business taxation from October 2002 to December 2003 and on a proposal for a Code of Conduct for the effective implementation of the Arbitration Convention (90/436/EEC of 23 July 1990), the Commission may decide to extend the Forum's mandate for another period of two years, depending on the overall results of the first term and any further issues for discussion identified and proposed by the Forum.

In addition to the issues carried over from the 2002 work program (i.e. the examination of possible preventive measures to avoid double taxation and the acceptability of transfer prices to tax administrations (including APAs), some of these further issues have already been identified in the Forum's first report and in the business paper "Review of some outstanding issues in connection with the dispute resolution procedure" (doc. JTPF 0020/BACK/2003/EN) and concern:

- Interest charges for late tax payments.
- Penalties levied on transfer pricing adjustments.
- Certain aspects of the interaction of the mutual agreement and arbitration procedure with administrative and judicial appeals.

Further contributions proposing new issues for discussion were received from business (doc.JTPF/011/BACK/2004/EN) and Member States (doc.JTPF/014/BACK/2004/EN).

4. CONCLUSIONS

Taking into account the Forum's remit as well as the work already undertaken and the discussions in its meetings of 18 March and 10 June 2004, the Forum agrees the following working program in case it were decided to extend the mandate for another two years:

4.1. Substantive issues to be discussed:

1. Examination of possible preventive measures to avoid double taxation: *carry-over of 2002-2004 work program*
2. Acceptability of transfer prices to tax administrations (including APAs): *carry-over of 2002-2004 work program*
3. Interest payments: *discussed but not finalised during 2002-2004; the Forum could identify the exact nature and extent of the problems of interest payments related to transfer pricing adjustments and examine the scope for solutions*
4. Penalties levied on transfer pricing adjustments: *discussed but not finalised during 2002-2004; the Forum could identify the exact nature and extent of the problems of penalties related to transfer pricing (excluding criminal penalties) and examine the scope for solutions.*
5. Certain aspects of the interaction of the mutual agreement and arbitration procedure with administrative and judicial appeals: *discussed during 2002-2004; the Forum could identify the exact nature and extend of the problems of this interaction and examine the scope for solutions*
6. The influence of accounting systems on transfer pricing: *the Forum could discuss and assess the consequences and possibilities of more harmonised and integrated accounting systems on transfer pricing*

4.2. Monitoring

Throughout these two years, once a year an agenda item would be devoted to different aspects of monitoring.

- As identified in the Forum's report to the Commission¹, the multitude of possible positions as regards the implementation of the Arbitration Convention during the interim period when this instrument was not in force, will have its consequences once it re-enters into force in autumn 2004.

- The implementation of the proposed Code of Conduct, will require, once adopted by the Member States, a constant monitoring to assess its effectiveness to eliminate double taxation related to transfer pricing.

- An Accession Convention for the new EU Member States will be signed shortly. The provision allowing the bilateral entry into force of the Arbitration Convention between those Member States might complicate the overview of bilateral/multilateral relations covered. The Forum could in this respect monitor the ratification process and publish regularly an updated overview which would be of great interest for tax administrations and business and assist new Member States with implementation problems.

4.3. Reporting

As was the case during the first mandate of the Forum, a report will be issued at the latest at the end of the possible extension period for the second mandate.

In function of the progress made and as appropriate, the Forum may however decide on reporting to the Commission at an earlier stage.

¹ Commission's Communication (COM 2004) 297 of 23 April 2004 on the work of the EU Joint Transfer Pricing Forum in the field of business taxation from October 2002 to December 2003 and on a proposal for a Code of Conduct for the effective implementation of the Arbitration Convention (90/436/EEC of 23 July 1990)- Annex II, point 2.1 and Annex I thereto)