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DIRECTORATE-GENERAL  
TAXATION AND CUSTOMS UNION  
Direct taxation, Tax Coordination, Economic Analysis and Evaluation  
**Company Taxation Initiatives**

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## **EU JOINT TRANSFER PRICING FORUM**

**Note by the Secretariat on the completion of the  
EU JTPF 2015 – 2019 work programme**

**Meeting of 7 March 2019**

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## I. The EU JTPF Work Programme 2015 – 2019

In the document laying down the JTPF’s Programme of Work for the period 2015-2019 (DOC: JTPF/005/FINAL/2015/EN) the JTPF identified the following items as most relevant for the mandate of the Forum and assigned priorities as reflected in the order below:

- Work on practical issues arising from country-by-country reporting (“CBCR”) and transfer pricing documentation;
- Use and improvement of comparable data and comparability methods in the EU;
- Economic valuation methods applied to transfer pricing in the EU;
- Stocktaking, review and assessment of the state of play of multilateral controls in the EU in the area of transfer pricing;
- Assessment of practical issues linked to the use of profit split within the EU, once the OECD conclusions will be available;
- Internal monitoring and follow up on the functioning of Dispute Resolution and APAs in transfer pricing

## II. Completion

The JTPF dealt with the items of the work programme as follows:

ITEM	EVALUATION	OUTCOME
Arbitration Convention & Revised Code of Conduct for its effective implementation		<b>April 2015</b> (written procedure) Report on Improving the Functioning of the Arbitration Convention & Revised Code of Conduct for the effective implementation of the Arbitration Convention [ <b>coming from the previous mandate</b> ]
Issues on the Practical Implementation of OECD BEPS Action 13 on CBCR	<b>22 October 2015</b> Discussion of state of play in the EU of the implementation of the OECD BEPS Action 13	<b>18 February 2016</b> Work at JTPF stopped in view of the Commission’s proposal for non-public CBCR (“DAC4”). No further discussion at the JTPF.
Comparables	<b>22 October 2015</b> Scoping Paper <b>18 February 2016</b> Discussion Paper	<b>9 March 2017</b> Report on the Use of Comparables in the EU
Valuation Techniques	<b>22 October 2015</b> Scoping Paper <b>20 October 2016</b> Discussion Paper	<b>September 2017</b> (written procedure) Report on the Use of Economic Valuation Techniques in Transfer Pricing
Coordinated Transfer Pricing Controls	<b>22 October 2015</b> Discussion Paper on Joint Audits <b>8 March 2018</b> Discussion Paper on Multilateral Approach to Transfer Pricing Audits	<b>October 2018</b> (written procedure) Report on Coordinated Approach to Transfer Pricing Controls within the EU
Profit Split Method	<b>8 March 2018</b> Discussion Paper	<b>22 March 2019</b> (written procedure) Report on the Application of the Profit

	<p><b>26 June 2018</b> Summary of the Results to a Survey on PSM</p> <p><b>24 October 2018</b> The Application of the Profit Split Method within the EU</p>	Split Method within the EU
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### III. Achievements

#### 1. Comparables

The JTPF started its work under the new mandate with the topic of comparables and devoted a considerable amount of time on this subject. In parallel, the Secretariat undertook a study with Deloitte on comparable data that is used for transfer pricing in the EU.

Although the scoping paper had the ambition of looking at the delineation of the transactions within the wider generation of value by the MNE group, the content of the final Report focussed on the process of searching for comparables and further processing the results. It therefore did not touch upon the first component of the comparability analysis. The Report put forward 8 Recommendations.

Although the Report did not turn out to be as ambitious as it was initially envisaged in the scoping paper (with regard to the delineation of the transaction), it still laid down a set of principles and detailed guidance on the steps to be undertaken in searches for comparables. These principles should serve as a commonly agreed basis for both tax administrations and taxpayers when it comes to performing searches for comparables and further processing the data.

#### 2. Valuation Techniques

Similarly to the topic of comparables, the Secretariat undertook a study with Deloitte on “*The application of economic valuation techniques for determining transfer prices of cross border transactions between members of Multinational Enterprise Groups in the EU*”.

Based on an initial scoping paper, the JTPF agreed to discuss two key topics. On the first topic, the Report set out as a general principle that when valuation techniques are used in transfer pricing, they should be consistent with the arm’s length principle<sup>1</sup> and that consistency should be properly explained and documented. The Report concluded that there is little room for simplification on the use of valuation techniques, the main concern being that such valuations usually involve high amounts. So, the risk of imprecision could entail significant monetary consequences. The second topic stressed that there should be appropriate documentation to justify why a specific valuation technique was chosen and how it was applied.

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<sup>1</sup> Especially with regard to projections on income or cash flows that should not be affected by affiliation

The Report also contains an extensive recommendation on the differences between general valuations and valuations for transfer pricing purposes. There also are several annexes describing different valuation techniques.

Overall, while the Report is probably not as prescriptive as initially foreseen, it still provides for a comprehensive description of valuation techniques and the elements that should be considered when using those for transfer pricing purposes.

### **3. Coordinated Transfer Pricing Controls**

The objective of the Report is to establish a coordinated approach to transfer pricing controls within the EU.

The Report encourages cooperation at two levels: (i) between tax administrations amongst themselves; and (ii) between tax administrations and the taxpayer. It provides for a set of best practices towards a coordinated approach to transfer pricing controls. It addresses organizational issues relevant to cross-border audits and underlines taxpayer rights and obligations. In order to guarantee a common approach to cross-border audits, the Report makes recommendations regarding the different phases of the audit process.

In conclusion, the Report on a coordinated approach to transfer pricing controls within the EU lays down a consistent framework to enable better cooperation between tax administrations in the context of transfer pricing audits. This should be of benefit to both taxpayers and tax administrations.

### **4. Profit Split Method (PSM)**

The work programme refers to the PSM as one of the topics on which the JTPF will provide output and foresees that work will focus on the practical application of the PSM in the EU. It mentions that another angle for further work could be an evaluation of the available models for splitting profits.

The Secretariat carried out a survey amongst the JTPF members and identified the choice of the appropriate splitting factors, their relative weights and the valuation of contributions, especially heterogeneous contributions, as the most challenging aspects in applying the PSM. In the meeting of 24 October 2018, the JTPF members agreed to work on clarifying certain concepts related to the PSM and compile a non-exhaustive inventory of profit splitting factors. A sub-group was set up in order to help in drafting the Report. The Report discusses the criteria that determine when the PSM is the appropriate method for profit allocation and includes a non-exhaustive inventory of profit splitting factors.

The Report on the Application of the Profit Split Method within the EU builds upon the recently issued revised OECD guidance on the Profit Split Method and further clarifies when it may or may not be the most appropriate method and also provides further guidance on the choice of profit splitting factors.

## 5. Monitoring of Dispute Resolution and APAs

The elimination of double taxation has been in the focus of the JTPF since some time. In July 1990 Member States signed an intergovernmental agreement with the aim to resolve double taxation in the area of transfer pricing (EU Arbitration Convention 90/436/EEC on the elimination of double taxation in connection with the adjustment of profits of associated enterprises), which entered into force in January 1995.<sup>2</sup>

The JTPF regularly monitors the number of pending Mutual Agreement Procedures (MAPs) under the Arbitration Convention and the number of Advance Pricing Agreements (APA). Relevant data is collected from Member States on an annual basis and is published on the DG TAXUD website on Europa.<sup>3</sup>

The issue of dispute resolution will remain a very relevant topic in view of the Dispute Resolution Directive, which was adopted in October 2017<sup>4</sup>. The new legal act shall apply to any complaint submitted from 1 July 2019 onwards relating to questions of dispute on income or capital earned in a tax year commencing on or after 1 January 2018.

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<sup>2</sup> <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:41990A0436:en:HTML>

<sup>3</sup> [https://ec.europa.eu/taxation\\_customs/business/company-tax/transfer-pricing-eu-context/joint-transfer-pricing-forum\\_en](https://ec.europa.eu/taxation_customs/business/company-tax/transfer-pricing-eu-context/joint-transfer-pricing-forum_en)

<sup>4</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017L1852&from=EN>