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EU JOINT TRANSFER PRICING FORUM

Secretariat's paper summarising MS' replies on the EUTPD questionnaire

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!!! Member States are kindly invited to review Secretariat's classification of answers. !!!

Introduction.

The aim of this document is to sum up MS' answers on the questionnaire on the implementation of the Code of Conduct on EU Transfer Pricing Documentation (EUTPD).

MS were invited by letter from the Commission to report on how the EUTPD was implemented by them, the extent to which the EU TPD has been taken up by Multinational Enterprises (MNEs) and on what is their assessment of the value of the adoption of a common approach on transfer pricing documentation

At the end of September 2009, answers from Italy, Finland, Lithuania, The Netherlands and Portugal were not received.

Summary of Member States replies.

Q1.A What administrative or legal action, was taken to implement the EUTPD Code of Conduct?

- Through administrative practice: **8 MS (AT, BE, BG,CZ,IE,LU)**
- Through law: **9 MS (DE, DK, EE, ES, Latvia, PL, RO, SK, SLO, SW)**
- Implementation is under consideration: **CY, FR, GR, HU, MT**

Q1. B Do you have specific national transfer pricing documentation rules? Do you consider your national practice in line with the EU TPD?

Existence of specific TP documentation rules:

- 10 YES (DE, DK, EE, ES, Latvia, PL, RO, SK, SLOV, SP)
- 12 NO (AT, BE, BG, CYP, CZ, GR, HU, IE, LU, MT, SW, UK)

National practice in line with EUTPD?

- 11 YES (BE, CZ, DE, DK, EE, ES, GER, Latvia SLO, SW)
- 1 PARTIALLY (PL)
- 11 without answer (AT, BG, CY, GR, HU, IE, LU, MT, RO, SK, UK)

Q1. C Did your tax administration use "publicity" or other incentives to promote the use of the EUTPD ?

- 6 YES (BE, BG ,CZ, SK ,SLO, SW)
- 7 NO (AT, CY, DK, HU, MT, PL, UK)
- 4 without answer (FR, GR, Latvia, LU)
- 3 where TPD is compulsory (EE, ES, DE)

Q2. Do you have systems in place to assess the extent to which the EUTPD option has been adopted by MNEs? From those systems do you assess take-up to be at the level of minimal, medium or extensive? In the absence of any formal recording system do you assess take-up to be at the level of minimal, medium, extensive? (Member States may find it useful to refer to any notifications received by MNEs under paragraph 12 of the Code in responding to this question)

No MS has a system in place but in CZ it is under consideration.

Level of take up is generally considered as minimal, apart from countries where TPD is mandatory.

Q3. Depending on your assessment of the level of take-up:

(i) What in your view could be done to improve take up levels?

Suggestions to better promote the advantages of the EUTPD included targeted publicity , training-, enhanced taxpayer cooperation a flexible approach with the documentation requirements

(ii) What in your view has contributed to the extensive level of take up?

Mandatory application would inevitably lead to extensive take up.

Q4. Based on your national overview to what extent do you consider the Code has contributed to a better standard of documentation in terms of i) quality of content ii) standardisation between Member States iii) the initial assessment of a MNEs group's transfer prices policy?

Most MS have mentioned that it is to assess these aspects.

However 3 MS considered that it helped improve quality and 3 others to improve standardisation.

One MS mentioned that it facilitated acceptance of national TP requirements.

Q5. If you feel the Code has not significantly contributed to a better standard of documentation in terms of achieving i) quality of content ii) standardisation between Member States iii) the initial assessment of an MNEs group's transfer prices policy please explain the key factors that in your view still prevent the Code from working efficiently.

Most MS have mentioned that it was too premature to assess those aspects.

Two substantive comments were received:

- Need for a common definition of associated companies
- Unwillingness of parents to help subsidiaries in the preparation of the documentation

Q6. The Code addressed some issues directly relevant to MS.

6A) Paragraph 5: Member States undertake not to require smaller and less complex enterprises (including small and medium-sized enterprises) to produce the amount or complexity of documentation that might be expected from larger and more complex enterprises.

How have you sought to differentiate between the documentation requirements of SMEs and MNEs?

- BY DEFINITION: 7 MS (DE,HU,PL, SLO, SK ,SW,UK)
- BY LAW: Czech Republic (balance requirements and simplified form), Estonia (not mandatory for SMEs), Spain.
- FLEXIBLE RULE: (AT, BE)

6B) Paragraph 6 Member States should:

(a) not impose unreasonable compliance costs or administrative burden on enterprises in requesting documentation to be created or obtained; (b) not request documentation that has no bearing on transactions under review; (c) ensure that there is no public disclosure of confidential information contained in documentation.

In your view have the potentially conflicting requirements of a comprehensive documentation package and compliance costs/administrative burden been avoided?

Apart from one country where it was considered as difficult to gauge at this stage, all MS, having answered, have replied positively.

6C) Paragraph 7. Member States should not impose a documentation- related penalty where taxpayers comply in good faith, in a reasonable manner and within a reasonable time with standardised and consistent documentation as described in the Annex or with a Member State's domestic documentation requirements, and apply their documentation properly to determine their arm's length transfer prices.

Have you found it necessary to apply documentation-related penalties to a case in which EUTPD was applied? If so to how many cases and for what reasons?

11 NO (AT, BE, CY, CZ, DK, HU, IE, MT, SLO, SW, UK)

1 YES (SK)

1 too early (ES)

6D)

Paragraph 18 Since the EU TPD is a basic set of information for the assessment of the MNE group's transfer prices a Member State would be entitled in its domestic law to require more and different information and documents, by specific request or during a tax audit, than would be contained in the EU TPD.

Have you had to ask for supplementary information: rarely, occasionally routinely? What would you say were the main reasons for supplementary information request for example failure omissions from content template or as clarification of information submitted?

4 Yes: CZ, DE, SLO, SW. Reasons presented: incomplete documentation, particular circumstances, during an audit.

7 NO: AT, BE, CY, HU, IE, MT, SK

6E) Do you wish to make any other comments on General application Rules and requirements contained in Section 2, 3 and 4 of the code?

One comment from Hungary: once a taxpayer has opted he cannot step out before 3 years. (Unless they leave the MNE group).

Q7. Based on the practical experience of your administration what would you suggest to improve the adoption, functioning and efficiency of the EU TPD as a whole?

By enhancing communication with the taxpayers (CZ)

By encouraging an harmonized approach (CZ)

By adopting administrative instructions (BG)

By encouraging MNEs to inform TAs how transfer pricing documentation is applied (DE)

By visiting MNEs to inform them about the EUTPD (SLO)

By developing an electronic form of EUTPD (EE)

By encouraging Exchange of Information (EE)

By keeping it optional (AT)

Q8. What feed back, if any, both positive and negative have you received from MNEs about the introduction of EUTPD?

Feed back has been patchy with both critical and positive feedback. So it is difficult to draw an overall conclusion .The positive feedback generally centred around consistency and defence against audits (DE SLO) the critical around compliance burden and practical application (CZ ,Estonia,UK)