



Brussels, February 2011
TAXUD D1 D(2010)

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Doc: JTPF/010/2011/EN

SUMMARY RECORD OF THE THIRTIETH MEETING OF THE EU JOINT TRANSFER PRICING FORUM

held in Brussels on 10th February 2011

1. ADOPTION OF THE AGENDA

The agenda (doc JTPF/003/2011/EN) was adopted by consensus and the Chair reminded members that the minutes of the meeting of 10th October 2010 (doc JTPF/018/2010/EN) had been adopted under written procedure.

2. UPDATE BY THE COMMISSION

Tom Neale provided information on the state of play on the following topics:

1. Commission Communication COM/2011/16 (Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the work of the EU Joint Transfer Pricing Forum in the period April 2009 to June 2010 and related proposals 1. Guidelines on low value adding intra-group services and 2. Potential approaches to non-EU triangular cases) was adopted on 25/1/2011. It is now under consideration by the Council and will be discussed in the Council Working Party on Tax matters later this month. The Commission hopes the ECOFIN Council will endorse the proposals contained in the Communication before the end of the Hungarian Presidency. The Communication can be found on the JTPF webpage.

2. Renewal of JTPF mandate: the mandate of the JTPF was extended until 31/3/2015 by way of Commission decision C/2011/75 of 25 January 2011 setting

up the EU JTPF expert group (OJ C 24, 26.1.2011, p. 189). The Decision can be found on the JTPF webpage.

3. Call for applications of business members and a chairperson of the Forum: a call for applications was published on the website of DG TAXUD on 26/1/2011. Applications are sought with a view to selecting 16 business members and a chairperson of the group of experts on transfer pricing. The deadline for applications is 25/2/2011. The criteria to be applied for appointment are listed in the call for applications. The Director-General of DG TAXUD will formally appoint the new members and chairperson by a decision which is to be anticipated within 5-6 weeks after the deadline. The Commission intends to invite Iceland as an observer to the first meeting of the JTPF under its new mandate in June 2011.

4. Public consultation on double taxation within the EU: on 26/1/2011 the Commission released a Summary report on the Public Consultation on Double Tax Conventions and the Internal Market: factual examples of double taxation cases. The details have now been published on the website of DG TAXUD. It is clear from the responses that double tax is still an issue in the Internal Market and transfer pricing is still very much in point, therefore supporting the continued need for the JTPF. A Commission Communication on the subject, to describe the problems and suggest some solutions, is scheduled to be issued before the end of June 2011. An impact assessment will then be undertaken in assessing the options for actions and there is a possibility of a legislative outcome to the exercise by the end of 2012.

A letter is currently with MS asking for comments and suggestions at this stage on the consultation responses, which gives them the opportunity to comment before the Communication is finalised and adopted.

Business members acknowledged the value of this exercise.

3. TRANSFER PRICING AND SMES

3. (i) Member State responses: auditor to auditor responses and de minimis limits (doc JTPF/002/REV2/BACK/2011). It was agreed, as these responses related to paragraphs 38-39 and Recommendation R17 of the main report, the paper should be discussed at that point of the review of the main document.

3. (ii) Finalisation of the main body of SME Draft Report (doc. JTPF/001/REV2/2011)

The Chair explained that the report currently consists of two elements: the main body of the report and information contained in annex.

Comments had been received on the draft circulated, these had been incorporated and re-circulated and further comments on these had been received and incorporated in today's document. The document was presented today for discussion. The objective was to arrive at an agreed report in the meeting if possible.

Tax administration Vice Chair opened the discussions by advising the group that the Member States had had a constructive exchange on the revised document and anticipated reaching final agreement in this meeting.

The Business Vice Chair was also able to give a similar stated position.

The Chair went through the document paragraph by paragraph seeking comments, and, as necessary, agreeing amendments.

The breadth and depth of discussion varied according to the particular paragraph topic. There was some extended discussion on matters concerning definition, simplification measures, penalties and dispute resolution.

The paper on MS responses on auditor to auditor and de minimis limits (doc JTPF/002/REV2/BACK/2011) was also discussed. The outcome was that exchanges directly between auditors may be appropriate on a case by case basis but exchange of information rules and the role of Competent Authorities should be respected. On the issue of de minimis limits there was the possibility, some thought, of there being a role for them in a fast track process.

At the conclusion of the review of the SME report the meeting confirmed that the wording of the main body of the report had now been agreed. The Secretariat would incorporate the agreed wording in a final document which would be circulated for information and then published on the JTPF TAXUD website on the 4th March 2011.

3. (iii) Finalisation of tables to be in annex to the report (docJTPF/001/annex/2011)

Tax administrations had been asked in an e-mail dated 19/01/2011 to provide information and updates in response to this document by 31/1/2011. Several responses had been received. The deadline for response was now extended to close of business on the 25th February 2011. At this point the information held would be incorporated into and published as part of the final report to go on the TAXUD website on the 4th March 2011.

4. FUTURE JTPF WORK PROGRAMME

4. (i), (ii) Three room documents were presented: two from business members and one from the Belgian tax administration. These papers were for background information purposes only and a brief presentation was made on each of them.

The first paper addressed a range of issues that the business community had encountered in the Arbitration Convention (A/C) process. These included a measure of uncertainty of the interaction of a domestic dispute resolution process and the A/C, supplementary documentation requests and extension of deadlines within the process.

The second BM paper explored the potential avenues that a taxpayer was faced with when addressing a proposed transfer pricing adjustment. Four options were detailed. The paper concluded that the avoidance of double tax was not always readily and easily available.

The tax administration paper addressed a concern that there may be some differing interpretation of attributing profit to a permanent establishment, given the juxtaposition of the old and new Article 7, the related commentary and the A/C.

The Chair concluded that these would provide useful input to the future discussions on the preparation of the future Work Programme.

4. (iii) Monitoring work

This is an ongoing aspect of the JTPF's work.

5. COST CONTRIBUTION ARRANGEMENTS

Given the time constraints a discussion on this item did not take place.

6. STATISTICS ON THE NUMBER OF OPEN CASES UNDER THE ARBITRATION CONVENTION

Information as supplied in relation to 2009 will be published on the 4th March 2011, so any further contributions must be received before 25th February, if they are to be included.

7. INDEPENDENT PERSONS LIST

Certain updates had been received. Cyprus, Estonia, Latvia, Lithuania, Romania and Slovenia were reminded that they had not responded and were urged to supply names and CVs.

8. ANY OTHER BUSINESS

8. (i) Survey on language requirements for transfer pricing documentation: The Forum's attention was drawn to a background information document that detailed a KPMG study on this subject. The Chair noted that it might be a useful background document on any future monitoring exercise on EUTPD.

8. (ii) APA completion of the statistical tables for 2009 and 2010 were a priority action for the Secretariat and tables would be issued for completion very shortly.

8. (iii) Date of next meeting: 9th June 2011.

Concluding speeches of thanks were given by the Chair, the Vice Chairs and the Commission.

COMMISSIONNER'S ATTENDANCE AT THE JTPF

At lunchtime the Forum was addressed by Commissioner Šemeta. The Commissioner reflected on the success of the work of the Forum, the importance of its role and the relevance of the work continued into the future even as progress was made towards a CCCTB system. He thanked the Chair and all the members for their efforts and hosted a drink and buffet lunch for the Forum.