



Brussels, January 2013
TAXUD D1

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SUMMARY RECORD OF THE THIRTY FIFTH MEETING OF THE EU JOINT TRANSFER PRICING FORUM

held in Brussels on 25 October 2012

1. ADOPTION OF THE AGENDA

The Agenda (doc JTPF/016/2012/EN) was adopted by consensus. The Chair mentioned that this 35th meeting marked the 10th anniversary of the JTPF.

2. DOCUMENTS ADOPTED UNDER WRITTEN PROCEDURE

The Chair reminded members that the summary record of the JTPF meeting held on 7 June 2012 (doc JTPF/015/2012/EN) had been adopted under written procedure.

3. INFORMATION BY THE COMMISSION ON CURRENT ONGOING ISSUES

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

- On 19 September 2012 the Commission adopted a [Communication on the work of the JTPF in the period July 2010 to June 2012](#) which included the CCA Report and the Report on SMEs and TP. The Communication was discussed by the Council (Working Party on Tax matters) on 24 October. Draft Council Conclusions were circulated and are currently under consideration. The ECOFIN Council will hopefully adopt these conclusions in December 2012.
- The first reading of the proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB) has been completed. Following a pause for reflection, work will resume under the next EU Presidency (Ireland).
- Follow-up to the Commission's [Communication on Double Taxation](#) includes current discussions about EU-wide arbitration. In this context the functioning of

the Arbitration Convention represents an evidence base. The outcome of the current discussions is expected in the autumn of 2013.

- On 27 June 2012 the Commission adopted a [Communication on tax fraud and tax evasion](#). A further Commission Communication on the issues raised in the initial Communication, as well as tax havens, is expected in December 2012. The new Communication is also likely to contain an action plan for addressing these issues in the next 2-3 years, as well as recommendations on how MS can tackle problems from a collective point of view.

On a wider note:

- As regards progress on the EU Financial Transaction Tax, a group of eleven EU Member States is currently exploring avenues for enhanced co-operation to implement the tax in participating MS.
- The Commission has presented a [Proposal for a Regulation on European Venture Capital Funds](#) which is currently under consideration by Council and the European Parliament (under co-decision). The new legislation will make it easier to raise capital across the EU by introducing a single and simplified regime. Members were made aware of some relevant tax features contained in the proposal.

4. SECONDARY ADJUSTMENTS

The JTPF discussed the Draft Report on Secondary Adjustments (doc JTPF/017/2012/EN) with the objective to arrive at an agreed report in the meeting.

The Forum reviewed one by one the 12 recommendations proposed in the document. The Chair steered the discussion by commenting on the proposals and, after the various interventions, confirming agreement on the recommendations. The final wording retained reflects the agreement reached by the Forum and confirmed by the Chair on each recommendation.

The Secretariat was asked to incorporate the amendments in a final document and align accordingly the remaining text (main body of the draft report) in order to make it consistent all through.

Three Member States made scrutiny reservations on 3 of the recommendations, as retained at the meeting: Italy on recommendation 1, Austria on recommendation 2 and France on recommendation 7¹.

The Chair reiterated that according to the Secretariat, the PSD applies to secondary adjustments made in the form of constructive dividends in cases where the primary adjustment is made between a subsidiary in the EU and a parent in the EU. To clarify whether Member States which apply secondary adjustments² consider such adjustments in the form of constructive dividends as covered by the PSD the Chair asked concerned MS *whether in a situation where a subsidiary in a MS is subject to a secondary adjustment based on a primary transfer pricing adjustment relating to a transaction with*

¹ France's reservation was lifted subsequently.

² 9 EU Member States apply secondary adjustments - Austria, Bulgaria, Denmark, Germany, France, Luxembourg, the Netherlands, Slovenia and Spain.

its parent company situated in another MS, they would not impose any withholding tax on the basis of the provisions of the PSD.

Seven of the nine MS which apply secondary adjustments provided answers at the meeting and two MS sent written answers following the meeting. It was revealed that seven MS³ consider the PSD as applicable to constructive dividends as described above, while 2 MS⁴ do not.

It was agreed that paragraph 12 would be redrafted in line with these facts and that recommendation 3 would be deleted.

At the end of the review the Chair concluded and the Forum confirmed that the report had been agreed subject to the final wording/reservations. The revised text of the report will be circulated by the Secretariat by e-mail in a matter of weeks and considered final once all reservations have been lifted.

5. MONITORING

The Forum discussed document JTPF/018/2012/EN – Monitoring overview and proposals.

The Chair recalled that monitoring is an essential part of the JTPF's work program and that JTPF achievements are monitored as part of existing commitments under instruments already adopted by the Forum. Performing a comprehensive monitoring of the Forum's achievements in the past 10 years was agreed at the June meeting. Doc JTPF/018/2012/EN was prepared by the Secretariat to take stock of these past achievements and to form the basis of a comprehensive monitoring exercise.

Members were reminded that part of the monitoring task of the JTPF is also to find ways to improve how actual monitoring is done, building on Members' experience. In this context the Secretariat has collected proposals from members on how to improve the AC (doc JTPF/020/2012/EN). The Chair thanked members for their comments and stressed that these proposals will not be discussed at this meeting. They will rather form the basis for a discussion paper for the next meeting. The Chair opened the floor for more general comments on document JTPF/018/2012/EN and the proposed monitoring calendar under the current JTPF work programme, especially the suggestion to start with a monitoring exercise on the Arbitration Convention.

TAs and PSM welcomed document JTPF/018/2012/EN as a useful starting point for future monitoring and stated their agreement with the calendar put forward by the Secretariat.

With respect to the content of document JTPF/018/2012/EN both TAs and PSM made some drafting suggestions, in particular with respect to the monitoring of the Arbitration Convention.

It was agreed that the Secretariat would introduce the necessary changes in the text.

Members commented that having consistent and good statistics is essential for the regular monitoring and that with reference to the pending discussion on this topic the final form of the 2012 AC statistics will be decided at the next meeting in February 2013.

³ Austria, Denmark, Germany, Luxembourg, the Netherlands, Spain and Slovenia.

⁴ France and Bulgaria.

Comments by JTPF Members indicated that the determination of the 2-year period under Article 7 of the Arbitration Convention is a major issue. As a starting point it would be essential to know the reasons why cases take longer than 2 years. In order to achieve a balance between the need for detailed information and the administrative burden connected with such an exercise, MS agreed on doing a qualitative analysis of their pending cases to find out the concrete reasons causing delays of more than 2 years. PSM will also provide an analysis based on their experiences. The result should be submitted to the Secretariat before 31 December 2012. Further it was stated that some areas for improvement were already identified after the last revision of the Code of Conduct.

Based on the comments received and this evaluation, the Secretariat will draft a discussion paper for the next JTPF meeting in February 2013.

6. TRANSFER PRICING RISK MANAGEMENT

Document JTPF/019/2012/EN – Discussion paper on TP risk management was introduced to the JTPF.

On the Chair's request, the Secretariat informed the JTPF about the status of work in the Subgroup on TP risk management created to prepare the discussion on risk management, which first met on 18 September 2012. The starting point of the subgroup's work was the working paper (Annex 1 of the discussion paper) which contains a review of past work by the EU and the OECD on this topic. Based on the indicative summary table in section C of doc. JTPF/019/2012/EN, the possible extent of future work currently envisaged for the different areas of risk management was introduced. The Secretariat stressed that the discussion paper should be understood as an information source on the current status of work and further ideas and comments are welcome. It was confirmed that the subgroup continues its work and will meet again before the end of the year or in January 2013.

7. COMPENSATING/YEAR-END ADJUSTMENTS

Due to time constraints the discussion paper on Compensating/year-end adjustments (doc JTPF/012/2012/EN) was not discussed. This topic will be included in the agenda for the next meeting of the JTPF in February 2013.

In the meantime, members that wish to do so can send written comments to the JTPF Secretariat. These will be reflected in the revised version of the discussion paper which will be tabled next year. PSM offered to make presentations on the topic at the next meeting, so as to inform Forum discussions.

Some MS indicated that they are reluctant to work on this topic as the OECD also currently works on timing issues. The OECD representative, however, stated that even though timing issues are on the agenda of WP6, he would personally welcome any progress on this issue at the level of the JTPF.

8. ANY OTHER BUSINESS

The next meeting of the Forum is scheduled for 14 February 2013.