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SUMMARY RECORD OF THE FORTY THIRD MEETING OF THE EU JOINT TRANSFER PRICING FORUM (“JTPF”)

held in Brussels on 25 June 2015

1. WELCOME BY THE COMMISSION AND INFORMATION BY THE COMMISSION ON CURRENT ONGOING ISSUES

On behalf of the Commission, Tom Neale, welcomed the JTPF members, the Chair and the Vice-Chairs. He highlighted the tasks of the new group and the Commission’s expectations in the context of the recent June 2015 Action Plan for a Fair and Efficient Corporate Tax System in the European Union (the “2015 Action Plan”)¹.

The group has been set up on the basis of the Commission’s Decision of 26 January 2015², which defines it as an experts group, composed of governmental and non-governmental members. Their role is to advise and assist the Commission on transfer pricing issues, which constitute obstacles to cross-border business activities within the European Union (“EU”).

The task of the JTPF group is ultimately to find practical solutions, which are compatible with the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (“the OECD guidelines”). The aim to improve the application of the OECD Transfer Pricing Guidelines within the EU internal market is to be restated. Tom Neale stressed that, far more than in the past, the Commission was going to be active in transfer pricing in the framework of the 2015 Action Plan and that the Commission has high expectations on areas of progress and solutions, to which the JTPF should contribute.

Tom Neale provided then information on the state of play of current ongoing issues, and more particularly, the 2015 Action Plan presented on June 17, 2015. The Action

¹ COM(2015) 302 final
http://ec.europa.eu/taxation_customs/resources/documents/taxation/company_tax/fairer_corporate_taxation/com_2015_302_en.pdf

² C(2015) 247 final

Plan intends to fundamentally reform corporate tax framework in the EU and adjust it to the reality of today. Its main objectives are tackling tax avoidance, securing sustainable revenues, strengthening the Single Market for businesses, as well as improving the corporate tax environment in the EU, *i.e.* making it fairer, more efficient and more growth-friendly.

Tom Neale detailed the 5 key actions of the Action Plan. He laid emphasis on the direct implications for transfer pricing as 60% of the world trade takes place inside group currently and transfer pricing is identified in the Plan as being a major driver for profit shifting. Moreover, the relaunching of the CCCTB, as provided for by the Action Plan, triggers more attention to transfer pricing and the need to implement in the most efficient way the OECD guidelines. Besides that, the outcome of the BEPS project should be followed and implemented in acceptable terms for the EU.

2. INTRODUCTION/PRESENTATION OF CHAIR

The Chair introduced himself and the renewed JTPF in its new composition.

He underlined the uniqueness of this Forum based on dialogue between Tax Administrations and Non-Governmental Members on designing tangible technical solutions to improve the state of the art in transfer pricing in the EU.

The important work performed by the JTPF over the last 13 years and its several achievements is recognized even outside Europe. He noticed the evolution to be taken by the new Forum, as the focus should now be towards a fair corporate taxation system and less on tax compliance and tax cost improvement. The Chair insisted on the short time line and the necessity for the Forum to organise itself effectively to meet the Commission's expectations on tangible deliverables, which was the basis for the renewal of the Group.

3. ADOPTION OF THE AGENDA

The Agenda (doc. JTPF/006/2015/EN) was submitted to the vote of members and adopted by the members after having agreed on placing point 6 on "Discussion of Rules of the Procedure of the JTPF" before point 5 (Discussion on the future JTPF programme of Work).

4. DOCUMENTS ADOPTED UNDER WRITTEN PROCEDURE

The Summary Record of the March 2015 meeting (doc. JTPF/015/2015/EN) was adopted under written procedure.

5. ADOPTION OF RULES OF PROCEDURE OF THE JTPF

The draft Rules of Procedure of the JTPF (doc JTPF/007/2015/EN) presented to the Forum by the Secretariat are based on the standard Commission-wide model of Rules of Procedure of expert groups³.

After a discussion at length on several points⁴ the Secretariat committed itself to do its best efforts to ensure that the documents are sent as far in advance as possible,

³ SEC(2010) 1360 final

⁴ Note that Article 4 (*Re*: Invitation by the Chair to adopt an opinion, a recommendation or a report), Articles 5 and 12 (*Re*: Role and functioning of the Bureau), Articles 8 and 11 (*Re*: Period allowed for comments by members), Article 13 (*Re*: Publication of working documents) and Article 15 (*Re*: notion

and, if possible within 21 days rather than the 14 days mentioned in Article 3.2 “Documentation to be sent to the group members”. In addition the Secretariat agreed to circulate before the next meeting a short explanatory note on the way the Bureau, Vice-Chairs and Chair function and operate under the Rules of Procedure. The draft Rules of Procedure of the JTPF as presented were then adopted by the group, subject to the following change:

- Amendment of Article 7 of the Rules of Procedure “Admission of third parties” to insert: “and United Nations” after the word “OECD”⁵;

After adoption of the Rules of Procedure, the group was asked by the Chair to vote on the possibility to make its deliberations public under Article 18.2 of the same Rules. The Forum decided negatively, only two members voted in favour of opening the deliberations to the public.

6. WELCOME SPEECH BY VALERE MOUTARLIER, DIRECTOR OF DIRECT TAXATION, TAX COORDINATION, ECONOMIC ANALYSIS AND EVALUATION, DIRECTORATE D, DG TAXUD

Valère Moutarlier, Director of Direct Taxation at DG TAXUD, delivered a welcome speech. The first meeting of this renewed JTPF is the first stone in the building of the June 2015 Action Plan for a Fair and Efficient Corporate Tax system in the EU. In this context, he shared his views with the members on what should be the role of the JTPF and that the Commission has high expectations from this group.

Experts’ advice is expected by the Commission on how to deal with tax fairness and profit shifting in which transfer pricing is a key driver. Priorities should be given to these aspects in the programme of work and a common and coordinated understanding of how the transfer pricing system can be improved in the EU should be achieved.

The Arm’s Length Principle should remain the reference standard and a robust and technical input is expected to find the appropriate tools and solutions in order to tackle situations where transfer pricing rules are overused and create tax avoidance.

The group represents a wide range of interests and expertise. It reflects a wide spectrum of origins in the EU for Non-Governmental Members (*i.e.* industry sectors, professional consultancies, NGOs and Academia, small and bigger multinationals, etc.) and diversity as well as continuity for the Member States’ representatives.

On this basis, the group should design a work program aimed at fostering synergies and bring dynamics to create a stronger transfer pricing system, also enabling to create a good economic environment.

7. DISCUSSION ON THE 2015-2017 WORK PROGRAMME

After a brief introduction by the Chair, who insisted on its importance and the need to set up priorities, the Secretariat gave first a short presentation of the proposed Work Programme for 2015-2019 (doc JTPF/005/2015/EN). The work programme follows immediately the 2015 Action Plan and the announced action of improving the

of "conflict of interest") were discussed in particular. They gave rise to exhaustive and thorough explanations by the Commission services.

⁵ Final text of Article 7 – “Admission of third parties”: “*In particular, representatives of candidate countries and from the OECD and United Nations Secretariat may be invited as observers.*”

transfer pricing framework within the European Union. The experts of the JTPF have a role to play in the development of effective and operational solutions and tools to achieve this goal.

Some Members made presentations on respectively Pan-European comparables and the Value Chain analysis, economic valuation applied to transfer pricing within the EU and practical issues linked to the implementation of the Profit Split Method in the Single Market. All presentations were focused on identifying specific EU relevant and practical issues and, accordingly, practical approaches and recommendations to be developed. A Member State representative made a presentation on CBCR and specific issues to be addressed as part of their incorporation into domestic law and effective implementation.

The Work Programme was positively received by the JTPF. The focus and request from the members were more on keeping some flexibility, ensuring consistency and defining priorities, planned deliverables and outputs bringing added value for both, Member States and enterprises, as well as efficiency for tax administrations. In this respect, emphasis was laid on two key aspects for the Member States in the current context: first, the need to target more than in the past solutions which make it easier for tax administrations to tax profit where they are created and second, take into consideration Tax Administrations' resource capacities when assigning priorities in the Programme.

Further to questions from the Member States' representatives, Tom Neale indicated that the future work programme would remain flexible and open for any future agreed item that the group might wish to include, particularly in light of developments of the BEPS work. The Chair insisted in turn on the importance of the OECD framework and on targeting practical solutions, effectively working in the Single Market.

The Chair finally summarised the items identified by JTPF members as most relevant for the current mandate of the Forum and the assigned priorities as reflected in the order below:

- Work on practical issues arising from country-by-country reporting ("CBCR") and transfer pricing documentation (doc JTPF/005/2015/EN, sections 3.2.1 and 3.2.2);
- Use and improvement of comparable data and comparability methods in the EU (doc JTPF/005/2015/EN, section 2.2);
- Economic valuation methods applied to transfer pricing in the EU (doc JTPF/005/2015/EN, section 2.4);
- Stocktaking review and assessment of the state of play of Multilateral controls in the EU in the area of transfer pricing (doc JTPF/005/2015/EN, section 3.3.1);
- Assessment of practical issues linked to the use of Profit Split within the EU, once the OECD conclusions will be available in the context of the BEPS project (doc JTPF/005/2015/EN, section 2.3);
- Internal Monitoring and follow up of the functioning of Dispute Resolution and APAs in transfer pricing (doc JTPF/005/2015/EN, section 3.4).

On the other hand, performing further works on Cost Contribution Arrangements (CCAs) and Financial transactions were not considered as a priority.

Member States stated that they want to coordinate on the implementation of the OECD conclusions on TP documentation (CBCR, Masterfile, local file) and related practical issues. In terms of organisation of work, a questionnaire will be launched as soon as possible by the Secretariat regarding the OECD's work on CBCR and sent to Member States. Member States asked the Secretariat to make arrangements for them to meet after the summer break to discuss the outcome of the questionnaire and areas of coordination. The Secretariat agreed to organise such a meeting for Member States but stressed that discussions should be restricted to possible implementation of the OECD's CBCR. The Secretariat stressed that the Commission is currently preparing an assessment of possible wider requirements (including for example possible public disclosure) and is waiting for the results of its current public consultation on this issue.

In parallel, the Non-Governmental Members will collect identified practical issues related to the implementation of the OECD's CBCR and to present conclusions as well as preliminary recommendations in the course of 2016.

The Secretariat will work on a scoping paper on comparable data and Comparability in the EU and make a preliminary assessment of the state of play in Multilateral Controls in the field of transfer pricing, both to be presented and discussed during the October 2015 JTPF meeting. A sub-group will be established to work on comparable data and Comparability in the EU. The other subjects will be dealt with in the course of 2016.

8. OTHERS:

The Chair informed the members that, due to lack of time, Item 7 in the Agenda dealing with Arbitration Convention and APA statistics for 2014 would be postponed and examined during the next JTPF meeting. The Secretariat informed the JTPF members that a question from Member States on exchange of information in the area of transfer pricing via the Commissions secure CCN system would be handled in a written procedure between the Member States' representatives.

The Chair thanked the participants and closed the meeting after having announced the date of the next meeting: 22 October 2015 (tbc).