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EU JOINT TRANSFER PRICING FORUM

2007-2008 JTPF WORK PROGRAMME

Meeting of Tuesday 23 October 2007

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Work programme of JTPF for 2007-2008 Mandate

Having consulted widely and debated this issue, the JTPF at the first meeting of its new mandate decided that the following topics will form the basis of its work programme for 2007-2008.

- (1) Monitoring of previously developed Codes of Conduct on the effective implementation of the Arbitration Convention and transfer pricing documentation in the EU, respectively, and Guidelines on APAs in the EU.

Monitoring will be conducted with the intent of establishing to what extent the previous work of the JTPF is being implemented to evaluate its effectiveness and to consider how improvements might be made.

- (2) Further improving the functioning of Arbitration Convention:

Several areas were identified where a common view of the interpretation of the AC would be helpful. Areas were also identified where, with the knowledge gained since the AC entered into force in 1995 practical issues could usefully be addressed. The topics for work specifically identified were:

- Interest charged/credited by tax administrations when a case is dealt with under the AC.
- The inter-action of the AC and domestic litigation.
- Triangular cases under the AC (and also under a treaty MAP).
- Thin capitalization cases.
- Areas to improve the functioning of the AC (for instance, to develop rules about the deadline for the setting-up of the Advisory Commission and to examine the criteria for an independent person).

It was envisaged that if more areas come to light during the work then these should be added to this part of the work programme.

- (3) Group services (Management and HQ expenses, central services, shareholder costs, stewardship expenses etc)

The JTPF acknowledged that inter-company services are a particularly difficult area for taxpayers and tax administrations alike. With a view to developing approaches to ensure that tax administrations' treatment of inter-company service fees and charges does not result in double taxation or excessive compliance costs, the JTPF will consider in particular:

- whether costs incurred by a MNE should be deductible somewhere within the MNE;
- the standard of evidence appropriate;
- a common approach to evidence for cases in a MAP;
- the appropriate re-charges for inter-company services.

(4) Small and Medium sized Enterprises

The JTPF noted that there was considerable interest in this topic and that the particular problems faced by SMEs needed to be identified to see if any solutions could be developed to ensure the better functioning of the internal market. A balance would need to be struck between removing disproportionate burdens on smaller businesses while not giving them an inappropriate competitive advantage over larger ones. To develop this topic, Business members in particular would consult widely with SMEs. If possible, the Commission would invite representatives of SMEs to present to the JTPF.

(5) Cost Contribution Arrangements

While noting that rules on CCAs were included in the OECD transfer pricing guidelines, and without wishing to duplicate or interfere with OECD work in this area, the JTPF intends to explore the possible scope and degree to which a common approach to CCAs could be developed within the EU.

It was agreed to keep the following topics on the reserve list in case time was available for dealing with these issues: alternative dispute resolution and risk assessment.

It was agreed that the JTPF would analyse and draw on practical experience when dealing with the above-mentioned items of its work programme.

The JTPF considers that item one should be a standard item at each meeting. Work on item three could begin before work on item two had finished. Therefore, the JTPF intends to start discussing item three no later than its third meeting under the new mandate (said meeting likely to be February 2008) on the basis of preparatory work done in advance.