



## EUROPEAN COMMISSION

DIRECTORATE-GENERAL  
TAXATION AND CUSTOMS UNION  
Direct taxation, Tax Coordination, Economic Analysis and Evaluation  
**Direct Tax Policy and Cooperation**

JTPF/005/2017/EN

Brussels, 15 March 2017

### **Summary Record**

49<sup>th</sup> Meeting of the **EU Joint Transfer Pricing Forum (JTPF)** [E00951]  
9 March 2017, Brussels (BE)

#### **1. Approval of the agenda and of the minutes of previous meeting**

The Agenda (doc. JTPF/001/2017/EN) was adopted. The Summary Record of the October 2016 meeting (doc. JTPF/004/2016/EN) was adopted under written procedure.

#### **2. Nature of the meeting**

In accordance with the Commission Decision of 26 January 2015 setting up the "EU Joint Transfer Pricing Forum" expert group<sup>1</sup> and the Rules of Procedure of the JTPF<sup>2</sup>, the meeting was non-public. Its mandate started on 1 April 2015 and will end on 30 March 2019. The meeting was a further step in completing the JTPF programme of work 2015 – 2019.<sup>3</sup>

Main objective of the meeting was to discuss the report on the use of economic valuation techniques in transfer pricing (item 2.4 JTPF Programme of Work).

#### **3. List of points discussed**

Agenda item 1 (Introduction) and 2 (Adoption of the Agenda):

See section 1 above

Agenda item 3 (Documents adopted under written procedure)

The JTPF Report on the Use of Comparables in the EU (doc. JTPF/007/FINAL/2016/EN) was adopted with slight modifications (item 2.2 of the JTPF Programme of Work). The following statements were made:

- Eurodad: The representative of Eurodad informed that her organisation is not able to endorse the report. Eurodad has an overall concern that the arm's length principle is unsuitable as the basis for taxation of multinational corporations, but finds that the report constitutes a further watering down of the principle, including through increased acceptance of internal comparables, and the assumption that a

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<sup>1</sup> OJ, C28 of 28.1.2015

<sup>2</sup> doc. JTPF/007/FINAL/2015/EN available on the JTPF website

[http://ec.europa.eu/taxation\\_customs/business/company-tax/transfer-pricing-eu-context/joint-transfer-pricing-forum\\_en](http://ec.europa.eu/taxation_customs/business/company-tax/transfer-pricing-eu-context/joint-transfer-pricing-forum_en)

<sup>3</sup> doc. JTPF/005/FINAL/2015/EN available on the JTPF website

[http://ec.europa.eu/taxation\\_customs/business/company-tax/transfer-pricing-eu-context/joint-transfer-pricing-forum\\_en](http://ec.europa.eu/taxation_customs/business/company-tax/transfer-pricing-eu-context/joint-transfer-pricing-forum_en)

company can be assumed as being independent if no shareholder has an ownership over 50 %."

- NGMs: With respect to recommendation 6d, the Vice Chair of the Non-Governmental-Members ('NGM') Group stressed that several of the NGM's did not agree to the recommendation in the last sentence which was believed to put a strong requirement on the need to justify a certain point in an arm's length range asserted if the price originally reported was not within the range. The recommendation to consider the median as a reference point should not result in adjustments to the median becoming the general rule in practice. Following the rationale established in recommendation 6c) that every point situated in the range should be considered arm's length, the nearest point in the newly asserted arm's length range was considered a more appropriate reference point.

#### Agenda Item 4 (Information by the Commission Services on current ongoing issues)

The Commission Services gave an update on current developments mainly:

- State of play as regards the initiative on Double Tax Dispute Resolution Mechanisms (COM(2016)686).
- Information about the adoption of ATAD II and EU List of non-cooperative jurisdictions (21/2/2017 Council Adoption).
- Update on the initiative of DG FISMA on public country by country reporting.
- Information about two important VAT proposals launched in November and a questionnaire launched just recently on administrative cooperation in the VAT area which contains in section 3.2 a question on joint audits in the area of direct taxation.
- Information about the consultation and subsequent Commission initiative on disincentives for advisors and intermediaries for potentially aggressive tax planning schemes and the public consultation for whistle blowers protection.
- The state of play as regards the renewal of the mandate of the Non Governmental members of the JTPF.

#### Agenda Item 5 (Discussion on use of economic valuation techniques in transfer pricing)

The draft report "Use of Economic Valuation Techniques in Transfer Pricing" (doc. JTPF/003/2017/EN) was extensively discussed (excluding the Annexes).

The general approach regarding the report has been agreed. It was suggested to clarify the scope in more detail and to add some additional technical details to make the document a self-standing document, e.g. without having to read the Deloitte study. Furthermore, it was highlighted that the subject and focus of the report is on the practical application of the economic valuation techniques for transfer pricing purposes. Unnecessary repetitions of what is already said in the OECD Transfer Pricing Guidelines should be avoided and instead references be made.

It was stressed that the idea of the report is not to explain valuation techniques and also not to create new concepts but rather to provide a common understanding and develop recommendations on how to use the valuation techniques in the specific context of transfer pricing. The report should facilitate creating a 'bridge' between these techniques and the existing transfer pricing methods as well as between the experts in both fields. It should also enable risk management in cases where these methods are to be used.

Especially two aspects triggered a substantial discussion: whether there is a need for a "sanity check" in such valuation exercises for intangibles in TP and how to apply the two-

sided approach (i.e. valuing at the level of both parties and determining a price within the range of agreement). The respective recommendations will be redrafted to take the outcome of the discussion into account. A further key aspect was the question of what documentation will have to be provided when using these techniques and how an appropriate balance between the need for information and the administrative burden can be achieved.

The sections on building capacity and legislative proposal implications were not considered as necessary for the report and were agreed to be deleted.

#### Agenda Item 6 (Statistics)

A constructive and preliminary discussion took place with respect to the statistics on MAPs under the Arbitration Convention for 2015 (doc. JTPF/014/2016/EN) and on APAs for 2015 (doc. JTPF/015/2016/EN).

It was suggested that the developments of cases in dispute resolution and advance pricing arrangements in the EU would warrant a more detailed review in the future. Also revisiting the structure and contents of the respective statistics was regarded as important in the context of the potential implementation of the proposed Directive on Double Tax Dispute Resolution Mechanisms recently proposed by the Commission and currently discussed at the Council's level.

#### Agenda Item 7: Any other business

Next meeting, see section 6 below.

### **4. Conclusions/recommendations/opinions**

Significant progress was made on the report on use of economic valuation methods in TP which allows sticking to the aim of finalising it at the next JTPF meeting. Some points of the report on the use of comparables in the EU were clarified and the report adopted. There was time left for discussing APAs and MAPs/Dispute resolution statistics.

### **5. Next steps**

The final report on the use of Comparables in the EU will be published on the JTPF website

The report on the use of economic valuation techniques for transfer pricing in the EU will be redrafted by the Secretariat in light of the conclusions reached at the meeting. Aspects requiring technical input from valuation experts will be drafted with the support of a small group of JTPF experts having volunteered. The objective is to finalise this drafting exercise by mid April 2017 and circulate the second draft report so that it can be discussed and possibly approved during the meeting on 22 June 2017.

### **6. Next meeting**

Subject to the availability of rooms, the date for the next meeting (22 June 2017) and the pre-meetings (21 June 2017) was confirmed.

### **7. List of participants**

All MS were present except EL and LT. From the 18 Non-Governmental Members, one representative of a professional organisation (TPCA) was absent. The representative from

DELOITTE could only participate in the NGM pre-meeting. OECD and UN were not represented.

Brussels 15 March 2017

Hartmut Foerster and Morgan Guillou