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EU JOINT TRANSFER PRICING FORUM

INTRODUCTION TO

MULTILATERAL/SIMULTANEOUS/JOINT CONTROLS

Meeting of 8 March 2018

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This is a DG TAXUD working paper prepared for discussion purposes. It does not represent a formal Commission or Commission services position or policy.

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The JTPF Programme of Work 2015-2019¹ refers to multilateral controls. It mentions that it would be useful for the JTPF to take up work in developing and improving existing legal frameworks and practical guidance on bi- or multilateral TP controls. In this context, the JTPF will **collect guidance** already available and **invite MS which already undertake joint or simultaneous audits to provide the Forum with their experiences**. A link is also drawn to audits in the field of VAT.

In response to this invitation, the JTPF discussed the usefulness of joint audits from a transfer pricing standpoint during its meeting of 22 October 2015². Member States agreed on the possible benefit and potential of joint audits but found that joint audit procedures may not only involve benefits but also give rise to problems. The non-governmental members (NGMs) concurred that joint audits are one tool among others but stressed the positive aspects of joint audits in transfer pricing compared to what can be achieved by simultaneous controls³.

At the meeting of 18 February 2016, experts from the Netherlands and Germany gave a presentation about a joint audit pilot project which took place in the two countries⁴. The members of the JTPF raised questions on the following matters⁵:

- The potential of reducing administrative burden for the taxpayer;
- The potential of avoiding Mutual Agreement Procedures ("MAP") in the EU or at least shortening their duration;
- The need to translate the result into the legal system of the MSs and how to ensure legal certainty for the MS;
- The combination of a joint audit with a subsequent Advance Pricing Arrangement ('APA') and similarities/differences to an APA with a rollback;
- How to select appropriate cases;
- How to deal with disputes between the auditors.

The discussion was found to be a good basis for moving forward on this subject in order to resolve identified practical problems. It was concluded that at some stage, the topic will be brought back for discussion and it will be decided how the JTPF can contribute to the future development of joint audits in the context of transfer pricing⁶.

The recent report by the Commission on the application of Council Directive (EU) 2011/16/EU on administrative cooperation in the field of direct taxation⁷ finds that, when compared with cross-border activity in Europe or the total number of audits by tax administrations, administrative cooperation in cross-border situations in the EU is limited. Member States should increase the use of tools for administrative cooperation other than the exchange of information, such as the presence in administrative offices and the participation in administrative enquiries, simultaneous controls, etc. In addition, it is mentioned that the

¹ JTPF/005/FINAL/2015/EN.

² JTPF/014/2015/EN.

³ JTPF/017/2015/EN.

⁴ JTPF/017/2015/EN.

⁵ JTPF/004/2016/EN.

⁶ Ibid.

⁷ Report from the Commission to the European Parliament and the Council on the application of Council Directive (EU) 2011/16/EU on administrative cooperation in the field of direct taxation, COM(2017) 781 final, 18.12.2017, {SWD(2017) 462 final}.

Commission will consider proposing joint audits in the field of direct taxation (as it is currently proposed for administrative cooperation in the field of VAT⁸), together with a common methodology.

What is more, the extensive guarantees that the Directive on Dispute Resolution Mechanisms (DRM)⁹ gives to the taxpayer are likely to increase the number of cases where double taxation is timely relieved. On this premise, it would be worth that Member States re-considered their position in relation to joint audits, given that the alternative of multilateral controls does not ensure an outcome where double taxation is relieved.

The discussion paper on a multilateral approach to transfer pricing audits within the EU (see Annex) is a basis for initiating this discussion. To bring this debate forward in an effective way, it would be useful if the members of the JTPF contributed their views on the following questions:

- Do the members of the JTPF see a good reason for working on best practices for transfer pricing simultaneous controls within the EU?
- Which specific issues related to the multilateral approach to transfer pricing audits would the members of the JTPF consider useful to work on?
- How would they consider extending this work to cover joint audits? In fact, the key objectives set out in the discussion paper are better served by joint audits: no double taxation; enhanced transparency; and guarantees and legal certainty for the taxpayer.
- There is no reference to joint audits in EU legislation. Yet, the fact that the Directive on Administrative Cooperation (DAC)¹⁰ includes a provision on simultaneous controls (Article 12) does not exclude, as a matter of principle, the possibility of taking initiative in the field of joint audits based on domestic law. Do members agree or consider that the lack of specific mention of joint audits in EU legislation hampers this type of cooperation? Is there need for specific EU legislative action on that point?
- Do the members see any primary and fundamental issues to consider and/or concerns to resolve in advance, i.e. prior to embarking on a discussion of best practices in simultaneous controls and joint audits?
- Do the members see the need for considering whether the outcome of a simultaneous control or joint audit can be accompanied by a bi- or multilateral Advance Pricing Arrangement (APA)?

⁸ Amended Proposal for a Council Regulation amending Regulation (EU) No 904/2010 as regards measures to strengthen administrative cooperation in the field of value added tax, COM(2017) 706 final, 30.11.2017, {SWD(2017) 428 final} - {SWD(2017) 429 final}.

⁹ Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union, OJ L 265, 14.10.2017, p. 1–14.

¹⁰ Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC, OJ L 64, 11.3.2011, p. 1–12.