



European Commission  
Taxation and Customs Union

# *EU Joint Transfer Pricing Forum (JTPF)*

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## ***Issues for discussion on SMEs***

*Pablo Luján Gil  
Unit D1  
Company Tax Initiatives*



## *Issues*

**A. Size indicators** used for TP purposes

**B. Documentation requirements** in relation to size

- Conceptual description
- Current situation in the Member States



## ***A. Size indicators used for TP purposes***

- 1) Company-size indicators
- 2) Transaction-size indicators
- 3) Combination of company-size and transaction-size indicators
- 4) No formal indicators



## A. Size indicators used for TP purposes

### 1) Company-size indicators (EC SME definition)

- Use of **all or some** of the indicators and the **same or different** thresholds described in the EC Recommendation 2003/361 concerning the definition of micro, small and medium-sized enterprises (EC SME definition):

Enterprise category	Headcount: Annual Work Unit (AWU)	Annual turnover	or	Annual balance sheet total
Medium-sized	< 250	≤ €50 million	or	≤ €43 million
Small	< 50	≤ €10 million	or	≤ €10 million
Micro	< 10	≤ €2 million	or	≤ €2 million

Article 2 of Commission Recommendation 2003/361/EC

Source: *SME User Guide*



## ***A. Size indicators used for TP purposes***

### 2) Transaction-size indicators

– Use of the amount of the intercompany transactions, ***differentiating or not*** between:

- Cross-border transactions
- Domestic transactions

**And** between:

- Value of goods (tangibles or intangibles)
- Value of services
- Percentage of the capital share
- Value of other transactions



## A. Size indicators used for TP purposes

### 3) Combination of company-size and transaction-size indicators

i. Company-size indicators (EC SME definition) and transaction-size indicators can be used ***cumulatively***, for example:

- Amount of turnover (EC SME definition) **and**
- Value of the transactions

1 indicator

ii. Company-size indicators (EC SME definition) and transaction-size indicators can be used ***alternatively***, for example:

- All indicators and same thresholds (EC SME definition) **or**
- Value of the transactions (independently from the size of the company)

2 indicators



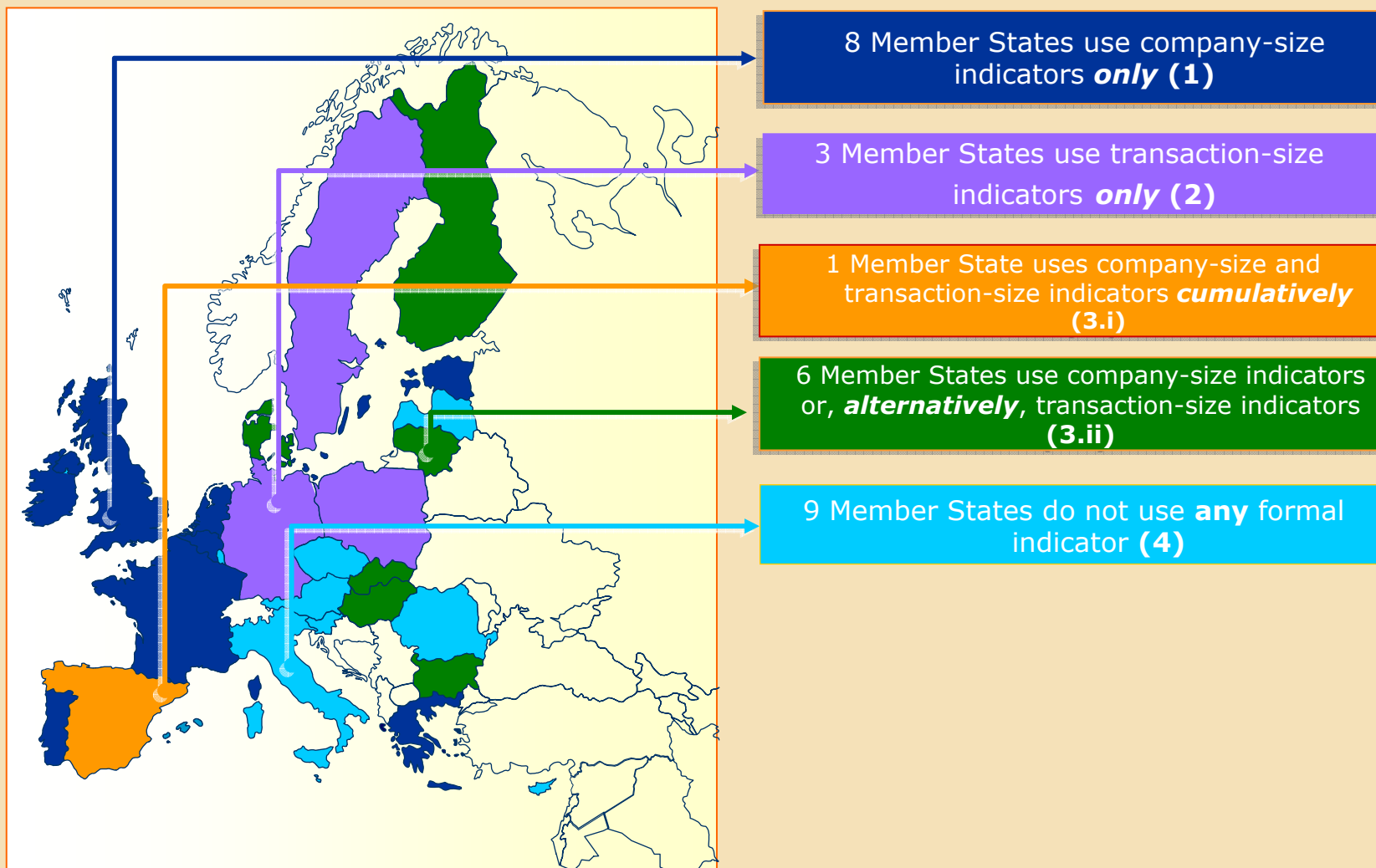
## ***A. Size indicators used for TP purposes***

### 4) No formal indicators

- No consideration of company-size, transaction-size or other indicators for TP purposes.



## Current application of size indicators in the EU







## ***B. Documentation requirements in relation to size***

- Legal obligation:
  - 1) **Exemption**
  - 2) **Reduced** documentation
  
- No legal obligation, but administrative practice provides for a flexible approach for documentation requirements under a tax audit ("facts and circumstance test"):
  - 3) Flexible approach implies **reduced** documentation
  
- No TP rules:
  - 4) No documentation requirements



## ***B. Documentation requirements in relation to size***

- Legal obligation:

### **1) Exemption**

- Full exemption
- Exemption only for micro and small enterprises (not medium enterprises)
- Exemption with certain exceptions, for example:
  - Companies of a particular public interest (company-type)
  - Financial and insurance companies, credit institutions (company-type)
  - Transactions with tax havens (transaction-type)
  - Eligibility
  - Notice from the Tax Authorities to medium sized enterprises



## ***B. Documentation requirements in relation to size***

- Legal obligation:

### **2) Reduced documentation**

- Simplified requirements
- Simplified requirements with certain exceptions, for example:
  - Entities required to prepared financial statements under IFRS rules (company-type)
  - Intangible property (transaction-type)



## ***B. Documentation requirements in relation to size***

- No legal obligation, but administrative practice provides for a flexible approach for documentation requirements under a tax audit (“facts and circumstance test”):
- 3) Flexible approach implies **reduced documentation**
- Less documentation required for SMEs during a tax audit
  - Specific Guidance for SMEs, recommending to maintain certain documentation in case of a tax audit
  - Submission of documentation in possession of the taxpayer and oral justification of the ALP during tax audit



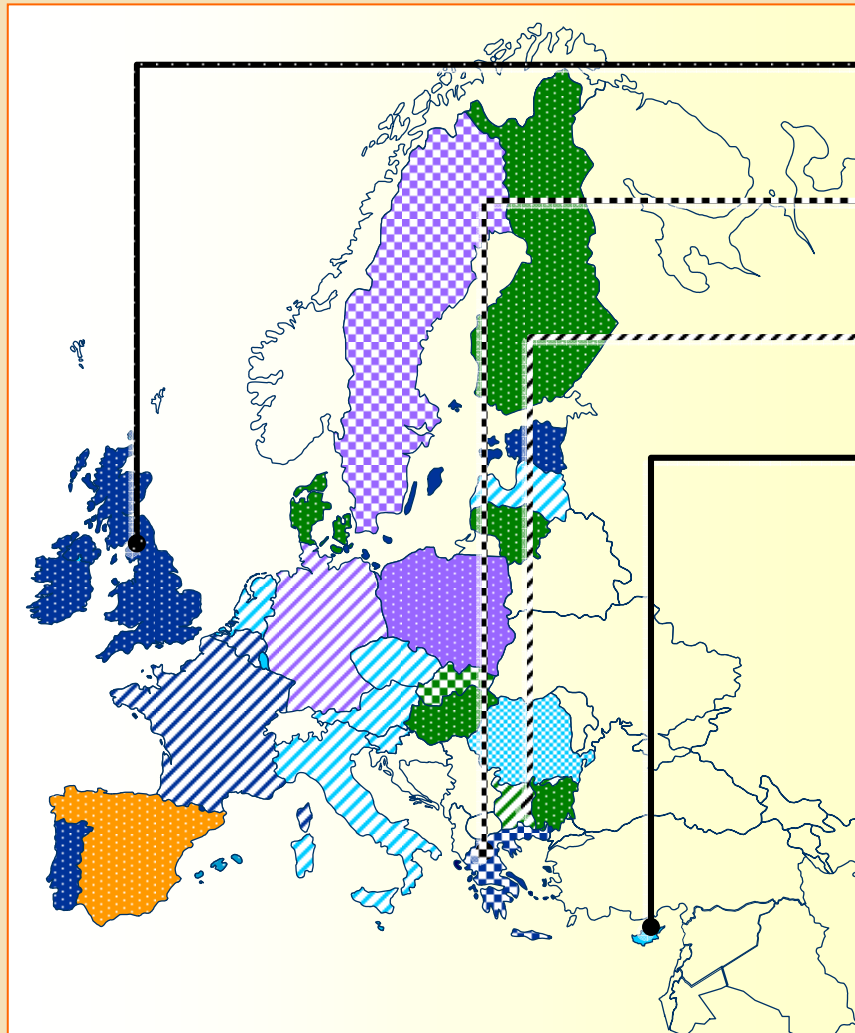
## ***B. Documentation requirements in relation to size***

### 4) No requirements

- No obligation to comply with transfer pricing rules.



## Documentation requirements in relation to size in the EU



**12 Member States exempt from preparing TP documentation (1)**

**8 MS require legally to provide reduced documentation (2)**

**9 MS require reduced documentation for tax audit purposes (3)**

**3 MS do not have any kind of documentation requirements (4)**



## ***Conclusions***

- Conceptual analysis based on the current TP regimes of the EU MS.
- EU MS do not always use size indicators for TP purposes.
- When EU MS use indicators, it is necessary to distinguish between:
  - Company-size indicators (at least one of the indicators in the EC SME definition is always used).
  - Transaction-size indicators (use of different variables).
  - No prevailing method: some EU MS use exclusively company-size indicators; others use exclusively transaction-size indicators; others combine these two types of indicators, cumulatively or alternatively.
- Almost all EU MS require no or less documentation requirements based on size of company or transactions.



***Thank you for your attention!***