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# **EU JOINT TRANSFER PRICING FORUM**

## **Draft Revised Secretariat working document for the EU Joint Transfer Pricing Forum on its work program**

**Meeting of Thursday 10 June 2004**

**Centre de Conférences Albert Borschette  
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**Working Paper**

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## **1. BACKGROUND**

After discussing the paper "Issues for debate" (doc. JTPF 003/2002/EN/FR/DE of 2 August 2002) at the meeting on 3 October 2002, the Forum adopted at its second meeting on 4 December 2002 its two year work program which is annexed to this document (see § 3 to 9 of doc. JTPF 002/2003 EN/FR/DE: "Summary record of the second meeting of the EU Joint Transfer Pricing Forum held in Brussels on 4th December 2002" of 7 March 2003).

The Forum also agreed by consensus that generally two topics should be discussed at each of the Forum's meetings.

Considering the intensive discussions held on the Arbitration Convention and related mutual agreement issues and in spite of holding an additional meeting on 19 June 2003, the Forum was unable to deal with all the issues as initially adopted in its work program. As it was agreed that the work program should be flexible to take into account progress, the initial work programme should therefore be updated and revised.

Taking into account the remaining important issues in the Forum's work programme adopted in 2002 that are still to be discussed, the Commission announced in its Communication to the Council, transmitting the Forum's report on its activities from October 2002 to December 2003, its intention to extend until the end of 2004 the initial period of two years foreseen for the activities of the Forum.

In the light of the overall results and further issues for discussion identified and proposed by the Forum, the Commission may decide to extend the Forum's mandate for a further period of two years i.e. until the end of 2006.

## **2. REVISING AND CONTINUING THE 2002 WORK PROGRAM**

Considering that the discussions on this working document during the meeting of 18 March 2004 revealed that the majority of Members took the view that the Forum should try to complete its work on the issue of documentation requirements by the end of 2004 and, therefore, should not discuss an additional issue until then, the Forum agreed, therefore, by consensus to discuss only documentation requirements and its relevant report to the Commission, at its meetings in June and September 2004 and if necessary in December 2004. (see § 13 to 18 of doc. JTPF/010/2004/EN, draft minutes of the meeting of 18 March 2004 )

## **3. A NEW 2-YEAR MANDATE FOR THE FORUM ?**

As announced in the Commission's Communication (COM 2004) 297 of 23 April 2004 on the work of the EU Joint Transfer Pricing Forum in the field of business taxation from October 2002 to December 2003 and on a proposal for a Code of Conduct for the effective implementation of the Arbitration Convention (90/436/EEC of 23 July 1990), the Commission may decide to extend the Forum's mandate for another period of two years, depending on the overall results of the first term and any further issues for discussion identified and proposed by the Forum.

In addition to the issues carried over from the 2002 work program (i.e. the examination of possible preventive measures to avoid double taxation and the acceptability of transfer prices to tax administrations (including APAs), some of these further issues have already been identified in the Forum's first report and in the business paper "Review of some outstanding issues in connection with the dispute resolution procedure" (doc. JTPF 0020/BACK/2003/EN) and concern:

- Interest charges for late tax payments.
- Penalties levied on transfer pricing adjustments.
- Certain aspects of the interaction of the mutual agreement and arbitration procedure with administrative and judicial appeals.

Further contributions proposing new issues for discussion were received from business (doc.JTPF/011/BACK/2004/EN) and Member States (doc.JTPF/014/BACK/2004/EN).

Taking into account the Forum's remit as well as the work already undertaken, the Secretariat proposes the following working programme in case it were decided to extend the mandate for another two years:

**During the meetings in 2005:**

1. Examination of possible preventive measures to avoid double taxation
2. Acceptability of transfer prices to tax administrations (including APAs)
3. Interest payments

**During the meetings in 2006:**

1. Penalties levied on transfer pricing adjustments
2. Certain aspects of the interaction of the mutual agreement and arbitration procedure with administrative and judicial appeals
3. The influence of accounting systems on transfer pricing

Throughout these two years, once a year an agenda item would be devoted to the monitoring of the implementation of the Code of Conduct on the Arbitration Convention and the monitoring of the ratification process of new EU Member States. This topic could include discussions on certain problems encountered in the implementation process of the Code of conduct and possible refinements hereto.

As agreed in the inaugural meeting of the Forum, each meeting should deal with two major discussion items.

In function of the progress made and as appropriate, the Forum may decide on reporting to the Commission.

<p><b><u>Question:</u> Could the Forum agree on this proposal as a basis for a more detailed working programme for 2005-2006 or do certain issues need to be added/removed ?</b></p>
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