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# **EU JOINT TRANSFER PRICING FORUM**

## **Secretariat note on JTPF monitoring task**

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## 1. INTRODUCTION

During the JTPF meeting of June 2006 the Chair suggested that the meeting of September should be partly dedicated to the question of what the Forum understands by monitoring and what should be included in the monitoring.

As the monitoring is considered by JTPF members as one of the most important issue in its actual and future work programme, this document aims to clarify the expectations of the Forum in this area..

It seems prudent to use the presence of representatives of the business community to request some feedback from their daily experience in transfer pricing. The general aim of the exercise being to give the opportunity to the JTPF to be always dealing with the most significant issues to assure a smooth functioning of the internal market.

## 2. WHAT SHOULD BE MONITORED BY THE JTPF?

### 1. The Arbitration Convention:

One of the aims when the JTPF was set up was a better functioning of the AC to make sure that the elimination of double taxation in Europe could take place or at least be speeded up. Therefore under this topic the JTPF can firstly monitor the implementation of the Code of Conduct and in particular the implementation of the suspension of tax collection and secondly monitor the proper functioning of the AC through collecting general information on the number of pending cases under the AC.

This monitoring has taken place so far by sending questions to the MS and preparing summary tables with the answers.(See JTPF documents: doc.JTPF/019/REV2/2004/EN, doc.JTPF/009/BACK/2006/EN and doc.JTPF/006/BACK/2006/EN).

**Do Forum members agree with the suggestion of updating every year the number of open cases under the AC and collecting information on the way the Code of Conduct is implemented by tax administrations?**

**Do Forum members agree with the need to define common criteria to consider a case as open or as closed in order to avoid discrepancies between Competent Authorities only based on these criteria?**

**Do Forum members agree that while fully respecting MS competence in this field it would be useful to know why cases are still open after 24 months and to distinguish between the cases whether it was delayed in application of art. 7.1 (*where the case has been submitted to a court or tribunal, the term of two years referred to in the first subparagraph shall be computed from the date on which the judgment of the final court of appeal was given*) or 7.4 (*The competent authorities may by mutual agreement and with the agreement of the associated enterprises concerned waive the time limits referred to in paragraph 1*) or another reason (it would probably be helpful to mention the reason).**

**Do Forum members agree to provide the updated information by 1<sup>st</sup> March of each year?**

**Do Forum members agree that the conclusions of the JTPF on the basis of this information provided might eventually lead to an improvement/amendment of the Code of Conduct (as recommended by the Code itself)?**

Other interesting information would be the number of taxpayers' requests for arbitration which were refused because the taxpayer reassessment included a serious penalty. Indeed under the Arbitration Convention each MS has provided its own definition of what was considered as a serious penalty and taxpayers argue generally that a common definition should be found. Therefore it could be interesting to collect figures in order for the JTPF to assess the need to consider this issue in its next mandate.

**Do MS representatives members agree to send statistical information on a yearly basis?**

## **2. Code of Conduct on TP documentation**

The monitoring of the implementation of the Code of Conduct on transfer pricing for associated enterprises in the EU is already mentioned in the Council resolution itself under point 8: *"in order to ensure the even and effective application of this Code, Member States should report annually to the Commission on any measure they have taken further to this Code and its practical functioning"*.

Monitoring this issue would provide the opportunity of the JTPF examining whether the Code of Conduct should be improved/amended and some feedback from Business would facilitate this exercise.

**As the Code was adopted in June 2006, do Forum members agree that first information should be sent to the Secretariat by the end of November 2007?**

**Do Business members agree to send feedback on a yearly basis?**

## **3. Monitoring APAs**

The monitoring of this issue could consist of examining whether each MS provides the opportunity to the taxpayer to apply for an APA and in collecting statistical information about the number of APAs. Some feedback provided by Business members should help the JTPF to assess the need to update, clarify or amend the document.

**Do Business members agree to send feedback on a yearly basis to the JTPF?**

**Do MS representatives members agree to send statistical information on a yearly basis?**

## **4. Ratification process of the accession convention to the AC**

We can consider this monitoring as carried out on the basis of the answers collected until June 2006 and the availability of updated information on the Council website. However the JTPF

could briefly examine again this point in December in order to urge MS not having ratified it yet to do it.

#### **5. Penalties and interest**

These two topics are still examined by the JTPF and it is probably difficult to decide now about what should be monitored. However it could be interesting for the Forum to collect some statistics about the number of TP audits and tax reassessments involving a penalty.

**Do MS representatives agree to send statistical information on a yearly basis?**