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EU JOINT TRANSFER PRICING FORUM

SUMMARY OF MEMBER STATES REPLIES TO THE APA QUESTIONNAIRE

Meeting of Tuesday 20 September 2005

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Background Document

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Q1) How many bi- and multilateral APAs have been signed between your administration and other Member States? How many APAs have been signed between your administration and countries outside the EU?

Numbers of bi- and multilateral APAs with Member States : 14

Numbers of bi and multilateral APAs with non Member States: 38

Q2) How many unilateral APAs have been signed between your administration and taxpayers without the involvement of another country?

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Q3) How many signed APAs have included elements of retrospection or rollback? Were previously made tax returns changed as a result or agreed as submitted by the taxpayer?

- Experience varied. Some countries, even if they allow APAs, do not accept rollback. However, where a full APA procedure existed, between one quarter and two thirds of concluded APAs contained elements of rollback.

Q4) Have you found any specific problems which in practice have prevented the completion of an APA or dissuaded taxpayers from applying for an APA in the first place?

- Negotiation between CAs takes time
- Costs can be considerable
- If there is no legal framework, it can be difficult to provide certainty even if APA can be negotiated under a Treaty
- Lack of expertise or experience

Q5) In your experience, at which stage of the process or for what reason does any failure in the process occur? For example: at the pre-filing stage? During negotiations between Competent Authorities? Because the taxpayer withdraws his request during the procedure? Because of a request for rollback? Because your administration is unable to reach an agreed position with the taxpayer before even entering into negotiations between Competent Authorities? Or for what other reasons?

- In bi- or multilateral APAs, very few failures have occurred once the pre-filing stage has passed.

- Some failures have occurred in the evaluation stage where taxpayer and tax administration have been unable to agree a position. Other failures have occurred at in the CA negotiation stage.
- For unilateral APAs, it is more common that no agreement at all is reached.

Q6) How does your administration organise the way an APA procedure is conducted? For instance, some MS have a system where an auditor is assigned to the case to formulate a position with the taxpayer and then the APA is passed to the competent authority function which is held centrally. How does your MS organise the process?

- Most tax administrations which have an APA programme have a distinct APA unit which works with the CA. The specialist APA unit can call upon the transfer pricing unit or local auditors. In some tax administrations, the CA does everything. In all cases, the CA is responsible for negotiations with other tax administrations and exchange of information. For unilateral APAs, the CA is not involved; sometimes these are dealt with wholly by local Inspectors, sometimes by transfer pricing specialists.
- Some tax administrations agree a position with the taxpayer before the CA is involved. But in most tax administrations the CA is involved through the process.

Q7) Can you supply any published guidance or rules which you have on APAs?

- Where guidance has been made available it will be distributed separately.

Q8) Do you have specific rules about how long an APA can be in existence for? What has been the average duration of your APAs?

- Some tax administrations permit three year APAs, others permit 5 year APAs. Most do not have a maximum period.
- The average duration of APA has been between three and five years.

Q9) What is the average length of time taken to conclude an APA negotiation? Please distinguish, if relevant, the duration for bilateral/multilateral APAs and unilateral APAs.

- Bi or multilateral APAs have taken from 12 months to three years to negotiate. Unilateral APAs have taken on from 3 months to 18 months. Time taken increases when negotiations between CAs has to take place and also due to the complexity of an application

Q10) Do you have any further comments on the way in which you conduct APA procedures which will help inform the Forum of best practice?

- Tax administrations stressed the importance of the pre-filing meeting and early communication between CAs
- Tax administrations stressed the importance of having a separately, distinct role for the CA
- One tax administration said that while it was not necessary for all MS to have the same internal APA organisation, important that all international procedures were clear, quick and efficient, that any requirements in tax administrations were compatible with the requirements in other tax administrations and that APA units were adequately staffed.
- On a more technical note, one tax administration said that it was good practice for a APA position paper from a tax administrations to explain why they had rejected transfer pricing methodologies as well as to explain why they had chosen one particular methodology.

Q11) How many APAs have been a) renewed or b) not renewed (for what reason?) at the end of their normal duration? What is the length of the renewal process?

- All tax administrations with APA procedures had received renewal applications or offered the possibility of renewals.
- Renewals were possible where the facts remained substantially unchanged and were therefore expected to take much less time to negotiate.

Q12) How many APAs have been terminated before their term because the taxpayer informed the administration that the underlying conditions have been changed?

- This is an extremely rare occurrence; where it has happened, it has tended to concern only unilateral APAs.