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# **EU JOINT TRANSFER PRICING FORUM**

## **Draft Report on Improving the Functioning of the Arbitration Convention**

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### **Note from the Secretariat**

This Draft Report was prepared following the discussions at the November 2013 and March 2014 JTPF meetings on the Discussion Paper on improving the functioning of the AC (JTPF/011/REV2/2013/EN).

The draft report follows the structure of the Arbitration Convention, i.e. it addresses the issues in the order they appear in the Arbitration Convention itself. The relevant items for discussion are also listed (in *italics*, highlighted in yellow) as numbered in document JTPF/011/REV2/2013/EN.

The Draft Report forms the basis for a revised Code of Conduct for the effective implementation of the Arbitration Convention. A first draft of the revised Code of Conduct is attached in Annex 1 to this Draft Report.

Please note that track changes in the text boxes indicate suggested amendments to existing sections of the current Code of Conduct. Graphic markers (highlights in yellow and blue) are used in the text for ease of reference: items highlighted in yellow will be removed from the Final Report; items highlighted in blue may have to be updated in the Final Report.

## I. Introduction

1. The EU Joint Transfer Pricing Forum (JTPF) has carried out a comprehensive monitoring exercise of the practical functioning of Convention 90/436/EEC on the elimination of double taxation in connection with the adjustment of profits of associated enterprises<sup>1</sup> (Arbitration Convention, AC) and the revised Code of Conduct for the effective implementation of the Arbitration Convention (CoC)<sup>2</sup>. In this process the JTPF has drawn on experiences of Member States (MS) and non-government members (NGM) of the Forum, as well as on that of members of advisory commissions under the AC.
2. The monitoring has demonstrated that the AC and its related CoC provide for a well-balanced approach to dispute resolution. Guidance is available on important aspects, while at the same time a certain degree of flexibility is maintained as regards the allocation of powers to parties involved, in view of the administrative burden the procedure creates. Nevertheless, it was found that certain aspects of the functioning of the AC and the CoC could be improved. This Draft Report addresses relevant issues identified in the monitoring process by way of proposing amendments to the CoC.

## II. JTPF analysis and recommendations

### 1. Scope of the Convention (Chapter I, Articles 1 and 2 of the AC)

#### 1.1 Application of the AC in the absence of an actual payment of tax *(Discussion paper - p. 1)*

3. Article 6 (1) 2<sup>nd</sup> sentence AC provides that a “case must be presented within three years of the first notification of the action which results or is likely to result in double taxation within the meaning of Article 1”. The question arises whether double taxation occurs and a case is eligible to MAP under the AC only once a cash payment is due. This is pertinent, for example, in cases where the entity subject to the transfer pricing adjustment has losses carried forward against which an upward adjustment could be offset and therefore an actual tax payment is not due.

#### **JTPF recommendation (new point 1 in CoC)**

“An action which results or is likely to result in double taxation within the meaning of Article 1 of the Arbitration Convention does not require that the transfer pricing adjustment within the meaning of Article 4 of the Convention leads to an actual payment of tax. Therefore cases where the entity subject to the adjustment within the meaning of Article 4 has losses carried forward against which an upward adjustment could be offset are within the scope of the Arbitration Convention. The starting point of the three-year period is determined by Member States irrespective of whether an actual payment of tax took place.”

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<sup>1</sup> OJ L 225, 20.8.1990, p.10.

<sup>2</sup> OJ C 322, 30.12.2009, p.1.

## 1.2 Application of the AC dependent on MAP under DTC *(Discussion paper - p. 2)*

4. The AC applies to issues of double taxation which arise from profit adjustments between associated enterprises in the meaning of Article 1 (1) and (3) and Article 4 (1) AC and from profit adjustments to permanent establishments (PE) in the meaning of Article 1 (2) and (3) and Article 4 (2) AC. The JTPF discussed cases where the application of the AC itself and the way it is applied depends on issues not covered by the AC. For example: MS have different views on whether a PE in the meaning of Article 5 of the OECD Model Tax Convention (OECD MTC) exists and, if so, how much profit should be allocated to it by virtue of Article 7 OECD MTC.
5. The issue of whether a PE exists (Article 5 OECD MTC) is indeed not covered by the AC. Disputes on this issue may therefore only be solved by other means, e.g. Mutual Agreement Procedure under an applicable Double Taxation Convention. However, once the existence of a PE is established, the AC should be applicable to solve an eventual dispute on the amount of profit attributable to this PE.

### **JTPF recommendation (new point 2 in CoC):**

“If access to the Arbitration Convention or the treatment of cases under the Arbitration Convention depends directly on the result of a mutual agreement procedure under an applicable Double Taxation Convention, care should be taken to ensure that the deadline under Article 6(1) of the Arbitration Convention does not expire. The enterprise may combine the requests for a mutual agreement procedure under the Arbitration Convention and the applicable Double Taxation Convention. The enterprise should receive the benefit of the doubt in cases where it is not entirely clear which procedure is applicable. Competent authorities shall consider requests for a mutual agreement procedure under the Double Taxation Convention with priority and commence the procedure under the Arbitration Convention as soon as possible.”

## 1.3 Remedies against denial of access to the AC *(Discussion paper - p. 2)*

6. A Member State will not grant access to the AC if the case presented by the enterprise is not covered by the scope of the AC or excluded from the AC under Article 8 AC. The AC itself does not provide remedies against denial of access. However, some MS already have domestic legal remedies for determining whether a denial of access to the AC by their administrative bodies is justified (see MS TP profiles).

**Information from the Secretariat:** 16 MS provided information on whether an appeal against the denial of access is possible in their State (see Section 2 of the compilation of comments, doc. JTPF/005/2014/EN). This is possible in 6 MS, 1 MS foresees an administrative procedure against denial of access and in 9 MS domestic legal remedies are not available. The Secretariat suggests the following recommendation:

### **JTPF recommendation (new point 5 in CoC)**

“Member States should provide domestic legal remedies for determining whether the denial of access to the Arbitration Convention by their administrative bodies is justified.”

## 2. General provisions (Chapter II, Articles 3 to 14 AC)

### 2.1. Informing enterprises of their rights under the AC (Discussion paper - p. 2)

7. Drawing on Best Practice No. 9 of the OECD MEMAP the JTPF recommends informing concerned enterprises of their rights under the AC in case of an adjustment.

#### JTPF recommendation (new point 7.1 a) in CoC

“The onus for making a timely request in order to preserve access to the mutual agreement procedure rests with the enterprise and enterprises should take all reasonable steps to ensure that time limits do not expire. However, a tax administration making an adjustment should inform the enterprise of its rights under the Arbitration Convention, including about any time limits in the Convention for initiating a mutual agreement procedure.”

Such written notice or advice could be issued at the time a proposed adjustment is formally notified to the enterprise and could include general guidance on the availability of a mutual agreement procedure and how to go about protecting access to this mechanism. Some tax administrations have implemented the practice of advising enterprises of both their domestic and Convention rights and obligations at the time of the proposed adjustment, with successful results and positive feedback.

### 2.2. Independence of CA from audit (Discussion paper - p. 7)

8. In line with Best Practice No. 23 of the OECD MEMAP the JTPF recommends that in order to enhance the independence of a subsequent review of a case by a competent authority (CA), CAs maintain a level of autonomy from the audit function of a tax administration.

#### JTPF recommendation (new point 7.1 c) in CoC

“In order to ensure the independence of any subsequent review of a case by a competent authority, competent authorities should maintain – as far as possible – a degree of autonomy from the audit function of the tax administration. The guiding principle should be that the competent authority’s function is to ensure a fair and appropriate application of the Arbitration Convention, not to seek to uphold all adjustments proposed by the tax authorities of its Member State.”

### 2.3. No waiver of rights for audit settlements or blocking MAP access through unilateral APAs (Discussion paper - p. 8)

9. Drawing on Best Practice No. 19 of the OECD MEMAP the JTPF recommends that blocking MAP access via audit settlements or unilateral APAs should be avoided.

#### JTPF recommendation (new point 7.1 d) in CoC

“Enterprises and tax administrations should avoid the inclusion of a waiver of access to a mutual agreement procedure in audit settlements, as it would be inappropriate for two parties (the enterprise and one tax administration) to exclude a third party (the

other tax administration) from the final resolution of a file in which they had an interest. This should not however be interpreted as hampering a taxpayer's willingness to compromise in audits. In unilateral advance pricing agreements, if a foreign adjustment is raised in relation to a transaction or issue covered by a unilateral advance pricing agreement, the unilateral advance pricing agreement should be treated as the enterprise's filing and therefore eligible for a mutual agreement procedure and capable of adjustment, rather than as an irreversible settlement."

#### **2.4. Implication of the new Article 7 OECD MTC (2010)** *(Discussion paper - p. 12)*

10. In 2008 the OECD concluded its work on the attribution of profits to permanent establishments with publishing the report "Attribution of Profits to Permanent Establishments", approved by the OECD Committee on Fiscal Affairs in 2008. The report represents the outcome of the work on how the "separate arm's length enterprise" provision of Article 7 should be applied. The conclusions of the Report were implemented in the OECD MTC in two stages.
11. The first stage was the revision of the Commentary on Article 7 as Article 7 read before 22 July 2010. This stage was completed in the 2008 update of the OECD MTC. It was aimed at implementing the conclusions of the report that do not conflict with the interpretation previously provided in the Commentary on Article 7. The second stage was the finalization of a completely new Article 7 with related Commentary changes in the 2010 update of the OECD MTC.
12. The JTPF discussed the implications of these developments on the interpretation of Article 4 (2) AC.

**Information from the Secretariat:** 14 MS and 1 NGM provided their view on the issues and the options suggested by Belgium (see Section 3 of the compilation of comments, doc. JTPF/005/2014/EN). 11 MS have a preference for option 1, 2 MS for option 2 and 1 MS suggests further evaluation of the topic. Based on this result the Secretariat proposes the following recommendation The comment from the NGM indicates a preference for option which generally foresees to solve disputes of relevant cases taking into account the most recent agreements at the OECD. In bilateral cases where a DTC exists reference is made to the version of Article 7 in respective DTC and the respective interpretation by the OECD.

#### **JTPF recommendation (new point 6 b) in CoC)**

"Article 4(2) of the Arbitration Convention should be interpreted in conjunction with Article 7 OECD Model Tax Convention. Tax Administrations, competent authorities and advisory commissions should also take into consideration the interpretation provided in the OECD commentary on the provisions of Article 7. In cases where Member States have concluded bilateral Double Taxation Conventions, Article 4(2) should have the same meaning as the relevant Article on attributing profits to permanent establishments in the applicable Double Taxation Conventions, taking into account the OECD commentary on the provisions included in the concerned Double Taxation Convention. The reference to the meaning of the concept of attributing profits to permanent establishments under a bilateral tax treaty should imply that such

meaning is taken into consideration even where the wording of the respective Article of the Double Taxation Convention differs from the wording of Article 4(2) of the Arbitration Convention.”

**Information from the Secretariat:** *In multilateral cases where the bilateral DTC between the MS involved contain different versions of Article 7 and this difference is relevant for solving the issue referred to the AC, the decision could be based on the most recent version of Article 7 OECD MTC and its related commentary.*

**Possible addition to the **new point 6 b)** in CoC**

“In cases where more than two Member States are involved in a dispute which is addressed under the Arbitration Convention, and the relevant Double Taxation Conventions between these Member States contain different versions of Article 7 of the OECD Model Tax Convention (and this difference matters for solving the dispute), Article 4 (2) should insofar have the meaning as advocated by the OECD in the most recent version of the OECD Model Tax Convention and the most recent commentary to it.”

**2.5. Disputes likely to arise** *(Discussion paper - p. 3)*

13. The AC foresees that for cases where double taxation is likely to arise, MAP requests under the AC may already be submitted in advance. This possibility may, on the one hand, be seen as providing the advantage to address disputes at an early point in time. At the same time, however, an early submission of a MAP request may be seen as impeding efforts to solve the issue before MAP. An additional consideration is that the workload for CAs in dealing with cases where double taxation did actually arise is usually rather high.
14. Certain tools are already available for dealing with disputes likely to arise:
  - a) For situations where certainty is sought for **future transactions** taxpayers may have recourse to an APA procedure<sup>3</sup>.
  - b) For situations where following a transaction an enterprise identifies a **risk that a dispute may raise**, the JTPF report on transfer pricing risk management<sup>4</sup> recommends that the enterprise should have the possibility to communicate with the tax administration at an early point in time (R4) and tax administrations may consider joint action (R5 and R9).
  - c) For situations where a Contracting State **intends** to make an adjustment, the procedure in Article 5 AC is available. This procedure foresees that the enterprises in both States liaise between the two (or more) tax administrations involved.
  - d) For situations where the action of a Contracting State is **likely to result in double taxation** the taxpayer may file for MAP under the AC (Article 6 (1) AC).

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<sup>3</sup> Guidelines for Advance Pricing Agreements in the EU, COM(2007) 71 final

<sup>4</sup> Commission Communication on the work of the EU Joint Transfer Pricing Forum in the period July 2012 to January 2014, COM(2014) 315.

## 2.6. MAP request to both CAs *(Discussion paper - p. 6)*

15. The JTPF considered that it would be helpful if both CAs involved were informed by the enterprise about a MAP request under the AC.

### **JTPF recommendation (new point 7.3 d) in CoC)**

“Enterprises should submit a copy of their request for a mutual agreement procedure under the Arbitration Convention to the other competent authority involved at the same time and with the same set of information as to the competent authority to which the request is addressed in accordance with Article 6 (1) of the Arbitration Convention. Where appropriate and allowed, this might be done through electronic means. The fact that a copy of the request was submitted by the enterprise does not replace the obligation of the competent authority to inform the other competent authority about receiving the request under point 6.3 (d) nor should it be understood as limiting a competent authority’s efforts to come to a satisfactory solution itself within the meaning of Article 6 (2) of the Arbitration Convention.”

## 2.7. Guidance on Multilateral MAP *(Discussion paper - p. 13)*

16. The OECD is currently working on multilateral approaches in the context of MAP. This OECD project builds on earlier work of the JTPF on triangular cases. At its meeting in March 2014 the JTPF agreed that further work on this issue by the JTPF would be postponed until the first results of the OECD project become known. It would then be decided whether and how this item should be taken forward by the JTPF, i.e. in this project or in the context of monitoring the guidance on non-triangular cases.

## 2.8. Informing the enterprise during MAP *(Discussion paper - p. 18)*

17. The CoC already contains provisions (point 6.3 (b), (f) and (g)) that enterprises will be kept informed about: “all significant developments”; whether the case is considered as being well founded; the initiation of a MAP; whether the request is made within the time limits foreseen under the AC; and, about the starting point of the 2-year period. In practice, this is not always done in a timely and structured manner. CAs may want to use the template provided in *Annex 3* to monitor their cases and exchange it with the enterprise at the time of those significant developments.

## 2.9. Implications of MAP results for other years *(Discussion paper - p. 4)*

18. The procedure for MAP requests which are linked to a former MAP can usefully be streamlined to the benefit of both taxpayers and tax administrations.

### **JTPF recommendation (new point 7.3 i) in CoC)**

“Where a new request by an enterprise for a mutual agreement procedure is linked to issues which are already covered by an ongoing mutual agreement procedure with the same enterprise, competent authorities should consider treating the new request as part of the ongoing mutual agreement procedure. Where a request for a mutual agreement procedure is linked to issues which have already been covered in another mutual agreement procedure, competent authorities should consider whether it is appropriate



to apply the outcome in the earlier mutual agreement procedure to the new request and where appropriate, to apply that outcome.”

## **2.10. Information on the starting point of the three-year period** *(Discussion paper - p. 1)*

19. According to Article 6(1) of the AC, a case under the AC must be presented before the relevant competent authority within three years of the first notification of the action which results, or is likely to result, in double taxation within the meaning of Article 1 AC. The term first notification as the starting point of the three-year period under Article 6 (1) AC is determined differently by MS. Possible discrepancies may create insecurity for enterprises as regards time limits. For the determination of the starting point, the understanding of the term first notification by the MS whose action resulted in double taxation should be decisive. *Annex 2* contains information on the starting point of the three-year period for each Member State.

## **2.11. Guidance on position papers** *(Discussion paper - p. 9)*

20. The existing guidance on position papers contained in point 6.4 CoC can benefit from further clarification.

### **JTPF recommendation (amended point 7.4 in CoC)**

#### “6.4. Exchange of position papers

- (a) Member States undertake that when a mutual agreement procedure has been initiated, the competent authority of the country in which a tax assessment, i.e. a final decision of the tax administration on the income, or equivalent has been made, or is intended to be made, which contains an adjustment that results, or is likely to result, in double taxation within the meaning of Article 1 of the Arbitration Convention, will send a position paper to the competent authority(ies) of the other Member State(s) involved in the case setting out:
- (i) General information:
- legal name, address and taxpayer identification number of the person requesting assistance, its related persons in the other country, if applicable, and the basis for determining the association;
  - the contact details of the competent authority official in charge of the case
  - broad overview of the issue, transactions, business, and basis for the adjustment
  - the tax years affected
  - amount of income and tax adjusted in each tax year, if applicable
  - summary of relevant information from the original tax return
- (ii) the case made by the person making the request;
- description of the exact nature of the issue or adjustment
  - if relevant, calculations with supporting data (these may include financial and economic data and reports relied upon, explanatory narratives as well as taxpayer documents and records where relevant and appropriate).

- (iii) its view of the merits of the case, e.g. why it believes that double taxation has occurred or is likely to occur;
  - (iv) how the case might be resolved with a view to the elimination of double taxation together with a full explanation of the proposal.
- (b) The position paper will contain a full justification of the assessment or adjustment and will be accompanied by basic documentation supporting the competent authority's position and a list of all other documents used for the adjustment, e.g.
  - outline of comparable transactions and methods for adjusting differences;
  - description of the methodology employed for the adjustment; and
  - an explanation of the appropriateness of the transfer pricing methodology employed for the adjustment (i.e. an explanation why it believes the adjustment achieves an arm's length outcome; identification of tested party, if applicable; industry and functional analysis, if a relevant study is not already included elsewhere in the taxpayer's submission).
- (c) The position paper will be sent to the competent authority(ies) of the other Member State(s) involved in the case as quickly as possible taking account of the complexity of the particular case and no later than four months from the latest of the following dates:
  - (i) the date of the tax assessment notice, i.e. final decision of the tax administration on the additional income, or equivalent;
  - (ii) the date on which the competent authority receives the request and the minimum information as stated under point 7.6(a).
- (d) Member States undertake that, where a competent authority of a country in which no tax assessment or equivalent has been made, or is not intended to be made, which results, or is likely to result, in double taxation within the meaning of Article 1 of the Arbitration Convention, e.g. due to a transfer pricing adjustment, receives a position paper from another competent authority, it will respond as quickly as possible taking account of the complexity of the particular case and no later than six months after receipt of the position paper
- (e) The response should take one of the following two forms:
  - (i) if the competent authority believes that double taxation has occurred, or is likely to occur, and agrees with the remedy proposed in the position paper, it will inform the other competent authority(ies) accordingly and make such adjustments or allow such relief as quickly as possible;
  - (ii) if the competent authority does not believe that double taxation has occurred, or is likely to occur, or does not agree with the remedy proposed in the position paper, it will send a responding position paper to the other competent authority(ies) setting out its reasons and proposing an indicative time scale for dealing with the case taking into account its complexity. To enable the competent authorities to identify the areas of disagreement and to understand the position of the responding competent authority, a rebuttal

or response paper could include the following:

- indication of the areas or issues where the competent authorities are in agreement or disagreement;
- requests for additional information and explanations necessary to clarify particular issues;
- presentation of other or additional information considered pertinent to the case, but not raised in the initial position paper; and
- submission of proposals or views to resolve the issue.

The proposal will include, whenever appropriate, a date for a face-to-face meeting, which should take place no later than 18 months from the latest of the following dates:

- (aa) the date of the tax assessment notice, i.e. final decision of the tax administration on the additional income, or equivalent;
  - (bb) the date on which the competent authority receives the request and the minimum information as stated under point 7.6(a).
- (f) Member States will further undertake any appropriate steps to speed up all procedures wherever possible. In this respect, Member States should envisage to organise regularly, and at least once a year, face-to-face-meetings between their competent authorities to discuss pending mutual agreement procedures (provided that the number of cases justifies such regular meetings).”

## 2.12. MAP outcome and domestic remedies *(Discussion paper - p. 10)*

21. CAs have a legitimate concern that - in case of domestic court or administrative proceedings carried out in parallel to a MAP - an agreement reached in MAP may be in contradiction with a relevant court decision (or the outcome of other available domestic remedies). Possible risks of abuse also represent a valid concern.

### **JTPF recommendation (new point 7.7 in CoC)**

“If the terms and conditions of an agreement reached in a mutual agreement procedure are not satisfactory to the enterprise, the enterprise may withdraw its request for a mutual agreement procedure under the Arbitration Convention.

The implementation of an agreement reached under the procedure (Article 6(2) of the Arbitration Convention) should be subject to its acceptance by the enterprise and the enterprise's withdrawal from domestic remedies such as appeals concerning the issues settled in a mutual agreement procedure under the Arbitration Convention.”

22. Member States’ practices in this respect are indicated in the Member States Transfer Pricing profiles<sup>5</sup> published on the JTPF website. The chart in *Annex 4* to this report clarifies the relationship between domestic remedies and the AC.

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<sup>5</sup> See

[http://ec.europa.eu/taxation\\_customs/taxation/company\\_tax/transfer\\_pricing/forum/index\\_en.htm#membership](http://ec.europa.eu/taxation_customs/taxation/company_tax/transfer_pricing/forum/index_en.htm#membership)

## 2.13. Serious penalties *(Discussion paper - p. 11)*

23. Dispute resolution under the AC does not need to be initiated and may be suspended if one of the enterprises involved is subject to a “serious penalty” for the transactions giving rise to the profit adjustment (Article 8). MS have made unilateral declarations to the AC on what they consider a serious penalty in the meaning of Article 8 (1) AC. As the CoC already suggests that a serious penalty should only be applied in exceptional cases like fraud it would be beneficial to define the term fraud.

### **JTPF recommendation (amended point 8 in CoC)**

“As Article 8(1) provides for flexibility in refusing to give access to the Arbitration Convention due to the imposition of a serious penalty, and considering the practical experience acquired since 1995, Member States are recommended to clarify or revise their unilateral declarations in the Annex to the Arbitration Convention in order to better reflect that a serious penalty should only be applied in exceptional cases like fraud.

Tax fraud is a form of deliberate evasion of tax which is generally punishable under criminal law. The term includes situations in which deliberately false statements are submitted or fake documents are produced. Tax evasion generally comprises illegal arrangements where liability to tax is hidden or ignored, i.e. the taxpayer pays less tax than he is legally obliged to pay by hiding income or information from the tax authorities.<sup>6</sup>”

## 2.14. Improving the “second phase” of the Arbitration Convention *(Discussion paper - p. 10)*

### *a) Composition and functioning of advisory commissions*

23. The composition of advisory commissions is governed by Article 9(1) of the AC. Article 11 (2) AC provides that “The advisory commission shall adopt its opinion by a simple majority of its members”.
24. The presence of competent authorities on the panel and especially their right to vote on the opinion of the advisory commission was criticised by 3 of the 4 chairmen of advisory commissions from whom the JTPF sought feedback<sup>7</sup> in 2013 on the functioning of the “second phase” of the Arbitration Convention. They pointed out that although it is of great value to have CAs on the commission in order to give independent members full information on all aspects of the case including their own position and the reasons for it, their status as full members of the advisory commission with voting power seems to be an obstacle to the efficient functioning of the commission. In particular, chairmen of advisory commissions pointed out that:

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<sup>6</sup> Communication from the Commission to the European Parliament and the Council on concrete ways to reinforce the fight against tax fraud and tax evasion including in relation to third countries, COM (2012) 351, 27.06.2012

<sup>7</sup> See document [JTPF/010/2013/EN](#)

- the principles of arbitration suggest that interested parties do not sit on an arbitration panel;
- representatives of CAs can delay the proceedings of the advisory commission, as they take much of the meeting time by continuing exchanges of view;
- presence of CAs’ representatives may inhibit necessary discussion on the issues among the independent members;
- representatives of CAs do not want usually to prejudice their jobs by agreeing with the other side’s view; a compromise is therefore unlikely and this means in practice that the decision of the commission is generally taken by the (three) independent members only, unless they agree to fully support the view of one of the Member States. If CAs are not present in the advisory commission, the independent persons of standing and the Chair could decide on an opinion in a more expedite and efficient manner.

25. From a Member States point of view it is important that representatives of CAs are full members of the advisory commission, so as to ensure that their case is presented well. CAs’ representatives on the panel are normally two and MS consider that this is adequate, as it allows them to send to the advisory commission two professionals with different profiles (e.g., a lawyer and an economist).

26. The possibility to appoint only one representative per CA is already foreseen in Article 9(1). Revising voting powers within the advisory commission would, however, require a change to the AC. As a compromise it is suggested that independent persons of standing should be able to hold separate deliberations. In addition, the possibility to appoint only one representative per CA could be emphasized in the CoC.

*Note from the Secretariat: The statistics indicate that there may be more than one case between certain MS which may have reached the deadline for the second phase of the Arbitration Convention. Instead of setting up an advisory commission for each case separately, MS may consider forwarding more than one case to an advisory commission once it is set up. The JTPF may discuss this possibility.*

**JTPF recommendations (amended point 9.2 (c) and new point 9.3 (h) in CoC)**

“(c) The advisory commission will normally consist of two independent persons of standing in addition to its Chairman and one or two representatives of each competent authority. For triangular cases, where an advisory commission is to be set up under the multilateral approach, Member States will have regard to the requirements of Article 11(2) of the Arbitration Convention, introducing as necessary additional rules of procedure, to ensure that the advisory commission, including its Chairman, is able to adopt its opinion by a simple majority of its members.”

“(h) The Chairmen and the independent persons of standing will be able to hold separate deliberations in order to discuss and formulate the opinion of the advisory commission which will then be agreed with the representatives of competent authorities.”

*b) Opening statement by the enterprise and auditor(s)*

27. The chairmen of advisory commissions surveyed by the JTPF in 2013 argued that hearing enterprises and auditors at the outset of the arbitration procedure can usefully inform and facilitate the deliberations of advisory commissions. In the case of hearings of enterprises, this involves interviewing not only tax experts, but also persons occupying high operational and management positions in the enterprise - familiar with the business strategy, international market conditions and the reasons behind the enterprise's transfer pricing strategy.
28. The AC and CoC already envisage the possibility that auditors and enterprises may appear before the advisory commission (Article 10 AC and point 7.3 (d) CoC). It would nevertheless be useful to explicitly inform enterprises of the possibility to state their case before the advisory commission.

**JTPF recommendation (amended point 9.3 (d) in CoC)**

“(d) Whilst respecting Article 10 of the Arbitration Convention, the advisory commission may request Member States and in particular the Member State that issued the first tax assessment notice, i.e. final decision of the tax administration on the additional income, or equivalent, which resulted, or may result, in double taxation within the meaning of Article 1 of the Arbitration Convention, to appear before the advisory commission. At the outset of the arbitration procedure each of the enterprises involved should be informed by their respective competent authorities of their right to make a statement before the advisory commission.”

*c) Preparation of the arbitration procedure*

29. The 6-month period envisaged under the AC for an advisory commission to deliver an opinion can be considered generally appropriate. However, at the beginning of this period sufficient information should already be available to the commission, so that it can deliver its opinion in a timely and efficient manner. The time until an advisory commission is established should be used by the competent authorities to compile all relevant information, so that it is already available at the beginning of the procedure.

**JTPF recommendation (amended point 9.2 (f) in CoC)**

“(f) Member States will provide the advisory commission before its first meeting, with all relevant documentation and information and in particular all documents, reports, correspondence and conclusions used during the mutual agreement procedure. To assist the advisory commission in completing its work in a timely and efficient manner, the competent authorities will use the time period needed to establish the advisory commission to collect and prepare all necessary information, so that it is already available at the outset of the procedure.”

*d) Remuneration of chairmen and independent members of advisory commissions*

30. Point 7.3 (f) (ii) CoC provides for a remuneration in the amount of 1000 EUR per meeting date per person. Although it is recognised that members of advisory commissions do substantial work outside official meetings of the advisory commission (reading written material, exchanging emails, making conference calls, agreeing the wording of the opinion, travelling) the existing CoC determines remuneration on the

basis of meeting days and not by reference to actual time spent on the case due to the objectivity of this criterion.

*e) Follow-up to advisory commissions' opinions*

31. According to Article 12 AC the competent authorities concerned are expected to take a decision which eliminates the double taxation within 6 months of the delivery of the advisory commission's opinion (their decision may actually deviate from the advisory commission's opinion). Acceptance by the enterprise of this decision is not formally required under the AC and the decision may therefore be implemented without the enterprise's agreement. However, it can be expected that an enterprise would generally be satisfied when double taxation is removed.
32. Nevertheless, the relation between the AC and domestic remedies needs to be considered in this context. Article 7(1) AC blocks the expiration of the 2-year period when domestic remedies have been initiated by the enterprise, Article 7 (2) AC allows Member State to initiate or continue judicial proceedings and Article 7 (3) AC provides - for cases where the domestic law does not allow the competent authority to derogate from the decision of their juridical bodies - that an advisory commission shall not be set up before the time provided for an appeal has expired or the right for an appeal has been withdrawn. The chart in *Annex 4* to this report clarifies the relationship between domestic remedies and the AC.
33. Where the rules on specific domestic remedies and appeals in a MS create the possibility for inconsistencies, the MS concerned may need to take the necessary action to prevent this, e.g. by requiring the enterprise to withdraw from the domestic remedies and appeals which concern the issues to be settled under the AC before entering the "second phase".

## **2.15 Tax collection and interest charges** *(Discussion paper - p. 17)*

34. It is recognised that tax collection should be suspended during dispute resolution procedures under the AC and that Member States' different approaches to interest charges and refunds during that procedure do not adversely affect enterprises. The Code of Conduct (point 8) provides for measures aimed to ensure that the same conditions as those available for domestic appeals or litigation procedures are available in case of filing for a MAP procedure under the AC.
35. Annex *(to be added)* contains information on how MS have implemented the recommendation on suspension of tax collection and on interest charges.

***Note from the Secretariat: MS will be asked to provide this information***

### **JTPF recommendation (improved language of point 8 in CoC)**

(a) Member States are recommended to take all necessary measures to ensure that during cross-border dispute resolution procedures under the Arbitration Convention enterprises engaged in such procedures can benefit from suspension of tax collection under the same conditions as those engaged in a domestic appeals or litigation procedure although these measures may imply legislative changes in some Member States. It would be appropriate for Member States to extend these measures to the cross-border dispute resolution procedures under double taxation treaties between Member States.

(b) Considering that, during mutual agreement procedure negotiations, a taxpayer should not be adversely affected by the existence of different approaches to interest charges and refunds during the time it takes to complete the mutual agreement procedure, Member States are recommended to apply one of the following approaches:

- (i) tax to be released for collection and repaid without attracting any interest; or
- (ii) tax to be released for collection and repaid with interest; or
- (iii) each case to be dealt with on its merits in terms of charging or repaying interest (possibly during the mutual agreement procedure).”

### III. Concluding remarks

36. All parties involved in dispute resolution under the AC have an interest that double taxation is removed in a timely and resource effective manner. This Draft Report proposes amendments to the CoC to this effect. New guidance respects the fact that resolving transfer pricing disputes often requires case-specific approaches. It also rests on the principle that the application of the AC is governed by mutual trust between all parties involved and the recognition of the need to maintain a sustainable and reliable procedure for resolution of disputes.
37. Beyond the amendments to the Code of Conduct proposed in this Draft Report the JTPF notes that based on the findings of the AC and CoC monitoring process carried out, changes to the AC itself may be discussed in the future. Possible issues for consideration include:
- Composition of advisory commissions (Article 9 AC)
  - Alternative approaches to arbitration (e.g. last best offer approach, also called “baseball arbitration”) compared to the independent opinion approach currently provided under the AC (Article 11)
  - Possibility for CAs to mutually cancel the procedure under the AC in certain cases
  - Application of the AC to establish the existence of a permanent establishment (Article 5 OECD MTC).
  - Other issues ?



## ANNEX 1

### **Revised Code of Conduct for the effective implementation of the Arbitration Convention**

[...]

Without prejudice to the respective spheres of competence of the Member States and the European Union, this revised Code of Conduct concerns the implementation of the Arbitration Convention and certain related issues concerning mutual agreement procedures under double taxation treaties between Member States.

#### **SCOPE OF THE ARBITRATION CONVENTION (Chapter I, Articles 1 and 2 AC)**

##### **1. [addition, report item 1.1] Double taxation**

An action which results or is likely to result in double taxation within the meaning of Article 1 of the Arbitration Convention does not require that the transfer pricing adjustment within the meaning of Article 4 of the Convention leads to an actual payment of tax. Therefore cases where the entity subject to the adjustment within the meaning of Article 4 has losses carried forward against which an upward adjustment could be offset are within the scope of the Arbitration Convention. The starting point of the three-year period is determined by Member States irrespective of whether an actual payment of tax took place.

##### **2. [addition, report item 1.2] Application dependent on the outcome of a mutual agreement procedure**

If access to the Arbitration Convention or the treatment of cases under the Arbitration Convention depends directly on the result of a mutual agreement procedure under an applicable Double Taxation Convention, care should be taken to ensure that the deadline under Article 6(1) of the Arbitration Convention does not expire. The enterprise may combine the requests for a mutual agreement procedure under the Arbitration Convention and the applicable Double Taxation Convention. The enterprise should receive the benefit of the doubt in cases where it is not entirely clear which procedure is applicable. Competent authorities should consider requests for a mutual agreement procedure under the Double Taxation Convention with priority and commence the procedure under the Arbitration Convention as soon as possible.

##### **3. [former point 1.1 CoC] EU triangular transfer pricing cases**

- (a) For the purpose of this Code of Conduct, a EU triangular case is a case where, in the first stage of the Arbitration Convention procedure, two EU competent authorities cannot fully resolve any double taxation arising in a transfer pricing case when applying the arm's length principle because an associated enterprise situated in (an)other Member State(s) and identified by both EU competent authorities (evidence based on a comparability analysis including a functional analysis and other related factual elements) had a significant influence in contributing to a non-arm's length result in a chain of relevant transactions or commercial/financial relations and is recognised as such by the taxpayer suffering the double taxation and having requested the application

of the provisions of the Arbitration Convention.

- (b) The scope of the Arbitration Convention includes all EU transactions involved in triangular cases among Member States.

#### **4. [former point 1.2. CoC] Thin capitalisation<sup>8</sup>**

The Arbitration Convention makes clear reference to profits arising from commercial and financial relations but does not seek to differentiate between these specific profit types. Therefore, profit adjustments arising from financial relations, including a loan and its terms, and based on the arm's length principle are to be considered within the scope of the Arbitration Convention.

#### **5. [addition, report item 1.3] Denial of access**

Member States should provide domestic legal remedies for determining whether the denial of access to the Arbitration Convention by their administrative bodies is justified.

### **DISPUTE RESOLUTION PROCEDURE (Chapter II, Articles 3 to 14 AC)**

#### **6. Principles applied (Article 4 AC)**

- (a) *[former point 6.1. (a) CoC]*

The arm's length principle will be applied, as advocated by the OECD, without regard to the immediate tax consequences for any particular Member State.

- (b) *[addition, report item 2.4]*

Article 4(2) of the Arbitration Convention should be interpreted in conjunction with Article 7 OECD Model Tax Convention. Tax Administrations, competent authorities and advisory commissions should also take into consideration the interpretation provided in the OECD commentary on the provisions of Article 7. In cases where Member States have concluded bilateral Double Taxation Conventions, Article 4(2) should have the same meaning as the relevant Article on attributing profits to permanent establishments in the applicable Double Taxation Conventions, taking into account the OECD commentary on the provisions included in the concerned Double Taxation Convention. The reference to the meaning of the concept of attributing profits to permanent establishments under a bilateral tax treaty should imply that such meaning is taken into consideration even where the wording of the respective Article of the Double Taxation Convention differs from the wording of Article 4(2) of the Arbitration Convention.

#### **7. [former point 6 CoC] Mutual Agreement Procedure under the Arbitration Convention (Articles 6 and 7 AC)**

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<sup>8</sup> Reservations by certain MS to be inserted in the final version.

## 7.1 [former point 6.1 CoC] **General Provisions**

(a) *[addition, report item 2.1]*

The onus for making a timely request in order to preserve access to the mutual agreement procedure rests with the enterprise and enterprises should take all reasonable steps to ensure that time limits do not expire. However, a tax administration making an adjustment should inform the enterprise of its rights under the Arbitration Convention, including about any time limits in the Convention for initiating a mutual agreement procedure.

(b) Cases will be resolved as quickly as possible having regard to the complexity of the issues in question.

(c) *[addition, report item 2.2]*

In order to ensure the independence of any subsequent review of a case by a competent authority, competent authorities should maintain – as far as possible – a degree of autonomy from the audit function of the tax administration. The guiding principle should be that the competent authority's function is to ensure a fair and appropriate application of the Arbitration Convention, not to seek to uphold all adjustments proposed by the tax authorities of its Member State.

(d) *[addition, report item 2.3]*

Enterprises and tax administrations should avoid the inclusion of a waiver of access to a mutual agreement procedure in audit settlements, as it would be inappropriate for two parties (the enterprise and one tax administration) to exclude a third party (the other tax administration) from the final resolution of a file in which they had an interest. This should not however be interpreted as hampering a taxpayer's willingness to compromise in audits. In unilateral advance pricing agreements, if a foreign adjustment is raised in relation to a transaction or issue covered by a unilateral advance pricing agreement, the unilateral advance pricing agreement should be treated as the enterprise's filing and therefore eligible for a mutual agreement procedure and capable of adjustment, rather than as an irreversible settlement.

(e) Any appropriate means for reaching a mutual agreement as expeditiously as possible, including face-to-face meetings, will be considered. Where appropriate, the enterprise will be invited to make a presentation to its competent authority.

(f) Taking into account the provisions of this Code of Conduct, a mutual agreement should be reached within two years of the date on which the case was first submitted to one of the competent authorities in accordance with point 7.6(b) of this Code of Conduct. However, it is recognised that in some situations (e.g. imminent resolution of the case or particularly complex transactions, or triangular cases), it may be appropriate to apply Article 7(4) of the Arbitration Convention (providing for time limits to be extended) to agree a short extension.

(g) The mutual agreement procedure should not impose any inappropriate or excessive compliance costs on the person requesting it, or on any other person involved in the case.

## **7.2 [former point 4 CoC] *The starting point of the three-year period (deadline for submitting the request according to Article 6(1) of the Arbitration Convention)***

The date of the 'first tax assessment notice or equivalent which results or is likely to result in double taxation within the meaning of Article 1 of the Arbitration Convention, e.g. due to a transfer pricing adjustment'<sup>9</sup>, is considered as the starting point for the three-year period. As far as transfer pricing cases are concerned, Member States are recommended to apply this definition also to the determination of the three-year period as provided for in Article 25.1 of the OECD Model Tax Convention on Income and on Capital and implemented in the double taxation treaties between Member States.

## **7.3 [former point 6.3. CoC] *Practical functioning and transparency***

- (a) In order to minimise costs and delays caused by translation, the mutual agreement procedure, in particular the exchange of position papers, should be conducted in a common working language, or in a manner having the same effect, if the competent authorities can reach agreement on a bilateral (or multilateral) basis.
- (b) The enterprise requesting the mutual agreement procedure will be kept informed by the competent authority to which it made the request of all significant developments that affect it during the course of the procedure.
- (c) The confidentiality of information relating to any person that is protected under a bilateral tax convention or under the law of a Member State will be ensured.
- (d) *[addition, report item 2.6]*

Enterprises should submit a copy of their request for a mutual agreement procedure under the Arbitration Convention to the other competent authority involved at the same time and with the same set of information as to the competent authority to which the request is addressed in accordance with Article 6 (1) of the Arbitration Convention. Where appropriate and allowed, this might be done through electronic means. The fact that a copy of the request was submitted by the enterprise does not replace the obligation of the competent authority to inform the other competent authority about receiving the request under point 6.3 (d) nor should it be understood as limiting a competent authority's efforts to come to a satisfactory solution itself within the meaning of Article 6 (2) of the Arbitration Convention.

- (e) The competent authority will acknowledge receipt of a taxpayer's request to initiate a mutual agreement procedure within one month from the receipt of the request and at the same time inform the competent authority(ies) of the other Member State(s) involved in the case attaching a copy of the taxpayer's request.
- (f) If the competent authority believes that the enterprise has not submitted the minimum information necessary for the initiation of a mutual agreement procedure as stated under point 7.6(a), it will invite the enterprise, within two months upon receipt of the request,

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<sup>9</sup> Reservation by Italy to be inserted.

to provide it with the specific additional information it needs.

- (g) Member States undertake that the competent authority will respond to the enterprise making the request in one of the following forms:
  - (i) if the competent authority does not believe that profits of the enterprise are included, or are likely to be included, in the profits of an enterprise of another Member State, it will inform the enterprise of its doubts and invite it to make any further comments;
  - (ii) if the request appears to the competent authority to be well-founded and it can itself arrive at a satisfactory solution, it will inform the enterprise accordingly and make as quickly as possible such adjustments or allow such reliefs as are justified;
  - (iii) if the request appears to the competent authority to be well-founded but it is not itself able to arrive at a satisfactory solution, it will inform the enterprise that it will endeavour to resolve the case by mutual agreement with the competent authority of any other Member State concerned.
- (h) If a competent authority considers a case to be well-founded, it should initiate a mutual agreement procedure by informing the competent authority(ies) of the other Member State(s) of its decision and attach a copy of the information as specified under point 7.6(a) of this Code of Conduct. At the same time it will inform the person invoking the Arbitration Convention that it has initiated the mutual agreement procedure. The competent authority initiating the mutual agreement procedure will also inform — on the basis of information available to it — the competent authority(ies) of the other Member State(s) and the person making the request whether the case was presented within the time limits provided for in Article 6(1) of the Arbitration Convention and of the starting point for the two-year period of Article 7(1) of the Arbitration Convention.
- (i) *[addition, report item 2.9]*

Where a new request by an enterprise for a mutual agreement procedure is linked to issues which are already covered by an ongoing mutual agreement procedure with the same enterprise, competent authorities should consider treating the new request as part of the ongoing mutual agreement procedure. Where a request for a mutual agreement procedure is linked to issues which have already been covered in another mutual agreement procedure, competent authorities should consider whether it is appropriate to apply the outcome in the earlier mutual agreement procedure to the new request and where appropriate, to apply that outcome.

#### **7.4 [former point 6.4 CoC, amended based on report item 2.11] Exchange of position papers**

- (a) Member States undertake that when a mutual agreement procedure has been initiated, the competent authority of the country in which a tax assessment, i.e. a final decision of the tax administration on the income, or equivalent has been made, or is intended to be made, which contains an adjustment that results, or is likely to result, in double taxation within the meaning of Article 1 of the Arbitration Convention, will send a position paper to the competent authority(ies) of the other Member State(s) involved in the case setting out:
  - (i) General information:

- legal name, address and taxpayer identification number of the person requesting assistance, its related persons in the other country, if applicable, and the basis for determining the association;
  - the contact details of the competent authority official in charge of the case
  - broad overview of the issue, transactions, business, and basis for the adjustment
  - the tax years affected
  - amount of income and tax adjusted in each tax year, if applicable
  - summary of relevant information from the original tax return
- (ii) the case made by the person making the request;
- description of the exact nature of the issue or adjustment
  - if relevant, calculations with supporting data (these may include financial and economic data and reports relied upon, explanatory narratives as well as taxpayer documents and records where relevant and appropriate).
- (iii) its view of the merits of the case, e.g. why it believes that double taxation has occurred or is likely to occur;
- (iv) how the case might be resolved with a view to the elimination of double taxation together with a full explanation of the proposal.
- (b) The position paper will contain a full justification of the assessment or adjustment and will be accompanied by basic documentation supporting the competent authority's position and a list of all other documents used for the adjustment, e.g.
- outline of comparable transactions and methods for adjusting differences;
  - description of the methodology employed for the adjustment; and
  - an explanation of the appropriateness of the transfer pricing methodology employed for the adjustment (i.e. an explanation why it believes the adjustment achieves an arm's length outcome; identification of tested party, if applicable; industry and functional analysis, if a relevant study is not already included elsewhere in the taxpayer's submission).
- (c) The position paper will be sent to the competent authority(ies) of the other Member State(s) involved in the case as quickly as possible taking account of the complexity of the particular case and no later than four months from the latest of the following dates:
- (i) the date of the tax assessment notice, i.e. final decision of the tax administration on the additional income, or equivalent;
  - (ii) the date on which the competent authority receives the request and the minimum information as stated under point 7.6(a).
- (d) Member States undertake that, where a competent authority of a country in which no tax assessment or equivalent has been made, or is not intended to be made, which results, or is likely to result, in double taxation within the meaning of Article 1 of the Arbitration Convention, e.g. due to a transfer pricing adjustment, receives a position paper from another competent authority, it will respond as quickly as possible taking account of the complexity of the particular case and no later than six months after receipt of the position paper
- (e) The response should take one of the following two forms:

- (i) if the competent authority believes that double taxation has occurred, or is likely to occur, and agrees with the remedy proposed in the position paper, it will inform the other competent authority(ies) accordingly and make such adjustments or allow such relief as quickly as possible;
- (ii) if the competent authority does not believe that double taxation has occurred, or is likely to occur, or does not agree with the remedy proposed in the position paper, it will send a responding position paper to the other competent authority(ies) setting out its reasons and proposing an indicative time scale for dealing with the case taking into account its complexity. To enable the competent authorities to identify the areas of disagreement and to understand the position of the responding competent authority, a rebuttal or response paper could include the following:
  - indication of the areas or issues where the competent authorities are in agreement or disagreement;
  - requests for additional information and explanations necessary to clarify particular issues;
  - presentation of other or additional information considered pertinent to the case, but not raised in the initial position paper; and
  - submission of proposals or views to resolve the issue.

The proposal will include, whenever appropriate, a date for a face-to-face meeting, which should take place no later than 18 months from the latest of the following dates:

- (aa) the date of the tax assessment notice, i.e. final decision of the tax administration on the additional income, or equivalent;
  - (bb) the date on which the competent authority receives the request and the minimum information as stated under point 7.6(a).
- (f) Member States will further undertake any appropriate steps to speed up all procedures wherever possible. In this respect, Member States should envisage to organise regularly, and at least once a year, face-to-face-meetings between their competent authorities to discuss pending mutual agreement procedures (provided that the number of cases justifies such regular meetings).”

#### **7.5 [former point 6.2 CoC] EU triangular transfer pricing cases**

- (a) As soon as the competent authorities of the Member States have agreed that the case under discussion is to be considered a EU triangular case, they should immediately invite the other EU competent authority(ies) to take part in the proceedings and discussions as (an) observer(s) or as (an) active stakeholder(s) and decide together which is their favoured approach. Accordingly, all information should be shared with the other EU competent authority(ies) through for example exchanges of information. The other competent authority(ies) should be invited to acknowledge the actual or possible involvement of 'their' taxpayer(s).
- (b) One of the following approaches may be adopted by the competent authorities involved to resolve double taxation arising from EU triangular cases under the Arbitration Convention:
  - (i) the competent authorities can decide to take a multilateral approach (immediate and full participation of all the competent authorities concerned); or

- (ii) the competent authorities can decide to start a bilateral procedure, whereby the two parties to the bilateral procedure are the competent authorities that identified (based on a comparability analysis including a functional analysis and other related factual elements) the associated enterprise situated in another Member State that had a significant influence in contributing to a non-arm's length result in the chain of relevant transactions or commercial/financial relations, and should invite the other EU competent authority(ies) to participate as (an) observer(s) in the mutual agreement procedure discussions; or
- (iii) the competent authorities can decide to start more than one bilateral procedure in parallel and should invite the other EU competent authority(ies) to participate as (an) observer(s) in the respective mutual agreement procedure discussions.

Member States are recommended to apply a multilateral procedure to resolve such double taxation cases. However this should always be agreed by all the competent authorities, based on the specific facts and circumstances of the case. If a multilateral approach is not possible and a two or more parallel bilateral procedures are started, all relevant competent authorities should be involved in the first stage of the Arbitration Convention procedure either as Contracting States in the initial Arbitration Convention application or as observers.

- (c) The status of observer may change to that of stakeholder depending on the development of the discussions and evidence presented. If the other competent authority(ies) want(s) to participate in the second stage (arbitration), it (they) has (have) to become (a) stakeholder(s).

The fact that the other EU competent authority(ies) remain(s) throughout as (a) party(ies) to the discussions as (an) observer(s) only has no consequences for the application of the provisions of the Arbitration Convention (e.g. timing issues and procedural issues).

Participation as (an) observer(s) does not bind the other competent authority(ies) to the final outcome of the Arbitration Convention procedure.

In the procedure, any exchange of information must comply with the normal legal and administrative requirements and procedures.

- (d) The taxpayer(s) should, as soon as possible, inform the tax administration(s) involved that (an)other party(ies), in (an)other Member State(s), could be involved in the case. That notification should be followed in a timely manner by the presentation of all relevant facts and supporting documentation. Such an approach will not only lead to quicker resolution but also guard against the failure to resolve double taxation issues due to differing procedural deadlines in the Member States.

***7.6 [former point 5 CoC] The starting point of the two-year period (Article 7(1) of the Arbitration Convention)***

- (a) For the purpose of Article 7(1) of the Arbitration Convention, a case will be regarded as having been submitted according to Article 6(1) when the taxpayer provides the following:



- (i) identification (such as name, address, tax identification number) of the enterprise of the Member State that presents its request and of the other parties to the relevant transactions;
  - (ii) details of the relevant facts and circumstances of the case (including details of the relations between the enterprise and the other parties to the relevant transactions);
  - (iii) identification of the tax periods concerned;
  - (iv) copies of the tax assessment notices, tax audit report or equivalent leading to the alleged double taxation;
  - (v) details of any appeals and litigation procedures initiated by the enterprise or the other parties to the relevant transactions and any court decisions concerning the case;
  - (vi) an explanation by the enterprise of why it considers that the principles set out in Article 4 of the Arbitration Convention have not been observed;
  - (vii) an undertaking that the enterprise shall respond as completely and quickly as possible to all reasonable and appropriate requests made by a competent authority and have documentation at the disposal of the competent authorities; and
  - (viii) any specific additional information requested by the competent authority within two months upon receipt of the taxpayer's request.
- (b) The two-year period starts on the latest of the following dates:
- (i) the date of the tax assessment notice, i.e. a final decision of the tax administration on the additional income, or equivalent;
  - (ii) the date on which the competent authority receives the request and the minimum information as stated under point 7.6(a).

#### **7.7 [addition, report item 2.12] Domestic remedies**

If the terms and conditions of an agreement reached in a mutual agreement procedure are not satisfactory to the enterprise, the enterprise may withdraw its request for a mutual agreement procedure under the Arbitration Convention.

The implementation of an agreement reached under the procedure (Article 6(2) of the Arbitration Convention) should be subject to its acceptance by the enterprise and the enterprise's withdrawal from domestic remedies such as appeals concerning the issues settled in a mutual agreement procedure under the Arbitration Convention.

#### **8. [former point 3 CoC] Serious Penalties (Article 8 AC)**

As Article 8(1) provides for flexibility in refusing to give access to the Arbitration Convention due to the imposition of a serious penalty, and considering the practical experience acquired since 1995, Member States are recommended to clarify or revise their unilateral declarations in the Annex to the Arbitration Convention in order to better reflect that a serious penalty should only be applied in exceptional cases like fraud. *[addition, report item 2.13]* Tax fraud is a form of deliberate evasion of tax which is generally punishable under criminal law. The term includes situations in which deliberately false statements are submitted or fake

documents are produced. Tax evasion generally comprises illegal arrangements where liability to tax is hidden or ignored, i.e. the taxpayer pays less tax than he is legally obliged to pay by hiding income or information from the tax authorities.<sup>10</sup>

## **9. [former point 7 CoC] Proceedings during the second phase of the Arbitration Convention (Articles 9-12 AC)**

### **9.1 [former point 7.1 CoC] List of independent persons**

- (a) Member States commit themselves to inform without any further delay the Secretary-General of the Council of the names of the five independent persons of standing, eligible to become a member of the advisory commission as referred to in Article 7(1) of the Arbitration Convention and inform, under the same conditions, of any alteration of the list.
- (b) When transmitting the names of their independent persons of standing to the Secretary-General of the Council, Member States will join a curriculum vitae of those persons, which should, among other things, describe their legal, tax and especially transfer pricing experience.
- (c) Member States may also indicate on their list those independent persons of standing who fulfil the requirements to be elected as Chairman.
- (d) The Secretary General of the Council will address every year a request to Member States to confirm the names of their independent persons of standing or give the names of their replacements.
- (e) The aggregate list of all independent persons of standing will be published on the Council's website.
- (f) Independent persons of standing do not have to be nationals of or resident in the nominating State, but do have to be nationals of a Member State and resident within the territory to which the Arbitration Convention applies.
- (g) Competent authorities are recommended to draw up an agreed declaration of acceptance and a statement of independence for the particular case, to be signed by the selected independent persons of standing.

### **9.2 [former point 7.2 CoC] Establishment of the advisory commission**

- (a) Unless otherwise agreed between the Member States concerned, the Member State that issued the first tax assessment notice, i.e. final decision of the tax administration on the additional income, or equivalent which results, or is likely to result, in double taxation within the meaning of Article 1 of the Arbitration Convention, takes the initiative for

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<sup>10</sup> Communication from the Commission to the European Parliament and the Council on concrete ways to reinforce the fight against tax fraud and tax evasion including in relation to third countries, COM (2012) 351, 27.06.2012

the establishment of the advisory commission and arranges for its meetings, in agreement with the other Member State(s).

- (b) Competent authorities should establish the advisory commission no later than six months following expiry of the period referred to in Article 7 of the Arbitration Convention. Where one competent authority does not do this, another competent authority involved is entitled to take the initiative.
- (c) *[addition, report item 2.14 a)]* The advisory commission will normally consist of two independent persons of standing in addition to its Chairman and one or two representatives of each competent authority. For triangular cases, where an advisory commission is to be set up under the multilateral approach, Member States will have regard to the requirements of Article 11 (2) of the Arbitration Convention, introducing as necessary additional rules of procedure, to ensure that the advisory commission, including its Chairman, is able to adopt its opinion by a simple majority of its members.
- (d) The advisory commission will be assisted by a secretariat for which the facilities will be provided by the Member State that initiated the establishment of the advisory commission unless otherwise agreed by the Member States concerned. For reasons of independence, this secretariat will function under the supervision of the Chairman of the advisory commission. Members of the secretariat will be bound by the secrecy provisions as stated in Article 9(6) of the Arbitration Convention.
- (e) The place where the advisory commission meets and the place where its opinion is to be delivered may be determined in advance by the competent authorities of the Member States concerned.
- (f) *[addition, report item 2.14 c)]* Member States will provide the advisory commission before its first meeting, with all relevant documentation and information and in particular all documents, reports, correspondence and conclusions used during the mutual agreement procedure. To assist the advisory commission in completing its work in a timely and efficient manner, the competent authorities will use the time period needed to establish the advisory commission to collect and prepare all necessary information, so that it is already available at the outset of the procedure.

### **9.3 [former point 7.3 CoC] Functioning of the advisory commission**

- (a) A case is considered to be referred to the advisory commission on the date when the Chairman confirms that its members have received all relevant documentation and information as specified in point 9.2(f).
- (b) The proceedings of the advisory commission will be conducted in the official language or languages of the Member States involved, unless the competent authorities decide otherwise by mutual agreement, taking into account the wishes of the advisory commission.
- (c) The advisory commission may request from the party from which a statement or document emanates to arrange for a translation into the language or languages in which the proceedings are conducted.
- (d) *[addition, report item 2.14 b)]* Whilst respecting Article 10 of the Arbitration

Convention, the advisory commission may request Member States and in particular the Member State that issued the first tax assessment notice, i.e. final decision of the tax administration on the additional income, or equivalent, which resulted, or may result, in double taxation within the meaning of Article 1 of the Arbitration Convention, to appear before the advisory commission. At the outset of the arbitration procedure each of the enterprises involved will be informed by their respective competent authorities of their right to make a statement before the advisory commission.

- (e) The costs of the advisory commission procedure, which will be shared equally by the Member States concerned, will be the administrative costs of the advisory commission and the fees and expenses of the independent persons of standing.
- (f) Unless the competent authorities of the Member States concerned agree otherwise:
  - (i) the reimbursement of the expenses of the independent persons of standing will be limited to the reimbursement usual for high ranking civil servants of the Member State which has taken the initiative to establish the advisory commission;
  - (ii) the fees of the independent persons of standing will be fixed at EUR 1 000 per person per meeting day of the advisory commission, and the Chairman will receive a fee higher by 10 % than that of the other independent persons of standing.
- (g) Actual payment of the costs of the advisory commission procedure will be made by the Member State which has taken the initiative to establish the advisory commission, unless the competent authorities of the Member States concerned decide otherwise.
- (h) *[addition, report item 2.14 a)]*

The Chairman and the independent persons of standing will be able to hold separate deliberations in order to discuss and formulate the opinion of the advisory commission which will then be agreed with the representatives of competent authorities.

#### **9.4 [former point 7.4 CoC] *Opinion of the advisory commission***

Member States would expect the opinion to contain:

- (a) the names of the members of the advisory commission;
- (b) the request; the request contains:
  - (i) the names and addresses of the enterprises involved;
  - (ii) the competent authorities involved;
  - (iii) a description of the facts and circumstances of the dispute;
  - (iv) a clear statement of what is claimed;
- (c) a short summary of the proceedings;
- (d) the arguments and methods on which the decision in the opinion is based;
- (e) the opinion;

- (f) the place where the opinion is delivered;
- (g) the date on which the opinion is delivered;
- (h) the signatures of the members of the advisory commission.

The decision of the competent authorities and the opinion of the advisory commission will be communicated as follows:

- (i) Once the decision has been taken, the competent authority to which the case was presented will send a copy of the decision of the competent authorities and the opinion of the advisory commission to each of the enterprises involved.
- (ii) The competent authorities of the Member States can agree that the decision and the opinion may be published in full. They can also agree to publish the decision and the opinion without mentioning the names of the enterprises involved and with deletion of any further details that might disclose the identity of the enterprises involved. In both cases, the enterprises' consent is required and prior to any publication the enterprises involved must have communicated in writing to the competent authority to which the case was presented that they do not have objections to publication of the decision and the opinion.
- (iii) The opinion of the advisory commission will be drafted in three (or more in the case of triangular cases) original copies, one to be sent to each competent authority of the Member States involved and one to be transmitted to the Secretariat-General of the Council for archiving. If there is agreement on the publication of the opinion, the latter will be rendered public in the original language(s) on the website of the Commission.

**10. [former point 8 CoC, amended based on report item 2.15] Tax collection and interest charges during cross-border dispute resolution procedures**

- (a) Member States are recommended to take all necessary measures to ensure that during cross-border dispute resolution procedures under the Arbitration Convention enterprises engaged in such procedures can benefit from the suspension of tax collection under the same conditions as those engaged in a domestic appeals or litigation procedure although these measures may imply legislative changes in some Member States. It would be appropriate for Member States to extend these measures to the cross-border dispute resolution procedures under double taxation treaties between Member States.
- (b) Considering that, during mutual agreement procedure negotiations, a taxpayer should not be adversely affected by the existence of different approaches to interest charges and refunds during the time it takes to complete the mutual agreement procedure, Member States are recommended to apply one of the following approaches:
  - (i) tax to be released for collection and repaid without attracting any interest; or
  - (ii) tax to be released for collection and repaid with interest; or
  - (iii) each case to be dealt with on its merits in terms of charging or repaying interest (possibly during the mutual agreement procedure).

## **FINAL PROVISIONS (Chapter III Articles 15 to 22)**

### **11. *[former point 6.5 CoC]* Double taxation treaties between MS (Article 15 AC)**

As far as transfer pricing cases are concerned, Member States are recommended to apply the provisions of points 1, 2 and 3 also to mutual agreement procedures initiated in accordance with Article 25(1) of the OECD Model Convention on Income and on Capital, implemented in the double taxation treaties between Member States.

### **12. *[former point 2 CoC]* Admissibility of a case**

On the basis of Article 18 of the Arbitration Convention, Member States are recommended to consider that a case is covered by the Arbitration Convention when the request is presented in due time after the date of entry into force of accession by new Member States to the Arbitration Convention, even if the adjustment applies to earlier fiscal years.

### **13. *[former point 10 CoC]* Monitoring**

In order to ensure the even and effective application of this Code of Conduct, Member States are invited to report to the Commission on its practical functioning every two years. On the basis of these reports, the Commission intends to report to the Council and may propose a review of the provisions of this Code of Conduct.

## ANNEX 2

### The starting point of the three-year period (deadline for submitting the request according to Article 6 (1) of the Arbitration Convention)

Member State	Implementation of the definition in national legislation	Member States' translation in EN of their implementation of the definition in national legislation
<b>AT</b>	Die Zustellung des Steuerbescheides [ <i>der zu einer Doppelbesteuerung, z.B. aufgrund einer Verrechnungspreiskorrektur, führt</i> ]	The date on which the taxpayer <u>receives</u> the tax assessment notice or equivalent [ <i>that results in double taxation, e.g. due to a transfer pricing adjustment</i> ]
<b>BE</b>	La date d' <u>envoi</u> de l'avertissement-extrait de rôle comportant l'imposition ou le supplément d'imposition /en Nl. : de <u>verzendingsdatum</u> van het aanslagbiljet dat de aanslag of de aanvullende aanslag omvat	The date on which the notice of assessment is <u>sent</u> containing the assessment or the supplementary assessment
<b>BG</b>	Дата на връчване на акта, с който се определят задължения, произтичащи от корекция на трансферните цени.	The date of service (receipt) of the tax assessment notice containing a transfer pricing adjustment.
<b>CY</b>	Η ημερομηνία επίδοσης της ειδοποίησης επιβολής φορολογίας [ που αντανακλά τις τροποποιήσεις για τις τιμές μεταβίβασης].	The date of service (receipt) of the tax assessment notice [that reflects the transfer pricing adjustment].
<b>CZ</b>	Doručení prvního platebního výměru nebo jiného rozhodnutí, které vede ke dvojímu zdanění.	The date on which the taxpayer receives the first tax assessment notice or equivalent that results in double taxation
<b>DE</b>	Die <u>Bekanntgabe</u> des ersten Bescheides, der zu einer Doppelbesteuerung führt	The date on which the taxpayer <u>receives</u> the first tax assessment notice or equivalent that results in double taxation
<b>DK</b>	Såfremt skattemyndighederne agter at foretage en skatteansættelse på et andet grundlag end det, der er selvangivet, skal den skattepligtige underrettes skriftlig herom. Det skal samtidig underrettes om, at skatteyder har en frist på mindst 15 dage regnet fra skrivelsens datering, til at fremkomme med en udtalelse imod den foreslåede ændring af skatteansættelsen, jf. Skatteforvaltningslovens § 20. Har den skattepligtige udtalt sig inden fristens udløb, skal skattemyndighederne give skriftlig underretning om skatteansættelsen (kendelse).  I Danmark vil den første endelige underretning fra skattemyndighederne om	The date on which the taxpayer <u>receives</u> the final assessment from the tax authorities  [ <i>If the tax authorities intend to make an assessment not in accordance with a tax return, a notice specifying the amendment and the reason for it must be sent to the taxpayer. The taxpayer must be given a period of at least 15 days from the date of the notice to submit its comments on the amendment. Hereafter the tax authorities send the final assessment to the taxpayer.</i> ]

	armslængde reguleringen blive givet ved modtagelsen af kendelsen, hvorfor treårsfristen i henhold til Voldgiftskonventionens art. 6.1 begynder at løbe fra dette tidspunkt.	
<b>EE</b>	"arvates haldusakti teatavaks tegemise või kättetoimetamise päevast"	According to the Estonian domestic law, the date of <u>notification</u> of or <u>delivery</u> of the administrative act is decisive in case of similar procedure for appeals.  Thus, the starting point of the 3 year period in the meaning of the article 6(1) AC would be the date on which the taxpayer <u>receives</u> the tax assessment notice or equivalent.
<b>FI</b>	Päivä, jona verovelvollinen on saanut tiedon ensimmäisestä verotuspäätöksestä tai vastaavasta toimenpiteestä, jolla siirtohinnoittelua on oikaistu.  på svenska:  Dagen då den skattskyldige fått kännedom om det första skattebeslutet eller den motsvarande åtgärden, genom vilken den interna prissättningen har korrigerats.	The date on which the taxpayer receives the first tax assessment notice or equivalent decision resulting in a transfer pricing adjustment.
<b>FR</b>	La date de réception de la notification de redressements en cas de procédure contradictoire,  La date de réception de la notification des bases ou éléments d'imposition en cas de procédure d'office	The date of <u>receipt</u> of the notification of adjustments or the notification of basis of elements of assessments in case of estimated assessment
<b>EL</b>	από την ημερομηνία επίδοσης του φύλλου ελέγχου	From the date of <u>service</u> (receipt) of the tax assessment notice
<b>ES</b>	La fecha de la recepción de la notificación del acto de liquidación	The date on which the taxpayer receives the tax assessment notice or equivalent [that reflects the transfer pricing adjustment]
<b>HR</b>	Dan primitka poreznog akta koji za posljedicu može imati dvostruko oporezivanje	The date on which the taxpayer receives the tax assessment notice or equivalent that results in double taxation
<b>HU</b>		
<b>IE</b>	The date of the <u>issue</u> to the taxpayer of a notice of an assessment, or of an amended assessment [ <i>reflecting the determination by an inspector of taxes of a transfer pricing</i>	



	<i>issue]</i>	
<b>IT<sup>11</sup></b>	<p>"Avviso di accertamento"</p> <p>Per avviso di accertamento si intende l'atto scritto con il quale l'Amministrazione fiscale comunica al contribuente di aver accertato un reddito imponibile maggiore del reddito dichiarato oppure un reddito imponibile non dichiarato.</p>	<p>The date on which the taxpayer <u>receives</u> the notice of assessment that reflects the transfer pricing adjustment</p> <p>[«Avviso d'accertamento» means a formal written act through which the tax administration notifies the taxpayer to have assessed taxable income that resulted to be higher than the declared income or that was not declared at all.]</p> <p>La date d'<u>envoi</u> de l'avis d'évaluation de l'assiette incorporant l'ajustement du prix de transfert</p> <p>[Par «avviso d'accertamento» on entend un act écrit formel par lequel l'Administration fiscale notifie au contribuable d'avoir évalué un revenu imposable qui est plus grand que le revenu déclaré ou qui n'a pas été déclaré.]</p> <p><u>Zugangsdatum</u> des Bescheids über die Feststellung von Besteuerungsgrundlagen, mit dem die Verrechnungspreiskorrekturen durchgeführt werden</p> <p>[Unter „avviso d'accertamento“ versteht man ein formales schriftliches Dokument, mit dem die Finanzbehörde dem Steuerpflichtigen mitteilt, einen zu versteuernden Einkommensbetrag ermittelt zu haben, der höher als der erklärte Einkommensteuerbetrag ist oder der nicht erklärt worden war]</p>
<b>LU</b>	<p>« Bulletin », effet: le troisième jour ouvrable qui suit la remise de l'envoi à la poste</p> <p>[Les différents bulletins (bulletin d'impôt, bulletin de fixation, bulletin d'établissement séparé, bulletin provisoire, définitif, rectificatif.....) émis par l'administration des contributions du</p>	<p>The date of the third working day following the <u>sending</u> of the assessment</p> <p>Das Datum des dritten Arbeitstages nach <u>Absendung</u> des Bescheids</p>

<sup>11</sup> The definition does not apply to requests according to Article 25 (1) of the OECD Model Tax Convention, as the relevant "action" triggering the starting point of the three-year period could be other than a transfer pricing adjustment

	<i>Luxembourg peuvent être désignés dans le contexte de la convention d'arbitrage par le mot « bulletin », en anglais « assessment », en allemand « Bescheid ».]</i>	
<b>LT</b>	<p>Data, kurią kompetentinga institucija pranešė asmeniui apie priimtą sprendimą.</p> <p>Pranešimo data suprantama kaip dokumento įteikimo data pagal Mokesčių administravimo įstatymo 164 straipsnį:</p> <p>1. Dokumentai mokesčių mokėtojui gali būti įteikiami tokiais būdais:</p> <ol style="list-style-type: none"> <li>1) tiesiogiai įteikiant;</li> <li>2) siunčiant registruotu laišku;</li> <li>3) telekomunikacijų galiniais įrenginiais;</li> <li>4) viešai paskelbiant.</li> </ol>	<p>There is no specific provision embedded in national legislation, thus, the general rules applied: it is a date, when competent authority informed the taxpayer of the decision adopted. In practice date of informing means the date when document is delivered, i. e. the starting point of the three-year period is the date on which the taxpayer <u>receives (is recognised to have received)</u> the final tax assessment note from the tax authorities.</p> <p>The date of receipt depends on the way of communication and is governed by general rules provided in 164 Article of Law on Tax Administration:</p> <p>Documents may be communicated to the taxpayer in the following manner:</p> <ol style="list-style-type: none"> <li>1) personally;</li> <li>2) by registered mail;</li> <li>3) by telecommunications terminal equipment;</li> <li>4) by publishing.</li> </ol>
<b>LV</b>	Diena, kad nodokļu maksātājam paziņots lēmums par audita rezultātiem	The date on which the taxpayer is notified on the tax tax assessment
<b>MT</b>	Id-data tan-notifika ta' l-istima.	The date of the service (receipt) of the notice of assessment [reflecting the transfer pricing adjustment]
<b>NL</b>	Navorderingsaanslag, of primaire aanslag indien de verrekenprijscorrectie hierin is begrepen "	The date of the tax re-assessment notice, or original assessment [ <i>if it includes the transfer pricing adjustment</i> ]
<b>PL</b>	Bieg okresu trzyletniego rozpoczyna się od pierwszej z następujących dat: daty doręczenia protokołu kontroli albo daty doręczenia decyzji podatkowej.	The three year period starts with the first of the following dates: date of delivery of tax audit report or date of delivery of tax decision.

<b>PT</b>	Data da notificação legal do acto de liquidação efectuado pela Administração Fiscal ou data da liquidação efectuada pelo contribuinte, quando incluir o ajustamento do lucro tributável que origine ou seja susceptível de originar uma dupla tributação. Constitui notificação o recebimento pelo contribuinte de cópia do assento do acto da liquidação	Date of legal notification of the assessment or re-assessment act made by the tax administration or the date of the self-assessment, if it includes the taxable profit adjustment which results or is likely to result in double taxation  Notification means the receipt by the taxpayer of the tax assessment or re-assessment notice
<b>RO</b>		
<b>SE</b>	“Grundläggande beslut om årlig taxering”  “Omprövningsbeslut”  “Eftertaxering”	The date of <u>sending</u> of: <ul style="list-style-type: none"> <li>• the basic decision on the annual taxation;</li> <li>• the re-assessment decision; or</li> <li>• the additional assessment.</li> </ul> <i>[In Sweden the relevant decision would be the first decision of the tax authorities that results or is likely to result in double taxation, e.g. due to a transfer pricing adjustment]</i>
<b>SI</b>	Za začetek teka triletnega obdobja se šteje datum vročitve odločbe o davčni odmeri ali enakovreden dokument [ki ima za posledico, dvojno obdavčitev].	The date on which the taxpayer receives the first tax assessment notice or equivalent [that results in double taxation].
<b>SK</b>	Doručenie protokolu o daňovej kontrole sa považuje za úkon smerujúci na vyrubenie dane."	The delivery ( <u>receipt</u> ) of the record (protocol) from the tax inspection is referred as the action resulting in the tax assessment.
<b>UK</b>	As stated in our Statement of Practice SP01/11 HMRC will regard the first notification as being the finalisation of a transfer pricing enquiry which gives rise to double taxation. This stage will be marked by the determination of the quantum of the additional profits arising from a transfer pricing adjustment such as the issue of a closure notice, or the amendment of a return during an enquiry.  The starting point will be the date of issue of the related notice, letter or amendment.	--

### ANNEX 3

#### Draft Template for cases under the Arbitration Convention that may be exchanged at each step between CAs

##### General Information:

	Initiating State	Other State
<b>Case No.</b>		
<b>Date of request for MAP</b>		
<b>Taxpayer:</b> Name: Address ID No		
<b>Competent Authority</b> Address Email Tel. Contact person		
<b>Amount of adjustment</b>		

**Phase I**

No	Description of steps	Initiating State	Other State	timelines		
1a)	Date of measure (adjustment) resulting in double taxation			3 years		
1b)	Date of tax assessment					
2	Request for MAP received on					
	<b>Timeline respected?</b>	<input type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b>	<input type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b>		2 months	
3.	Informing the other State (add date of sending/receiving letter)			1 month		
4.	Information submitted by the applicant considered complete?	<input type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b>	<input type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b>			
	If not, what is missing?					
4 a)	Date of request for additional information					
4b)	Complete information received on					
5	Litigation? If so , date of decision					
	<b>Starting date of 2 year time period (the latest of 1b), 4b) or 5</b>					
	Informing applicant about acceptance of request and begin of 2 year time limit			1 month		

No	Description of steps	Initiating State _____	Other State _____	timelines		
6.	Position paper of initiating State			4 months	18 months	24 month
7	Position paper other State			6 months		
8.	Meeting of CAs					
	<b>End of 2 year time period</b>					
9.	Extension of 2 year timeline agreed between CAs and applicant?	<input type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b>				
<b>10.</b>	<b>New expiring date</b>					
	End of PHASE I					

**Phase II**

No	Description of steps	Initiating State _____	Other State _____	timelines		
11.	Establishing the advisory commission			6 months		
	<b>Date when advisory commission was established</b>					
12.	Date of establishment by Chair, that all relevant information has been received			6 month		
13.	Meeting of advisory commission					
	<b>Opinion of advisory commission</b>					
	CAs eliminating double taxation					
<b>14.</b>	<b>Closing date</b>					

## ANNEX 4

### Relation AC and domestic remedies

