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EU JOINT TRANSFER PRICING FORUM

SECRETARIAT INFORMATION PAPER ON THE DEFINITIONS ON EARLY NOTIFICATION, PRIOR NOTIFICATION, PRIOR CONSULTATION AND PRIOR AGREEMENT

Meeting of Monday 12th and Tuesday 13th December 2005

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Background Document

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1. This is an information paper which defines various terms to help the Forum in its future work.
2. The typical time line of events for a Mutual Agreement Procedure (MAP) or Arbitration Convention (AC) process runs as follows:
 - i. Adjustment.
 - ii. MAP/AC claim and Competent Authority discussions.
 - iii. MAP/AC resolution.
 - iv. Corresponding adjustment and possible reduction of original adjustment. Also the possibility of interest and penalty recalculations being necessary.
3. Under existing procedures in MS, each event needs to take place before the next event can happen. Some parts in the process require lengthy amounts of time to resolve what are sometimes very complicated issues. In its work programme, the JTPF has agreed that it will consider alternative dispute avoidance and resolution procedures. The idea is to develop patterns of behaviour and processes which will make procedures function more smoothly and efficiently.
4. At the June 2005 meeting it was agreed that various forms of "prior consultation" would be considered by the JTPF. The term "consultation" can cover a broad range of activities. Building on the ideas already discussed in the Forum and "Company taxation in the internal market" (COM(2001) 582 final), the Secretariat will produce discussion papers aimed at the following areas, all under the broad heading of alternative dispute resolution and avoidance.
5. Drawing on the work done so far, the following concepts have been identified:
 - a. Early Notification (EN) (paper already distributed): this concept aims to reduce some of the delay between any adjustment and the commencement of the MAP/AC. The proposal is for tax administrations to notify other relevant tax administrations as soon as they adjust the profits of a taxpayer.
 - b. Prior Notification (PN): Before an adjustment is made, MS notify all other relevant MS. This will be the subject of a future paper. Notification implies that tax administrations merely notify other relevant tax administrations of their intended actions before adjusting the profits of a taxpayer.
 - c. Prior Consultation (PC): Before an adjustment is made, MS consult with other relevant MS. This will be the subject of a future paper. A step up from Prior Notification because tax administrations would need to consult in some fashion before any adjustment was made. What form this consultation might take needs to be examined.
 - d. Prior Agreement (PA): Before any adjustment is made in one MS, another MS agrees to give a corresponding adjustment. As noted in "Company taxation in the internal market", this could completely remove problems of double taxation and represents an ideal solution from a business perspective.
6. This will form a major piece of the Forum's work once the work regarding APA procedures is more mature. The Forum will be able to discuss what these procedures could look like in practice to ensure that the aim of better dispute resolution and avoidance is best achieved.

7. The Secretariat will distribute discussion papers in the future meetings. In the meantime, the Secretariat welcomes any written comments from Forum members if they have ideas for these papers.