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EU JOINT TRANSFER PRICING FORUM

POSSIBLE ADDITIONAL INFORMATION ON PENDING CASES UNDER THE ARBITRATION CONVENTION

(Based on the proposal of the Belgian delegate)

Meeting of 9 June 2011

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Background Document

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Belgian suggestion:

The Belgian delegates consider that the EU Joint Transfer Pricing Forum could improve transparency of the MAP process under the EU Arbitration Convention in relation to Member States. In this respect, a questionnaire could be sent to the Member States in order to obtain information as to the average time needed to resolve a case and as to cases without a full agreement between the competent authorities after two years from the date on which the cases were valuably submitted to one of the competent authorities. A draft questionnaire is proposed in annex.

The information could be asked with regard to cases for which the request was presented on or after 1 November 2004, as the Arbitration Convention was suspended between 1 January 2000 and 1 November 2004.

Such questionnaire will not replace the questionnaire on open MAPs sent each year to the Member States (questionnaire identifying the other member States concerned). It will be an additional questionnaire furnishing different information and it will not identify the other Member States concerned. It will also be sent at the beginning of each year in order to obtain information concerning the previous year. The first time it would be sent, it would, however, be interesting to cover the years 2005 to 2009 in order to get a better picture of the situation.

The Belgian delegates are of the opinion that more transparency could improve the delays necessary to resolve MAP cases under the EU Arbitration Convention in relation to Member States.

Secretariat's comment:

As the Belgian proposal was presented during a pre-meeting and did not attract any objection we have prepared a draft additional questionnaire on the basis of the Belgian proposal.

Options

As regards the two first tables (aiming to collect information on the duration of a case) we see two options: or MS agree to provide information on the past (e.g. since 2000) or MS prefer starting in 2010.

Definitions

An important issue is the discrepancies in the actual tables which are mainly linked to different interpretations of the criteria applied to consider a case as open, pending or closed.

The Secretariat was recently questioned about whether a case is to be considered as open at the date when a taxpayer presents the case to a Competent Authority or rather at the moment a case is considered as well founded.

In 2006 the Forum decided to apply the following rule (see doc.JTPF/032/BACK/2006/EN and summary record of December 2006 doc.JTPF/001/REV1/2007/EN):

The Forum agreed by consensus to update the number of pending cases on a yearly basis (**information should be sent by 1st April of each year**) and on the French

proposal to use a common criteria for considering a case as pending (the word “pending” instead of “open” should be used in the future): *"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 authorities of the other Contracting States involved in the case attaching a copy of the taxpayer's request. The date on which such information is received by the competent authorities of the contracting States should be applied as the single criterion for including the case as “pending” in the Forum's tables. For cases which should no longer appear in the tables, the relevant closure date should be the date on which the other competent authority receives the letter closing the mutual agreement procedure sent by the competent authority of the first State. Where no such letter is sent, the date to be taken into account should be that on which the joint committee hearing the case has closed it".*

However considering the high number of discrepancies in the actual cases the Secretariat invites JTPF members to confirm the criteria agreed in 2006 or to adopt new criteria.

Draft additional questionnaire

MEMBER STATE: _____

Possible additional questionnaire related to the number of pending MAP cases on 31 December 2010 under the EU Arbitration Convention:

Question 1 should aim to collect information on the period of time necessary to solve a case.

1. MS are requested to provide for each case solved the number of months between opening and closing of the case by choosing a category (e.g. 24-36 months, 36-48 months, etc).
2. TAs should also decide whether they want to provide information for former years.

Example of table for question 1

What was the period of time to solve MAP cases in which your MS was involved under the EU Arbitration Convention for each of the following periods (or option2 only for 2010)?

	NUMBER OF CASES SOLVED ¹ DURING THE CONCERNED YEAR	NUMBER OF CASES PER TIME PERIOD (CHOOSE A CATEGORY ON THE BASIS OF MONTHS BETWEEN OPENING ² AND CLOSING OF THE CASE)				
		<24	24- 36	36- 48	48- 60	>60
e.g. Year 2010	3		1	1	1	
Year 2010						
Year 2009						
Year 2008						
Year 2007						
Year 2006						
Year 2005						
Year 2004						
Year 2003						
Year 2002						
Year 2001						
Year 2000						
TOTAL						

1 A case shall be considered as solved where a full agreement has been reached by the competent authorities involved on all the issues under consideration. **(to be discussed)**

2 A case is considered as opened at the moment when a taxpayer presents the case and not at the moment when a case is established as well-founded. **(to be discussed)**

Question 2 should aim to collect information on cases still pending after two years from the date on which the case was presented by the taxpayer.

MS are requested to provide for each case unsolved the number of months between opening of the case and the end of the reference year by choosing a category (e.g. 24-36 months, 36-48 months etc).

TAs should decide whether they want to provide information for former years.

Example of table:

How many MAP cases in which your MS was involved remain unsolved after two years from the date on which the case was submitted for each of the following periods (or option2 only for 2010)?

	NUMBER OF CASES UNSOLVED ³ AFTER THE TWO YEAR PERIOD AT THE END OF THE CONCERNED YEAR	NUMBER OF CASES PER TIME PERIOD (CHOOSE A CATEGORY ON THE BASIS OF MONTHS BETWEEN OPENING ⁴ AND THE END OF THE REPORTING YEAR)			
		24-36	36-48	48-60	>60
e.g Year 2010X	e.g. 3	e.g. 1	e.g. 1	e.g. 1	
Year 2010					
Year 2009					
Year 2008					
Year 2007					
Year 2006					
Year 2005					
Year 2004					
Year 2003					
Year 2002					
Year 2001					
Year 2000					
Total					

³ A case shall be considered as unsolved where a full agreement has not been reached by the competent authorities involved on all the issues under consideration.**(to be discussed)**

⁴ A case is considered as opened at the moment when a taxpayer presents the case and not at the moment when a case is established as well-founded.**(to be discussed)**

Question 3

Please indicate the main reasons why full agreement could not be reached within the two year period (e.g. lack of cooperation by the taxpayers, lack of cooperation by the other competent authority, pending case before court, complexity of the case, etc.)⁵:

Situation at the end of 2010						
Member State	Number of cases	Lack of cooperation by taxpayer	Lack of cooperation by the other CA(s)	Pending case before court	Complexity of the case	Other (please specify):
e.g. BE	e.g. 5	e.g. 1	e.g. 2	e.g. 2	e.g. 1	e.g. 1 triangular case

Question 4

Please indicate the main reason why the cases have not been submitted to an advisory commission after the two year period (e.g. time limit waived with the agreement of the associated enterprise concerned, pending case before court, etc.):

Situation at the end of 2010				
Member States	Number of cases	Time limit waived with the agreement of the taxpayers	Pending case before court	Other (please specify):
e.g. BE	e.g. 3	e.g. 2		e.g. 1: translation of the documents

⁵ You may tick more than one box for each case if necessary.