



EUROPEAN COMMISSION
DIRECTORATE-GENERAL
TAXATION AND CUSTOMS UNION
TAX POLICY
Coordination of Tax Matters

Brussels, 1 June 2004
C1/LDH/

DOC: JTPF/012/BACK/2004/EN

EU JOINT TRANSFER PRICING FORUM

Contribution from business on the masterfile concept

Meeting of Thursday 10 June 2004

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Master File and Penalties: Business Input

1. Yes, the business representatives agree to the “master file” concept under the following provisos:
2. The content (still to be defined) of the master file is generally understood to be a roadmap (or standardized document) that would and should allow the tax inspector to select a company for audit and ask relevant and precise questions regarding intercompany relations. Because the timing when a master file must be ready (when filing the return, at the start of the audit) may vary from country to country, its content must be kept short, clear, but (again) with enough details to allow the tax inspector to ask relevant and precise questions. The master file could include the commitment by the taxpayer to prepare or have prepared further analytical information (e.g. comparable studies to prove arm's length nature of the applied transfer pricing method). This analytical information would upon request on audit;
3. The master file must be the same for all countries that decide that transfer pricing documentation is required. Obviously a country may decide not to have transfer pricing documentation at all or have a shorter version of the master file. If a country adds items to the master file, such country departs from the master file concept;
4. The taxpayer should be free to keep the master file either in a centralized or in a decentralized manner. Whatever method chosen, the taxpayer ensures that the master file document is handed over in a timely fashion.
5. A taxpayer that hands over its seriously prepared master file in a timely manner should be free of the following penalties:
 - a) Documentation related penalties (*): because the taxpayer has fulfilled its documentation requirements
 - b) Adjustment related penalties (*): because the taxpayer and the tax inspector may disagree on the range of transfer prices and an adjustment may be made by the inspector, the serious taxpayer, having done its part in good faith and in a professional manner, should not be punished through additional penalties;
 - c) Serious penalties (as defined by the Arbitration Convention) that precludes the access to the said Convention: when a taxpayer has done his master file and the attached documentation in a serious manner, there should be no room for the administration to make an argument that would prevent the taxpayer from accessing the Arbitration Convention.

Note: (*) Prof. G. Maisto et al will file a separate paper on the penalty regimes (law and practices) of the various countries. This paper will describe the penalties that the well-behaving taxpayer should get relief from when having the master file prepared.