



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL  
TAXATION AND CUSTOMS UNION  
Analyses and tax policies  
**Analysis and coordination of tax policies**

Brussels, 05th December 2006  
TAXUD E1 D(2006)

Taxud.E1/JMVL/EM

**Doc: JTPF/038/BACK/2006/EN**

## **EU JOINT TRANSFER PRICING FORUM**

### **Comments on JTPF monitoring task**

**Meeting of Thursday 07th December 2006**

**Centre de Conférences Albert Borschette  
Rue Froissart 36 - 1040 Brussels**

### **Background document**

Contact:

Jean-Marc Van Leeuw, Telephone (32-2) 295.89.36 E-mail: [Jean-Marc.Van-Leeuw@cec.eu.int](mailto:Jean-Marc.Van-Leeuw@cec.eu.int)

Edward Morris, Telephone (32-2) 295.15.67 [Edward.Morris@cec.eu.int](mailto:Edward.Morris@cec.eu.int)

### **Poland:**

Commission européenne, B-1049 Bruxelles / Europese Commissie, B-1049 Brussel - Belgium. Telephone: (32-2) 299 11 11.  
Office: MO59 6/50. Telephone: direct line (32-2) 2958936. Fax: (32-2) 2956377.

E-mail: [jean-marc.van-leeuw@cec.eu.int](mailto:jean-marc.van-leeuw@cec.eu.int)

With respect to the document „Secretariat note on JTPF monitoring task” (DOC. JTPF/024/2006/EN), answers to the questions are as follow:

### **1. The Arbitration Convention**

In our opinion, updating the number of open cases and collection of information of Code of Conduct implementation on yearly basis seems to give the most useful source of information. However, we find it extremely vital to define “open cases” and “closed ones”. Only in that case, any comparison of provided information may lead to right conclusions.

Poland would like to state that any information given on reason of delays in closing case under The Arbitration Convention should assume Polish regulations on tax secrecy.

Moreover, Poland agrees on 1<sup>st</sup> March as the date of updating aforementioned information.

Any conclusion based on collected information should lead to improvement of the Code of Conduct.

According to Polish rules on public information, Polish tax administration is obliged to perform various statistical information to the public recipient. As it is stated, we have no objections to send to JTPF accepted statistics.

### **2. Code of Conduct on TP documentation**

We accept the date of November 2007 as the date of sending first information in subject of Code of Conduct on TP documentation implementation.

### **3. Monitoring APAs**

We find very reasonable monitoring of APA’s and publishing statistical information on the yearly basis. However, it needs to be discussed on JPTF what kind of statistics and scope of information would be sufficient and will not infringe internal regulations on tax secrecy.

### **4. Ratification process of the accession convention to the AC**

As regards The Arbitration Convention, we have a pleasure to inform you that ratification documents were signed by the President of the Republic of Poland on 12<sup>th</sup> October 2006. The Arbitration Convention and ratification documents were sent to The Secretariat of Council of the European Union, as the last step of ratification procedure.

### **5. Penalties and interest**

Polish tax administration collects some statistics of TP audits, so we do not see any obstacles to sent them on the yearly basis.

### **Business:**

## **1. The Arbitration Convention:**

*Do Forum members agree with the suggestion of updating every year the number of open cases under the AC and collecting information on the way the Code of Conduct is implemented by tax administrations?*

**Remark:** *This should be the most efficient way to review the implementation process. The experience during the 1<sup>st</sup> mandate of the JTPF (e.g. ratification process of EU AC) demonstrated that a regular review of MS' and business community's obligations is a most efficient tool to ensure an improvement in the implementation process.*

*Do Forum members agree with the need to define common criteria to consider a case as open or as closed in order to avoid discrepancies between Competent Authorities only based on these criteria?*

**Remark:** *Generally, a definition of these criteria should be helpful to decide whether a case is still under discussion between the MS involved. This would also increase the certainty on the actual number of open cases. However, a narrow definition could at least partially decrease the MS' flexibility in dealing with the cases with the other countries involved. In practice, the issue of whether a case was still open or not should not be most critical for the taxpayers.*

*Do Forum members agree that while fully respecting MS competence in this field it would be useful to know why cases are still open after 24 months and to distinguish between the cases whether it was delayed in application of art. 7.1 (where the case has been submitted to a court or tribunal, the term of two years referred to in the first subparagraph shall be computed from the date on which the judgment of the final court of appeal was given ) or 7.4 (The competent authorities may by mutual agreement and with the agreement of the associated enterprises concerned waive the time limits referred to in paragraph 1) or another reason (it would probably be helpful to mention the reason).*

**Remark:** *This distinction would certainly be advantageous as taxpayers/advisors could examine for which cases an application could be handled efficiently from a timing perspective.*

*Do Forum members agree to provide the updated information by 1<sup>st</sup> March of each year?*

**Remark:** *As far as business members are in a position to provide information, it should be acceptable to present information on 1<sup>st</sup> March of each year.*

*Do Forum members agree that the conclusions of the JTPF on the basis of this information provided might eventually lead to an improvement/amendment of the Code of Conduct (as recommended by the Code itself)?*

**Remark:** *Yes, we are of the opinion that the conclusions of the JTPF on the basis of this information provided should lead to an improvement/amendment of the Code of Conduct. The Code of Conduct should be reviewed in the light of the practical application, regardless whether it relates to the EU AC or the EU TPD.*

## **2. Code of Conduct on TP documentation**

*As the Code was adopted in June 2006, do Forum members agree that first information should be sent to the Secretariat by the end of November 2007?*

***Remark: Yes, this period seems to be appropriate given that the tax authorities and taxpayers need make certain experiences with the EU TPD to provide significant and meaningful information.***

*Do Business members agree to send feedback on a yearly basis?*

***Remark: This should be acceptable for the business community. However, it might be useful to structure the regular feedback to reduce the administrative burden and to receive a consistent feedback on the application of the EU TPD.***

*From our perspective, such feedback could comprise the aspects described in more detail below. For the avoidance of doubt, this list provides a non-exhaustive description of issues and is subject to customization for each individual case:*

### **List of items in monitoring the EU TPD Concept**

- ***Number of cases in which the EU TPD concept has been applied***
- ***Information on cases where the EU TPD has been applied:***
  - ***Place of residence of company for which the Masterfile is prepared***
  - ***Number and places of residence of countries involved***
  - ***Type of transactions subject to the EU TPD***
  - ***Issues in the application of the EU TPD ( e.g. centralization vs. non-centralization)***
  - ***Deviations from MS' transfer pricing documentation law***
  - ***Issues/deviations in the application of the EU TPD concept to permanent establishments***
  - ***Indication of level of administrative burden and/or compliance costs in creating the EU TPD (e.g. internal resources, external advisors fees, etc.)***
  - ***In setting-up the Masterfile and the Country-specific documentation (see lists in section 1, paragraph 4.2 and 5.2 of the Code of Conduct, OJ EU 2006/C 176/3,4): Which part of the content of the Masterfile and country specific documentation, respectively is in the practical application (please provide a short explanation, if applicable either:)***
    - a) ***useful, and/or,***
    - b) ***less useful and burdensome, and/or,***
    - c) ***contrary to the aim of the EU TPD, creates a high administrative burden and should, therefore, be reviewed and potentially removed from the Masterfile/Country-specific documentation lists.***
- ***Any other issue/obstacle in the practical application of the EU TPD concept***
- ***If any, what are the experiences made in discussing the EU TPD with tax authorities (for both, “Masterfile-country” and other countries for which country-specific documentations are prepared).***

### **3. Monitoring APAs**

*Do Business members agree to send feedback on a yearly basis to the JTPF?*

**Remark: This should be acceptable.**

## Ireland:

**Q1 Do Forum members agree with the suggestion of updating every year the number of open cases under the AC and collecting information on the way the Code of Conduct is implemented by tax administrations?**

A1 Ireland is prepared to update the list of open cases annually. It is not clear what is meant by collecting information on the way the Code of Conduct is implemented by tax administrations.

**Q2 Do Forum members agree with the need to define common criteria to consider a case as open or as closed in order to avoid discrepancies between Competent Authorities only based on these criteria?**

A2 The exchanges between tax administrations to settle the existing table worked well so that it may not be essential to define criteria to consider a case as open or closed. However, Ireland has no objection to seeking to identify appropriate criteria.

**Q3 Do Forum members agree that while fully respecting MS competence in this field it would be useful to know why cases are still open after 24 months and to distinguish between the cases whether it was delayed in application of art. 7.1 (where the case has been submitted to a court or tribunal, the term of two years referred to in the first subparagraph shall be computed from the date on which the judgment of the final court of appeal was given) or 7.4 (The competent authorities may by mutual agreement and with the agreement of the associated enterprises concerned waive the time limits referred to in paragraph 1) or another reason (it would probably be helpful to mention the reason).**

A3 There may be a risk to taxpayer confidentiality here, particularly where the table is to be put on the JTPF website. Nothing should be done that could lead to a taxpayer being identified. There might be a greater risk of identification in relation to smaller Member States.

**Q4 Do Forum members agree to provide the updated information by 1<sup>st</sup> March of each year?**

A4 Ireland is open to fixing a date by which information should be provided.

**Q5 Do Forum members agree that the conclusions of the JTPF on the basis of this information provided might eventually lead to an improvement/amendment of the Code of Conduct (as recommended by the Code itself)?**

A5 Such an outcome is a possibility but it is not possible to predict how likely such an outcome might be.

**Q6 Do MS representatives members agree to send statistical information on a yearly basis?**

A6 As indicated in relation to the question of publishing statistics, we would have reservations about the provision and use of statistics that could result in identification of a taxpayer. Taxpayers are entitled to confidentiality under law. Subject to this, we are open to providing some statistics.

**Q7 As the Code was adopted in June 2006, do Forum members agree that first information should be sent to the Secretariat by the end of November 2007?**

A7 Yes.

**Q9 Do MS representative members agree to send statistical information on a yearly basis?**

A9 See A6 above.

**Q10 Do MS representatives agree to send statistical information on a yearly basis?**

A10 See A6 above.

### The Netherlands:

**Do Forum members agree with the suggestion of updating every year the number of open cases under the AC and collecting information on the way the Code of Conduct is implemented by tax administrations?**

The Netherlands agree with updating the number of open cases under the AC every year and to collect information on the way the Code of Conduct is implemented by tax administrations. Regarding the monitoring of the number of cases, it should be clear when a case is considered to be opened and when a case can be considered to be closed in order to avoid any mismatches between the Member States. Therefore the Netherlands supports the French proposal for the use of common criteria to determine what should be considered an “open case” (doc. JTPF/032/BACK/2006/EN).

**Do Forum members agree with the need to define common criteria to consider a case as open or as closed in order to avoid discrepancies between Competent Authorities only based on these criteria?**

Yes (see also answer to former question)

**Do Forum members agree that while fully respecting MS competence in this field it would be useful to know why cases are still open after 24 months and to distinguish between the cases whether it was delayed in application of art. 7.1 (*where the case has been submitted to a court or tribunal, the term of two years referred to in the first subparagraph shall be computed from the date on which the judgment of the final court of appeal was given*) or 7.4 (*The competent authorities may by mutual agreement and with the agreement of the associated enterprises concerned waive the time limits referred to in paragraph 1*) or another reason (it would probably be helpful to mention the reason).**

The Netherlands agree that it could be useful to know why cases are still open after 24 months in order to see if there are specific issues which several Member States encounter and for which it would be helpful to find a solution within the Forum. The Netherlands feel that such information should be provided to the Forum only if both Member States concerned agree to that.

**Do Forum members agree to provide the updated information by 1<sup>st</sup> March of each year?**

In order to have enough time to check the information with the other Member State involved, the Netherlands would prefer providing the updated information by the 1<sup>st</sup> April of every year.

**Do Forum members agree that the conclusions of the JTPF on the basis of this information provided might eventually lead to an improvement/amendment of the Code of Conduct (as recommended by the Code itself)?**

The Netherlands agree that the conclusions of the JTPF might lead to an improvement/amendment of the Code of Conduct if a specific issue seems to be encountered by several Member States.

**Do MS representatives members agree to send statistical information on a yearly basis?**

The Netherlands are of the opinion that this type of information could be interesting, but only if it is likely that the Forum will deal with this issue. If Member States provide statistics on any matter at all, the Netherlands is of the opinion that it should be clear what the goal and content of these statistics will be.

**Code of Conduct on TP documentation**

**As the Code was adopted in June 2006, do Forum members agree that first information should be sent to the Secretariat by the end of November 2007?**

The Netherlands agree with sending the first information on the Code by the end of November 2007.

**Monitoring APAs**

**Do MS representatives members agree to send statistical information on a yearly basis?**

The Netherlands could provide information on the opportunity for the taxpayer to apply for an APA. On the issue of collecting statistical information about the number of APAs The Netherlands are of the opinion that only after the goal and content of the envisaged collection of APA numbers are discussed and clear, it can be decided whether or not The Netherlands support this.

**Penalties and interest**

**Do MS representatives agree to send statistical information on a yearly basis?**The Netherlands agree that it could be interesting to collect some statistics about the number of TP audits and TP tax reassessments involving a serious penalty. However the Netherlands do acknowledge that it could be very hard for tax administrations to get this information. From the electronic systems it is often not clear why a penalty is imposed, but only that there is a penalty.

**Hungary:**

#### **4. The Arbitration Convention:**

*Do Forum members agree with the suggestion of updating every year the number of open cases under the AC and collecting information on the way the Code of Conduct is implemented by tax administrations?*

**Yes.**

*Do Forum members agree with the need to define common criteria to consider a case as open or as closed in order to avoid discrepancies between Competent Authorities only based on these criteria?*

**Yes.**

*Do Forum members agree to provide the updated information by 1<sup>st</sup> March of each year?*

**We are in a position to provide information on an agreed date in every year.**

#### **5. Code of Conduct on TP documentation**

*As the Code was adopted in June 2006, do Forum members agree that first information should be sent to the Secretariat by the end of November 2007?*

**Yes.**

*Do Business members agree to send feedback on a yearly basis?*

**Yes.**

#### **6. Monitoring APAs**

**As indicated in relation to the question of publishing statistics, we feel some risks that the use of certain statistics could result in identification of a taxpayer. It would hurt the confidentiality principle in tax matters.**

**Lithuania:**

#### **The Arbitration Convention**

**Q1 Do Forum members agree with the suggestion of updating every year the number of open cases under the AC and collecting information on the way the Code of Conduct is implemented by tax administrations?**

A1 Lithuania is prepared to update the number of open cases annually, as well as to provide information on implementation of the Code of Conduct.

**Q2 Do Forum members agree with the need to define common criteria to consider a case as open or as closed in order to avoid discrepancies between Competent Authorities only based on these criteria?**

A2 Lithuania finds it very important to define common criteria for treating the case being „open” or „closed” so that any obscurity could be avoided.

**Q3 Do Forum members agree that while fully respecting MS competence in this field it would be useful to know why cases are still open after 24 months and**



**to distinguish between the cases whether it was delayed in application of art. 7.1 (where the case has been submitted to a court or tribunal, the term of two years referred to in the first subparagraph shall be computed from the date on which the judgment of the final court of appeal was given) or 7.4 (The competent authorities may by mutual agreement and with the agreement of the associated enterprises concerned waive the time limits referred to in paragraph 1) or another reason (it would probably be helpful to mention the reason).**

A3 Information could be provided according to the provisions of domestic legislation regulating tax secrecy.

**Q4 Do Forum members agree to provide the updated information by 1<sup>st</sup> March of each year?**

A4 Lithuania agrees on 1<sup>st</sup> March as the date of updating information.

**Q5 Do Forum members agree that the conclusions of the JTPF on the basis of this information provided might eventually lead to an improvement/amendment of the Code of Conduct (as recommended by the Code itself)?**

A5 Lithuania support the view that conclusions based on collected information should lead to an improvement of the Code of Conduct.

**Q6 Do MS representatives members agree to send statistical information on a yearly basis?**

A6 Information could be provided according to the provisions of domestic legislation regulating tax secrecy.

### Code of Conduct on TP documentation

**Q7 As the Code was adopted in June 2006, do Forum members agree that first information should be sent to the Secretariat by the end of November 2007?**

A7 Yes.

### Monitoring APAs

**Q9 Do MS representative members agree to send statistical information on a yearly basis?**

A9 See A6 above.

### Penalties and interest

**Q10 Do MS representatives agree to send statistical information on a yearly basis?**

A10 See A6 above.

### Austria:

**Q. 1:**

**Do Forum members agree with the suggestion of updating every year the number of open cases under the AC and collecting information on the way the Code of Conduct is implemented by tax administrations?**

**Q 2:**

**Do Forum members agree with the need to define common criteria to consider a case as open or as closed in order to avoid discrepancies between Competent Authorities only based on these criteria?**

Answer to Q. 1 and 2:

AT agrees to the suggestion of updating the number of open cases year by year. In order to avoid discrepancies in the table of pending cases it is inevitable to define the proposed common criteria. The current tables show that MS do not always have the same point of view on whether a case is pending or not.

As far as an updating of the information about the implementation of the Code of Conduct is concerned it should be sufficient to communicate the implementation as such (e.g. administrative guidelines) and further amendments or changes, if any.

**Q 3:**

**Do Forum members agree that while fully respecting MS competence in this field it would be useful to know why cases are still open after 24 months and to distinguish between the cases whether it was delayed in application of art. 7.1 (*where the case has been submitted to a court or tribunal, the term of two years referred to in the first subparagraph shall be computed from the date on which the judgment of the final court of appeal was given*) or 7.4 (*The competent authorities may by mutual agreement and with the agreement of the associated enterprises concerned waive the time limits referred to in paragraph 1*) or another reason (it would probably be helpful to mention the reason).**

AT is prepared to inform about the number of cases which are still open after 24 months. Additional information about the reason of the delay might cause problems in respect of confidentiality, as currently there are only a few cases in which the mutual agreement procedure was initiated according to the AC. Detailed information could result in an identification of the taxpayer concerned.

**Q 4:**

**Do Forum members agree to provide the updated information by 1<sup>st</sup> March of each year?**

AT agrees to the date for the updated information.

**Q 5:**

**Do Forum members agree that the conclusions of the JTPF on the basis of this information provided might eventually lead to an improvement/amendment of the Code of Conduct (as recommended by the Code itself)?**

Yes, in principle.

**Q. 6:**

**Do MS representatives members agree to send statistical information on a yearly basis?**

An information about the number of request which were refused by reason of Art 8 para 1 of the AC is possible.

**Ad 2: Code of Conduct on TP documentation**

**Q to MS:**

**As the Code was adopted in June 2006, do Forum members agree that first information should be sent to the Secretariat by the end of November 2007?**

The proposed date for the first information is accepted by AT.

**Ad 3: Monitoring APAs**

**Q to MS:**

**Do MS representatives members agree to send statistical information on a yearly basis?**

Yes, on the condition mentioned in the answer to question 3 above.

**Ad 4: Ratification process of the accession convention to the AC:**

As the Irish version of the accession convention is available since June 2006 the AT Ministry for Foreign Affairs has now started the ratification process.

**Ad 5: Penalties and interest**

**Q.:**

**Do MS representatives agree to send statistical information on a yearly basis?**

As far as statistic are available and the information does not allow an identification of the taxpayer concerned, AT is prepared to send the information on a yearly basis.

	<b>Q1</b>	<b>Q2</b>	<b>Q3</b>	<b>Q4</b>	<b>Q5</b>	<b>Q6</b>	<b>Q7</b>	<b>Q8</b>	<b>Q9</b>
<b>AT</b>	Yes	Yes	<b>NO</b> Confid.	1 <sup>st</sup> March	Yes	Yes only for Art.8(1 )	Yes Nov. 2007	Yes BUT Confid.	Yes BUT Confid
<b>HU</b>	Yes	Yes	-	1 <sup>st</sup> March	-	-	Yes	<b>No</b> Confid.	-
<b>IE</b>	Yes	Yes	Maybe Confid.	Yes	Yes	Yes BUT Confid	Yes	Yes BUT Confid	Yes BUT Confid
<b>LI</b>	Yes	Yes	Yes BUT Confid.	1 <sup>st</sup> March	Yes	Yes BUT Confid	Yes	Yes BUT Confid	Yes BUT Confid
<b>NL</b>	Yes	Yes	Yes	1 <sup>st</sup> <b>April</b>	Yes	Yes	Yes Nov. 2007	Maybe	Yes <b>but</b> <b>difficult</b>
<b>PO</b>	Yes	Yes	Yes BUT Confid.	1 <sup>st</sup> March	Yes	Yes	Yes Nov. 2007	Yes BUT Confid	Yes