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EU JOINT TRANSFER PRICING FORUM

**DISCUSSION PAPER ON PUBLICATION OF APAS
STATISTICS**

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1. CONSIDERATIONS ON PUBLICATION OF APA STATISTICS

- (1) The Forum has indicated that it wishes to discuss the advantages and any disadvantages of publishing statistical details about APAs and to consider precisely what details could be published. This appendix paper outlines some possible approaches to help the discussion.
- (2) It is important to note that tax administrations have an explicit and implicit duty of confidentiality concerning information about specific taxpayer information. Thus tax administrations are not able to make public any detailed information about specific taxpayers. It is highly likely that this would include, in the context of APAs, even the names of taxpayers who were in the APA process. These names could not be published. In addition, even such basic information might prove commercially sensitive. Therefore the discussion should centre on what information could be published and the benefits of publication.
- (3) Some countries (for example the US and Japan) do publish information about APAs. The latest available information for Japan is below in paragraph 14. The latest available information from the US is too voluminous to include here but can be seen at <http://www.irs.gov/pub/irs-apa/a-05-27.pdf> . The statistical information runs to around 64 pages in tabular form.

What are the advantages of publishing statistical information?

- (4) Making information available helps to publicise the APA process. It is generally accepted that there are advantages for taxpayers and tax administrations in increasing the numbers of APAs. Publishing details about APAs will help taxpayers make a more informed decision about whether an APA would be of benefit to them. Publicising APAs by publishing statistical information will raise awareness of the process. This will make access to APAs easier.
- (5) Making statistical information available would also aid transparency amongst MS. This would have the advantage of helping to eliminate harmful tax competition.

Are there any disadvantages of publishing statistical information?

- (6) Publishing statistics requires the resources of tax administrations. There is work involved in obtaining, collating, publishing and updating information. Information would need to be accurate and complete.
- (7) However, this work effort needs to be weighed against the advantages described above. It is also likely that some statistics on APAs are also kept at the moment. As the Competent Authority (CA) is involved in all APAs involving more than one MS then much information is already to hand.
- (8) The key determinant in the level of resources involved in publishing information is likely to be the amount and detail of the information published. Restricting this information to the minimum necessary to be of real use for taxpayers will keep the resources required to a minimum. It is more important that tax administrations are able to concentrate scarce resources on the negotiation of APAs rather than having to spend large amounts of time compiling statistical information.

- (9) Nevertheless there are advantages in publishing some information and it is necessary to decide what and how this could be published.

What type of information could be published?

- (10) It can be seen from the US and Japanese approaches that there are (as is appropriate for transfer pricing) a range of current practices outside the EU. The US practice is to publish a lot of detail, the Japanese practice to publish much less.

Q. Which approach does the Forum favour? Publishing US or Japanese levels of detail or less? Which information is likely to be of the most use to taxpayers?

- (11) A certain amount of information is necessary to provide a useful tool for taxpayers but still allow tax administrations to keep resource costs to a minimum. Publishing similar details to those currently published on Mutual Agreement Procedure and Arbitration cases would mean publishing some or all of the following details:

- Numbers of applications received in the period
- Numbers of applications on hand
- Numbers of APAs concluded.
- Numbers of bi and multilateral APAs
- Numbers of APAs with specific countries
- Industries involved
- Types of transactions or functions covered
- Methodologies used
- Average time to completion
- Number of applications rejected at pre-filing stage
- Number of applications withdrawn

Q. What does the Forum think about publishing all or some of the above details? Does the Forum have any further ideas about what it would be useful and possible to publish?

How could the information be published?

- (12) MS could publish information individually. This might prove an easy option but would lead to information being published at different times, for different historical periods and in different formats. Taxpayers would also have to look in many different locations to obtain a complete EU picture.
- (13) Information could be published centrally by the EU: this could be done through an EU website such as the Forum's own website or somewhere else more appropriate. MS would still have the responsibility of submitting the information on any agreed basis (for example, annually) but the act of publication would be done on a coordinated basis.
- (14) The Japanese publish the following information:

The National Tax Agency Japan released APA Program Report 2005, to report on the result of Mutual Agreement Procedures (MAP) concerning Advance Pricing Agreements (APA) and other related matters as of 30 June 2005. It also reports that the number of APA cases that were disposed of during the year 2004 (i.e. from 1 July 2004 to 30 June 2005) was the largest ever, i.e. 49. The main points covered in the report are as follows:

MAP status

The following table itemizes MAP cases for the past 3 years. As in 2004, APA cases received and carried over made up more than 70% of total MAP cases.

Year	Cases	APA	Taxation resulting from adjustment transfer price		Others	Total			
2002	Received	47	50.0%	19	20.2%	28	29.8%	94	100%
	Disposed	47	58.7%	19	23.8%	14	17.5%	80	100%
	Carried over to following year	88	53.6%	37	22.6%	39	23.8%	164	100%
2003	Received	80	65.6%	30	24.6%	12	9.8%	122	100%
	Disposed	39	47.0%	19	22.9%	25	30.1%	83	100%
	Carried over to following year	129	63.6%	48	23.6%	26	12.8%	203	100%
2004	Received	63	70.0%	8	8.9%	19	21.1%	90	100%
	Disposed	49	53.3%	27	29.3%	16	17.4%	92	100%
	Carried over to following year	143	71.1%	29	14.4%	29	14.4%	201	100%

Note:

- (i) A year is defined as the period from 1 July to 30 June of the following year.
- (ii) Cases received are counted by the number of MAP requests submitted or requests filed by a treaty partner country.
- (iii) APA cases received are defined as cases of "MAP based on APA". MAP related to compensating adjustments and revisions following APAs are included.
- (iv) Cases disposed of are the number of MAP closed (such as APAs) and the number of case withdrawals by taxpayers.

Disposal of APA cases – by industry

APA cases disposed of are categorized by industry in the table below. Manufacturing companies make up more than half of all corporations using APAs. (Unit: Case)

Industry/Year	2002	2003	2004
Manufacturing	22	19	35
Wholesale/Retail	13	17	13
Others	12	3	1
Total	47	39	49

Disposal of APA cases – by transaction type

Transactions involving APA cases disposed of are categorized by transaction type in the table below. More than half of them are inventory transactions; the remainder is split between service provision and others.

Transaction/Year	2002	2003	2004
Inventory transactions	31	27	53
Provision of services	20	15	12
Others	11	14	8

Note: "Others" include royalty-related and global trading-related transactions.

Transfer pricing methods for disposal of APA cases

Transfer pricing methods used are as follows:

Method/Year	2002	2003	2004
Three basic methods (CUP, RP, CP)	31	23	24
Other methods	23	23	27

Disposal of APA cases – by region

Counterpart region/Year	2002	2003	2004
Americas	24	16	20
Asia/Oceania	17	18	26
Others	6	5	3
Total	47	39	49

Time required per APA case

The average time spent on an APA case is approximately 2 years, though it varies according to, for example, whether a case:

- is a new case;
- merely involves the renewal of a former APA; or
- is a compensating adjustment case.

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