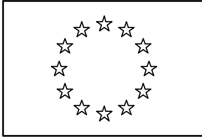

EUROPEAN COMMISSION
DIRECTORATE-GENERAL
TAXATION AND CUSTOMS UNION
Direct taxation, Tax Coordination, Economic Analysis and Evaluation
Company Taxation Initiatives

Brussels,
Taxud/D1/
4 March 2011

DOC: JTPF/002/REV3/BACK/2011/EN

EU JOINT TRANSFER PRICING FORUM

TABLE ON POTENTIAL TRANSFER PRICING DISPUTE RESOLUTION APPROACHES FOR SMES

Meeting of 10 February 2010

Centre de Conférences Albert Borschette
Rue Froissart 36 - 1040 Brussels

Secretariat's summary of TAs' answers

This document includes the answers received by the JTPF Secretariat from TAs after the meeting of 10 February 2010. The summary below was also updated accordingly.

Question 1: Is it legally possible and under which conditions to have direct auditor to auditor contact with other tax authorities (outside a simultaneous examination audit arrangement) in reaching agreement on the level of a transfer pricing adjustment?

All TAs have replied that direct auditor to auditor contacts are only legally possible within the scope of simultaneous audit or as authorized person under the umbrella of the CA or under an administrative agreement signed by two MS (e.g. AT-DE agreement of 1954). This conclusion applies under DTC and AC provisions.

Belgium mentioned that informal contacts can take place in the context of risk assessment.

Question 2: If it is or could be legally possible to have such contact, is this an approach that you would wish to develop?

As it was considered that it is not legally possible, a majority of TAs replied negatively.

However some TAs (namely AT, BG, CZ, FI, DE) might be ready to further develop this approach but on case by case basis (depending on the facts and circumstances) and under the supervision of the CA and in the case of Bulgaria when it is demonstrated that it will lead to savings of resources.

Question 3: If a de minimis limit of 200 000 EUR of tax base per procedure (based on the initial transfer pricing adjustment requested) had been applied over the last two calendar years, do you consider it would have had a significant negative impact on your tax revenue?

DE, CY, FI, MT, NL, SE, UK: no significant impact.

BG, CZ, ES, HU, IT, SK, PL, RO and SI: not able to estimate with sufficient accuracy the impact on their tax revenue.

AT, CY, DK, EE, EL, ES, IT, LT, PT, SE and UK: opposed to the implementation of a de minimis rule.

SI is not opposed to a de minimis rule, but the Tax Authority should have the option to deviate from such rule.

Question 4: If so, are you able to give any broad indication of the extent of that impact?

Most TAs could not indicate the extent of that impact.

Question 5: If you consider 200 000 EUR to be too high as a de minimis figure, what figure do you think is more appropriate?

BG, MT: 100 000 EUR; CZ, SK: less than 200 000 EUR; DE: 200 000 EUR possible as a starting point.

Member State	Question 1: Is it legally possible and under which conditions to have direct auditor to auditor contact with other tax authorities (outside a simultaneous examination audit arrangement) in reaching agreement on the level of a transfer pricing adjustment?
Austria	Generally, there is no legal basis for direct auditor to auditor contact. However, between Austria and Germany an old convention regarding administrative assistance has been concluded in 1954, which enables the Contracting Parties to exchange information at the level of local tax authorities in urgent cases.
Belgium	Informally, direct auditor to auditor contact is possible. However, when a case "sticks" these contacts have to be formalised through the competent authority channels. Informal contacts may be useful in the context of risk assessment. Legally, direct local auditor to auditor contact could be possible if the local auditor would have competent authority status (which is currently not the case). However, the Belgian tax administration's position is that rendering competent authority status to the local auditors is not expedient in transfer pricing cases in view of the potential difficulties and complexities arising in those cases. See also question 2 with regard to coherence.
Bulgaria	It is not legally possible in Bulgaria to have direct auditor to auditor contact with other tax authorities outside the scope of simultaneous audit arrangement.
Cyprus	It is not legally possible in Cyprus to have direct auditor to auditor contact with other tax authorities for the purpose of reaching agreement on the level of a transfer pricing agreement. Such a matter is to be dealt with by the competent authorities involved.
Czech Republic	The Czech Republic follows the procedures included in Directive 77/799/EEC, the Arbitration Convention and relevant Double Taxation Agreement. The direct contact between auditors beyond these binding documents is possible only randomly within the various OECD or EU meetings, but official positions of the Czech Republic always arise on the basis of procedures in the mentioned documents (simultaneous audit, exchange of information, MAP, AC etc.).
Denmark	Not without a preceding authorisation from both of the competent authorities
Estonia	Auditor to auditor contacts are possible only within the scope of relevant Double Tax Agreement (simultaneous audits or mutual agreement procedures), the Arbitration Convention or EU Directive 77/799/EEC.
Finland	We think that at a present it is not legally possible. The direct contacts between tax administrations from different countries require a legal instrument. We can use exchange of information article of the tax treaties or especially in EU the Directive 77/799/EEC on mutual assistance by Member States in the field of direct taxation and taxation of insurance premiums. These instruments require that the information go through Competent Authorities. If the tax administration would like to agree on the transfer pricing adjustment, it requires the use of the mutual agreement procedure (MAP). The direct auditor-to-auditor exchange of information can take place during a simultaneous tax audit, but otherwise it is not possible.
France	/
Germany	If a mutual agreement procedure (MAP) has formally been initiated – either as a double tax treaty (DTT) procedure or as first stage of the Arbitration Convention (AC)

	– Germany's national law does not disallow a direct auditor to auditor contact under supervision by the competent authorities (CA). Neither the AC, nor any relevant DTT itself disallows such direct contact. Allowing such participation of local auditors in a MAP lead by the CAs is common practice of the German CA.
Greece	Under our legislation a direct auditor to auditor contact with other tax authorities in reaching an agreement on the level of a transfer pricing adjustment is not legally possible. In practice, competent Greek tax auditors can only refer their case to the competent central authority of the Hellenic Ministry of Finance, which in its turn contacts with the competent authority of the other country, invoking the corresponding provisions of the relative tax treaties (articles 9, 25 and 26, the provisions of the EU Arbitration Convention and those of Direct tax Directive on mutual assistance), in order for tax issues to be resolved.
Hungary	There are no legal frames for the direct connection of our competent auditors with their colleagues at other tax authorities.
Italy	In Italy direct auditor-to-auditor contact with other tax authorities are possible only when they are consistent with the provisions of the exchange of information instruments (Council Directive 77/799; DTAs; Administrative Agreements following DTAs or Directive provisions). As an example, in accordance with Article 6 of Council Directive 77/799 and for the purpose of applying exchange of information provisions, Italy can authorize the presence on its territory of officials of another Member State. As taxpayer's data can be disclosed only in conformity with the exchange of information instruments, the auditor-to-auditor contact should be authorized by the Competent Authorities. Outside this framework, these contacts are not permitted. In addition to this, we think that allowing direct auditor-to-auditor contacts for the purpose of reaching an agreement on the level of a transfer pricing adjustment could lead to different results for similar cases
Ireland	It is not legally possible for direct contact to occur.
Latvia	Within the scope of tax audits performed by the State Revenue Service (SRS) currently there is no legitimate means for international cooperation, except simultaneous audit, where tax administrations of both states could agree on common tax audit results in the field of transfer pricing. With respect to external auditors there is an opportunity to contact transfer pricing business partners to reach voluntary agreement about price adjustment. In this case each business entity is responsible for submitting amendments to the respective tax administration. If voluntarily agreement cannot be achieved, there are no other legal procedures except SRS simultaneous tax audit or cross-border cooperation to request information exchange.
Lithuania	/
Luxembourg	/
Malta	It is not legally possible to have direct auditor to auditor contact in reaching agreement on the level of a transfer pricing adjustment. The competent authorities need to be involved.
Netherlands	Yes, under the umbrella/supervision of the competent authority.
Poland	Due to Polish tax legal system a direct auditor to auditor contact with other TA in reaching an agreement on level of transfer pricing adjustment outside the scope of simultaneous audit arrangement is not possible. As direct contact between auditors involve also exchange of secret information about taxpayers, the procedure shall be carried accordingly to procedure set out in DTA, AC

	or Directive 77/799 EEC Mutual assistance by Member States in the field of direct taxation and taxation of insurance premiums.
Portugal	During the auditing process there can be an exchange of information between the competent authorities to establish the facts that can, that being the case, lead to a transfer pricing adjustment, but the legal framework of the audit process does not allow the auditors to negotiate or reach an agreement on the transfer pricing adjustment, either before the conclusion of the audit report or the tax assessment.
Romania	At present, there is no possibility, from a legal point of view, to have direct auditor to auditor contact with other tax authorities in reaching agreement on TP adjustments.
Slovak Republic	The Slovak Republic follows the binding rules of law (bilateral double taxation agreements, Arbitration Convention and Law on mutual assistance that incorporates EU Directive 77/799/EEC) in reaching agreement on the level of a transfer pricing adjustment. Therefore, we think that under the current conditions it is not legally possible.
Slovenia	There is no legal base for a direct auditor to auditor contact with other tax authorities in reaching agreement on the level of a transfer pricing adjustment or in reaching any other agreement on the level of tax audit. The scope of International Cooperation in tax affairs is defined in the Slovene Tax Procedure Act through the Council Directive 2008/55/EC on mutual assistance for the recovery of claims relating to certain levies, duties, taxes and other measures and Council Directive 77/799/EEC concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation. The International Cooperation in tax affairs is embedded also through Article 25 of the Model Tax Convention on Income and on Capital (MTC) and through the Arbitration Convention.
Spain	Outside the simultaneous examination, it is not legally possible in Spain to have direct contact between Spanish tax auditors and tax auditors of a different country. Direct contact between auditors will imply exchange of tax information concerning taxpayers and it may break the confidentiality duty of tax inspectors. This information is confidential and it can only be disclosed under the existing exchange of information instruments signed between Member States. These instruments are the following: • Directive 77/799, Article 4(1)(d) exchange of information regarding transfer pricing issues; • DTA • Administrative agreements sign under DTAs or the Directive provisions Exchange of information must follow the legal procedures and only identified competent authorities can make such an exchange of information without violating confidentiality obligation. Those instruments do not allow exchange of information between auditors except when it is done under simultaneous examination arrangements.
Sweden	No, it is not possible under any conditions in Sweden to agree on TP-adjustments with tax authorities in other countries - auditor to auditor. This must be handled by the competent authority.
United Kingdom	1. Please note that for the sake of simplicity we refer to the situation described in the question as ‘fast track mutual agreement procedure (‘MAP’).’ In ‘fast track MAP’ there is no involvement of competent authority, unlike Article 6 of the Arbitration Convention, (‘AC’), and Article 25 of the OECD model tax convention, (‘MTC’).

Summary

2. The legal basis in the UK requires that exchange of information and negotiations to relieve (potential) double taxation must be undertaken by authorised officers, ‘competent authority’, (‘CA’). Article 5 AC does not explicitly confer authority to negotiate. If it implies such authority its meaning is ambiguous and we must refer to Article 3(2) AC. Through Article 3(2) we reach the conclusion that negotiations can only be undertaken by CA. Therefore we conclude there is no legal basis for direct contact between auditors in different tax authorities. Competent authority must be involved.

General considerations: the legal basis to disclose taxpayer information

3. Please note that the following discussion concerns the UK domestic legislation. We do not know if the same legal considerations apply to other MS.

4. Direct auditor to auditor contact will inevitably involve exchange of information, followed by negotiations. Since domestic law in the UK prevents the UK tax administration, HM Revenue and Customs, ‘HMRC’ providing taxpayer information to anyone other than the taxpayer we must consider whether there are any situations when this general rules does not apply.

5. HMRC is able to exchange information with tax authorities in other countries only under a legal instrument. These include double taxation treaties and the EU Mutual Assistance Directive. Note that there is no provision for exchange of information under the Arbitration Convention. Only authorised officers of HMRC can disclose information to an authorised officer of the government of the country concerned. Information can only be exchanged for the purposes set out in the relevant agreement.

6. Administrative practice in the UK is to limit the number of authorised officers who can exchange information. Auditors are not authorised officers.

7. Authority to negotiate relief of double taxation in the UK is again by way of legal instruments. These are the AC and double taxation agreements. Again only authorised officers may enter negotiations, the competent authorities.

8. In summary in the UK the legal basis for exchanging information and entering into negotiations with other tax authorities is through competent authority. There is no legal basis for an auditor who is not a competent authority to reach agreement on the level of a transfer pricing adjustment

Article 5 AC

9. The Arbitration Convention is an EC Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises. Articles 5 – 14 set out what steps the Contracting State, (‘CS’), should take to eliminate double taxation that arises under Article 4.

10. We need to consider whether Article 5 can be the authority for ‘fast track MAP’. Article 5 sets out what action should be taken by a CS when it intends to adjust the profits of an enterprise. The first two paragraphs refer to the procedures that should be used when a CS intends to adjust the profits of an enterprise. (It must inform the enterprise of its intended action and to give time for the enterprise to inform the other enterprise; and for the second enterprise to inform the other Contracting State.)

11. The third paragraph states:

    'If after such information has been given the two enterprises and the other Contracting State agree to the adjustment, Articles 6 and 7 shall not apply.'

    (Article 6 refers to an enterprise presenting its case to the CA of the Contracting State and to resolving the case by mutual agreement with the Other Contracting State. Article 7 refers to the setting up of the advisory commission.)

12. When the other CS is advised of the adjustment it can take one of two actions; accept the adjustment in full (and relieve the double taxation) or it can reject it, in full or in part. For the first of the actions, acceptance, the double taxation is eliminated and therefore no further proceedings under the AC are required.

13. If the other CS is unable to agree the adjustment in full then the enterprise may present its case as set out in Article 6.1.

14. However there is the possibility that Article 5 may be read in another way, namely, as authority for the parties involved to enter into negotiation. This arises from the words *"If… the two enterprises and other CS agree to the adjustment…"* Is this sufficient authority for 'fast track MAP'? Does the word 'agree' imply more than acceptance of the adjustment? Does it mean that the parties involved can undertake fact finding and/or negotiation to reach agreement?

15. Article 5 does not state that the two CS have authority to negotiate; authority to negotiate is given explicitly at Article 6. Article 5 refers only to the situation where the other CS can agree to the adjustment.

16. The wording of the 3rd paragraph of Article 5 does not detail any mechanism for negotiation – contrast this with Articles 6 et seq. which explain in detail steps that must be followed under the AC. In other words to accept Article 5 as authority for 'fast track MAP' we are required to set up procedures that are not detailed by the AC. As evidenced by the rest of the Convention this cannot be what was intended by the signatories – otherwise the details would have been given.

17. Another consideration is, if Article 5(3) is capable of being read more than one way it could be argued that it is ambiguous. Where there is doubt as to the meaning of any term not defined in the Convention Article 3(2) is in point. Article 3(2) states that we have to go back to the relevant Treaty to decide what this means. And under the Treaty only a CA can agree to grant correlative relief either unilaterally or after discussing the issue with the other CAs. Tax auditors do not have the authority to do this.

    Conclusion

18. We do not think that Article 5 can be used as the authority for 'fast track MAP'.

Member State	Question 2: If it is or could be legally possible to have such contact, is this an approach that you would wish to develop?
Austria	Austria believes that the most common way to enable direct auditor to auditor contact would be a case-by-case delegation of the respective auditor to conduct a MAP on behalf of the competent authority. A similar solution could be found on the basis of an Article 26 provision of a DTA (exchange of information) or a comparable provision on mutual assistance in a bilateral or multilateral treaty. Also Directive 77/799/EC as amended would not oppose such delegation from the competent authority to some local tax officials on a case by case basis. The responsibility would remain with the competent authority. This delegation would be undertaken irrespective of the amount of taxes or tax base involved but would only depend on the facts and circumstances of the respective case.
Belgium	Potentially in the area of risk assessment, direct auditor to auditor contact might be a good practice in order to see whether a case can "stick". However, the procedure through the competent authority must also be viewed as a filter so as not to overly burden the other tax administrations' auditors with unnecessary requests. Competent authority supervision is also needed to maintain a streamlined and coherent decision-making process. If direct auditor to auditor contact was made possible to settle the case, indeed the danger exists that the coherence in the different cases and in the positions taken is lost.
Bulgaria	Presently Bulgaria would not opt for such an approach. However with the growing number of MAP cases, a direct contact, if legally possible, would be accepted as long as a balance is found between saving resources and exercising effective control over decentralized bilateral transfer pricing arrangements.
Cyprus	It is not legally possible and not desirable to have such auditor to auditor contacts, since in our opinion all contacts should be made through the competent authorities.
Czech Republic	This approach could be further developed.
Denmark	This matter has not been the subject of discussion.
Estonia	We admit that direct auditor-to-auditor contact could give good effect in risk assessment.
Finland	We could establish a system that auditors could exchange information - by using proper instruments - on transfer prising adjustments while they are investigating the company, but we have our doubts about using our scarce resources on premature issues.
France	/
Germany	Direct auditor-to-auditor contact under supervision (but low involvement) of the CAs might be an advantage compared to the indirect pre-MAP procedure described in Article5 AC depending on the circumstances of the case, especially in cases where a local auditor is involved for both related enterprises in both countries. It has to be acknowledged that for SMEs this is often not the case. It may happen that the request for a corresponding adjustment makes it necessary for the first time to look at a file

	that would otherwise not be up for audit. As a consequence it should be left to CAs to decide on a case-by-case basis whether such a procedure appears appropriate taking into consideration the amounts involved, the availability of local experienced auditors familiar with the case and whether issues of principle are concerned. Proceeding like this appears possible within the existing framework of a MAP under the AC or the DTT, i.e. after a MAP request has been filed by the affected taxpayer(s).
Greece	/
Hungary	See response to question 1.
Italy	As explained in the answer to question 1, direct auditor-to-auditor contact is not legally possible, apart from cases provided for by exchange of information instruments. We think any agreement between countries should be centrally managed, mainly in order to avoid different decisions for similar cases. Moreover, the confidentiality of taxpayer data can be better protected by the already mentioned existing procedures
Ireland	We would not favour direct approaches at present.
Latvia	/
Lithuania	/
Luxembourg	/
Malta	Malta takes the view that such an approach is not a desirable one.
Netherlands	Yes, we would like to further investigate whether this approach could help bringing down the numbers of MAP cases under the Arbitration Convention. Although this topic has come up in our discussions regarding SME cases, we consider worthwhile exploring this beyond the SME cases.
Poland	No
Portugal	As mentioned in question 1, direct auditor-to-auditor contact or negotiation is not legally possible, except through the exchange of information instruments between the competent authorities and we do not wish to adopt an approach based on *de minimis* rule.
Romania	There is no intention in the near future to develop such an approach, given the insufficient experience in TP adjustments. The classical approach, though Competent Authorities is the most suitable approach for Romania at present given the abovementioned status.
Slovak Republic	We would prefer to maintain the contacts between Competent Authorities under the current rules.
Slovenia	See response to question 1.
Spain	This approach is out of the scope of the SME project and it will not be legally possible with the existing legal rules.
Sweden	No, it is preferred that all such contacts go through the competent authority.
United Kingdom	As explained in our reply to question 1, we do not think it is possible to have such contact. Even if we did think that this was possible, we would not wish to adopt it. It

	would not fit with our current administrative practice for transfer pricing. We have central control and monitoring of all transfer pricing work and the suggested approach would be outside of this. We would lose our practice of allocating resource to the highest risk cases. In addition we would also lose oversight of the application of the arm's length principle leading to a potential lack of consistency.

Member State	Question 3: If a de minimis limit of 200 000 EUR of tax base per procedure (based on the initial transfer pricing adjustment requested) had been applied over the last two calendar years, do you consider it would have had a significant negative impact on your tax revenue?
Austria	Austria is of the opinion, that such de minimis approach should not be followed. A case-by-case delegation is preferred irrespective of the amount of taxes / tax base which is involved.
Belgium	Data is not available. The tax administration does not keep records per tax adjustment for each tax file. However, the Belgian tax administration considers TP cases of 200 000 EUR to be small TP cases.
Bulgaria	We are not able to provide any indication of the extent of a possible negative impact. TP is a relatively new issue in Bulgaria and we do not have still a full picture of the magnitude of the problem and its impact on the national tax revenue.
Cyprus	No (as regards MAP requests in the last two years). However it is noted that the arm's length principle is contained in the Cyprus tax law and there is no de minimis limit for transfer pricing adjustments.
Czech Republic	The Czech Republic considers every case according to its facts and circumstances. The potential impact cannot be determined accurately.
Denmark	Denmark is of the opinion that such a de minimis approach should not be followed. A case-by-case delegation is preferred irrespectively of the amount of taxes / the tax base which is involved.
Estonia	We do not agree with the idea of minimis limit – both according to the OECD Model and OECD TP Guidelines transfer price must be in accordance with the arm's length principle notwithstanding any threshold.
Finland	If a de minimis limit of 200 000 EUR of tax base per procedure had been applied over the last two calendar years, it would not have had a significant negative impact on our tax revenues. Then again, if that kind of rule should be applied in the future, the impact might be different, because it opens a room for tax evasion. Taxpayers are entitled to relay on continuity on their taxation. First year the need for transfer pricing adjustment might be below 200 000 EUR, but following years the value might be much higher. Taxpayer might argue that the transfer pricing issue have already been solved.
France	/
Germany	In 2009, the German CA registered only two European MAP requests concerning transfer pricing adjustments below a tax base of 200 000 EUR. In 2010, the relevant number of newly registered European MAP requests so far (mid-November) is five. This includes cases involving PE profit attribution. Given these numbers Germany thinks that the impact of a 200 000 EUR de minimis limit would, at least at the MAP stage, not be substantial. Significant negative impact on our tax revenue is not expected. Further positive experience could lead to a higher de minimis amount in the future.
Greece	A "de minimis" limit amount of tax base per procedure cannot be a pragmatic option for Greece, as substantial legal problems are created, considering what was mentioned above.

Hungary	We could do only a general calculation. We are unable to get an exact estimation of the effect of the mentioned limit.
Italy	We do not have any available data. However, we disagree with the de minimis rule approach, which implies that claims within certain parameters can be accepted without further enquiry. If an adjustment is not consistent with the ALP, we would not accept it, whatever amount is involved
Ireland	Relief can only be granted in respect of an arm's length adjustment. Enquiries sufficient to demonstrate the arm's length nature of the adjustment will be made in all cases.
Latvia	With respect to application of *de minimis* threshold to identify taxpayers for tax audit in Latvia, such risk criterion would not be suitable for the following reasons. Taking into consideration that the transaction value itself is an audit object and that in particular as a result of companies' action may be artificially increased or reduced, the basis for application of *de minimis* principle in practice remains unclear. Another issue in Latvia is that the tax administration does not perform audits on transfer pricing exclusively; in general, taxpayers are selected for tax audits by combination of risk criteria, transfer pricing risk being one of them. At the moment, for statistical purposes neither corporate income tax arising from transfer pricing, nor the value of transfer pricing transactions are recorded separately.

The results of tax audits, comprising transfer price audit, performed in 2008, 2009 and the 10 months of 2010

Period	Number of audits	Of which number of resultative audits	Additionally assessed amount (thousand EUR)	Incl. CIT (thousand EUR)	Reduced losses (thousand EUR)
2008	2	2	21,5	16,3	-
2009	7	6	698,0	371,7	435,0
10 months of 2010	12	10	623,3	109,0	1578,6

Note: These numbers are the total result of audits involving transfer pricing, but are not exclusively born by transfer pricing. The result may include additionally assessed amount for inland transactions, CIT, VAT, etc.

Tax Audit (CIT), with respect to TP, thsnd. EUR, 2010

Tax Payer	Audit period	Enterprise calculated CIT taxable income, total	Enterprise calculated CIT taxable income from TP transactions	Total increase in taxable income as a result of audit	Total increase in taxable income from TP, as a result of audit	Total result of tax audit (additional tax calculated or losses reduced)
1.	2007	-1193,4	-	1170,9	699,7	Losses reduced by 1170,9
	2008	-989,4	-	985,3	584,6	Losses reduced by 985,3
2.	2005-2007	-543,0	-	303,0	303,0	Losses reduced by 303,0
3	2007-2008	-10,3	-	70,0	4,6	0,101 (incl. CIT 0,064, late payment penalty 0,006, fine 0,031)
4.	2008	1062,4	-	30,6	7,0	6,756 (t.sk. 4,583 UIN, late payment penalty 0,797, fine 1,374)
5.	2008	-1040,0	365,7	151,0	115,0	Losses reduced by 151
6.	2008	-142,1	-	41,9	43,9	Losses reduced by 41.9
7.	2008-2009	985,9	-	297,0	279,9	171,519 Pre-taxable period losses to be brought forward to next taxable periods since 01.04.2009
	Total			3 049,7	2 037,7	

Lithuania	/
Luxembourg	/
Malta	Malta had no such requests for transfer pricing adjustments in the last two calendar years and therefore there would have been no impact on Malta tax revenue.
Netherlands	No. In recent years we have not dealt with MAP cases under the AC resulting from adjustments below a tax base of EUR 200 000 made by the Dutch tax administration.
Poland	
Portugal	Irrespectively of the dimension of the tax adjustment to the tax base, we disagree with the de minimis rule approach. Each case should be treated according to the facts and its own merits and not on the *de minimis* limit.
Romania	Insufficient experience to asses the de minimis limit.
Slovak Republic	Data concerning the impact on tax revenue is not available. Anyway, we prefer to proceed on a case-by-case basis taking into account all relevant facts and circumstances of each case.
Slovenia	It is difficult to estimate if a minimis rule of 200 000 is adequate. In theory it could result in loss of tax revenue (rate is 20%) of 40 000 EUR per tax payer in two years. This amount does not seem to be high. However, if it is applied on an aggregate basis (when you have approximately 2 000 SMEs engaged in transfer pricing) it could result in substantial number of tax revenue lost. We are therefore of the opinion that regardless of the threshold of a minimis rule, there should be an option given to the Competent Authority to make a deviation from such a rule.
Spain	We do not have any figures. However, within the scope of SME an adjustment of 200 000 EUR might be quite important. According to Spanish Law an enterprise is not required to have transfer pricing documentation when the total amount of transactions with related persons is less than 100 000 EUR when a taxpayer's turnover is less than 8 million EUR (SME), with some exemptions. Therefore, 200 000 EUR is a too high

	amount within the scope of SME. If the proposal of a de minimis rule is a general one, for any enterprise, Spain considers that this proposal is out of the scope of the SME project. Anyway, during the October meeting Spain expressed some concerns with the establishment of a minimis limit of tax base per procedure. Establishing a limit could create double taxation in the taxpayer unless the other Administration accepts automatically such adjustment. On the other hand, accepting the adjustment done by the other Administration without checking it will mean giving up taxing rights by reason of the amount. In the case of Spain, tax auditing lies within the sphere of competence of the Tax Administration which cannot be waived. Acting otherwise could lead to a relief of tax debts, only available by law, or to make disposition of a tax credit, which is also forbidden by law.
Sweden	No, it would of course not have had a significant negative impact on the Swedish tax revenue, based on the audits performed/MAPs concluded. But this aspect is totally irrelevant. According to the OECD model and Guidelines a TP-adjustment must be in accordance with the arm's length principle. If a state has made an adjustment, that the other state considers to be in violation of the arm's length principle, a corresponding adjustment should not be made without negotiations between the competent authorities. And in addition to this, it is equally likely that smaller adjustments would not have any significant negative impact on the tax revenue of the state which has initiated the process and caused the double taxation by making the adjustment in the first place. It should also be remembered that according to paragraph 17 of the Preface to the OECD Guidelines (page 21) it is this state - and not the state which is asked to make a corresponding adjustment - that bears the burden of proof that the adjustment "is justified both in principle and as regards the amount". If this state can not demonstrate to the other state that its adjustment is in accordance with the arm's length principle it should not bother the other state with a request to make a corresponding adjustment. Thus, in our opinion all TP-adjustments shall be well-founded regardless of the amounts involved and it is the state making the adjustment that has the burden of proof that the adjustment is in accordance with the arm's length principle. If this can be proved we see no reason at all for a long and complicated MAP process, especially not if it concerns small amounts. If this cannot be proved we can se no reason for making a corresponding adjustment regardless of the amount involved in the case. Sweden therefore can not accept to apply a de minimis approach.
United Kingdom	We are not clear whether the question refers to an adjustment of EUR 200 000 in total or per year; the latter could make a significant difference in MS responses. For the UK, adopting a de minimis approach for a total adjustment of EUR 200 000, (i.e. EUR 200 000 adjustment spread over all the years involved), would not have had a significant negative impact on the UK tax revenue. However please read our reply at question 5.

Member State	Question 4: If so, are you able to give any broad indication of the extent of that impact?
Austria	N/R
Belgium	Max impact per case: 200 000 * 33,33 % (corporate tax rate) : 66 660 EUR loss in tax revenue per case. However, the specialised transfer pricing audit team mentions that on the basis of the Belgian tax risk assessment system TP cases of 200 000 EUR or less are not selected / identified in practice for a TP audit.
Bulgaria	See question 3
Cyprus	No
Czech Republic	/
Denmark	No
Estonia	/
Finland	N/R
France	/
Germany	At the time being there is no statistical information available on the potential impact of such a de minimis rule.
Greece	/
Hungary	See answer to question 3.
Italy	See answer to question 3.
Ireland	NA
Latvia	/
Lithuania	/
Luxembourg	/
Malta	See answer to question 3.
Netherlands	No
Poland	Yes. We are not able to provide any indication of the extend of a possible negative impact
Portugal	No
Romania	Not yet
Slovak	N/A

Republic	
Slovenia	See answer to question 3.
Spain	Spain is not able to assess the impact on its tax revenue.
Sweden	/
United Kingdom	Not applicable.

Member State	Question 5: If you consider 200 000 EUR to be too high as a de minimis figure, what figure do you think is more appropriate?
Austria	N/R
Belgium	N/R
Bulgaria	In this respect we prefer a case by case approach. However, according to our practice a de minimis figure of EUR 100 000 could be a good solution for the time being.
Cyprus	We do not think there should be a de minimis rule. In Cyprus transfer pricing cases are determined on the basis of the arms length principle. Therefore a case should be examined on the bass of its facts and circumstances
Czech Republic	In general the limit of 200 000 EUR of tax base per procedure would be too high for de minimis case in our country.
Denmark	For the time being we do not have the intention to implement a de minimis limit approach as suggested.
Estonia	/
Finland	We feel that de minimis approach is not the best way to solve this issue. We think that on this issue it is better to relay on risk analysis of the tax administrations. They should not concentrate on insignificant issues.
France	/
Germany	Germany does not consider 200 000 EUR to be too high as a de minimis figure for the start. In addition it may be useful to further define what the consequences of staying below the de minimis amount would be. Without such clarification, it is difficult to estimate whether a specific figure would be appropriate as a de minimis figure.
Greece	/
Hungary	We are not in favour of introducing any de minimis limit.
Italy	We do not think there should be any de minimis limit. All cases should be considered on their merit by the Competent Authority
Ireland	N/A
Latvia	/
Lithuania	/
Luxembourg	/
Malta	What is a de minimis figure for one country may not be so for another. In Malta's case, we feel that a EUR 100,000 figure will be more appropriate.
Netherlands	We are flexible with respect to the amount. We do not consider a minimis figure of EUR 200 000 tax base per case too high. More important at this stage is that we try to define what the consequences are. We think it could be beneficial investigating

	whether some kind of a minimis figure could help tax administrations to make efficient use of their limited resources and to mainly devote their energy to material cases. Under such an approach the tax administration would refrain from making an adjustment below a minimis amount tax base per case. An exception could be applied to cases of tax avoidance (where there are strong indications that the taxpayer did not act in good faith). This could fit within a risk based approach and could also go beyond the scope of SMEs.
Poland	As we do not intend to implement de minimis approach, we are not able to give that figure. We think that case by case approach is preferred and we need to relay on performed risk analysis
Portugal	N/A
Romania	N/R
Slovak Republic	From the point of view of a relatively small tax administration as the Slovak administration is, the amount of 200 000 EUR per procedure seems to be too high.
Slovenia	See question 3.
Spain	We are of the view that a de minimis rule is not an appropriate one. No fixed amount can be established as a general rule; in the event that a tax administration decides to accept some corresponding adjustments because the amount does not deserves to devote its resources to be analyzed, every case should be considered on its own merits, taking into account the facts and circumstances of each particular case.
Sweden	
United Kingdom	The UK does not think there should be any de minimis limit. All cases should be considered by Competent Authority, ('CA'). The UK tax administration has governance procedures in place to ensure that cases are settled on an arm's length basis. We consider that adjustments agreed by other tax administrations should also be part of such procedures; we believe that we should adopt a consistent approach to all transfer pricing adjustments. We think that if we adopt a de minimis approach this may encourage field auditors to agree a settlement just below the de minimis level as such adjustments would not be reviewed by the CA. This would lead to inconsistency in the arm's length standard and to a greater risk for the UK tax base.