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

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Doc: JTPF/999/REV1/2010/EN

SUMMARY RECORD OF THE TWENTY-SEVENTH MEETING OF THE EU JOINT TRANSFER PRICING FORUM

held in Brussels on 4th February 2010

1. GENERAL INTRODUCTION

The minutes of the October meeting were dealt with under written procedure.

The agenda (doc.JTPF/001/Rev1 2010/EN) was adopted.

2. JTPF REPORTS: FOLLOW-UP

Tom Neale reminded the Forum that the revised Code of Conduct on the implementation of the Arbitration Convention was subject of a Commission Communication (COM/2009/472) dated 14/9/2009. This Communication was noted by the Council who also adopted the revised Code of Conduct see OJC C322 published on 30/12/2009.

The Commission noted there were more reservations than normal in the original report and when discussed at Council but on the positive side agreement overall had been reached. As a matter of process the consequence of submitting late reservations hampered the smooth administrative progress of a Commission Communication and Council adoption of any JTPF report.

Looking ahead it was observed that the intra group services paper had been discussed several times and that the Commission was pleased with the way the paper was shaping up and was looking forward to a timely conclusion to this work. Whilst consensus was the optimum position it may be a final resolution could only be achieved with the use of reservations although it should be remembered the Forum outcomes were non legislative solutions.

3. OUTCOME OF THE WRITTEN PROCEDURE ON THE ADOPTION OF THE REPORT ON GUIDELINES ON LOW VALUE ADDING INTRA GROUP SERVICES (DOCJTPF/020/REV1/2009/EN).

The process adopted was to go through the document taking final comments and drafting suggestions and arrive at the final document. BM Vice Chair and TA Vice Chair were both able to report that a large part of the document was agreed and although one or two substantive comments had been made they anticipated resolution at the meeting today.

The Chair took the Forum through the document and there were lengthy discussions on several points of detail. The main areas of debate concerned were:

Scope of paper: at paragraph 11. The UK suggested revision was accepted.

Critical assumptions: it was felt the notion of good faith would be more appropriately placed at paragraph 5 of section II OVERVIEW rather than in the section V CRITICAL ASSUMPTIONS.

Methodology and Margin: there was extensive discussion of these sub sections. Clarity was sought on the link between typically agreed margins and the OECD guidelines. Redrafting of the relevant paragraphs to address that issue was agreed. Post review considerations: Paragraph 81 sparked discussions but the final consensus was that the paragraph was merely a gentle reminder that it may be that no more work was required in accepting a MAP adjustment based on the guidelines. But, the Competent Authority, however, is not at all bound to accept the adjustment as presented.

(Secretariat note: after the meeting a final revised document was circulated to members and the final agreed document was published on the JTPF web-pages in March (Reference JTPF/020/Rev3/2009/EN post meeting final JTPF document.).

4. DRAFT REPORT ON NON-EU TRANSFER PRICING TRIANGULAR CASES (DOC. JTPF/007/REV1/2009/EN).

Time restraints meant that the document was not discussed in the main plenary. The Vice –Chair did however report that in the TA pre meeting it was felt that the wording of the German reservation was such that it may be possible to for TA to agree wording in the main report that may also be acceptable to BM. The Vice – Chair would take that forward in conjunction with the Secretariat and Bureau.

5. FUTURE WORK DISCUSSIONS:

5.1 SME` s docJTPF/012/REV1/BACK/2010/EN:

Not discussed because of time constraints. UK, French and FEE presentations postponed until June meeting.

5.2 CCAs doc JTPF/003/BACK2010/EN:

Not discussed because of time constraints

5.3 Future JTPF work programme doc JTPF/004/BACK/2010/EN:

Not discussed because of time constraints

6. EUTPD MONITORING (DOC. JTPF/012/REV3/ /2009/EN, JTPF/015/REV015/BACK/2009/EN)

No comments because of time constraints

7. DRAFT 2009 APA TABLE (DOC. JTPF/010/REV2/BACK/2009/EN)

No comments because of time constraints

8. DRAFT TABLE ON THE NUMBER OF PENDING CASES UNDER THE ARBITRATION CONVENTION (DOC. JTPF/009/REV2/BACK/2009)

No comments because of time constraints

9. ANY OTHER BUSINESS:

Next meeting agenda items to include SMEs, CCAs, Non EU Triangular cases

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2010 meeting dates: 8th June and 26th October