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EU JOINT TRANSFER PRICING FORUM

JTPF work programme 2011-2015

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On 25 January 2011 the mandate of the JTPF was extended until 31 March 2015 by way of Commission Decision 2011/175 setting up the EU Joint Transfer Pricing Forum expert group. The new mandate of the JTPF started on 1 April 2011.

JTPF Work programme for 2011-2015

At its first meeting of 9 June 2011, the JTPF decided that the following topics would form the basis of its work programme for 2011-2015. JTPF members also agreed that this work programme would remain open for any future item(s) that the group might wish to include.

1. Cost Contribution Agreements

This topic is carried-over from the previous work programme. The JTPF intends to explore the possible scope and degree to which a common approach to CCAs could be developed within the EU.

Considering that the OECD is currently involved in a project on the transfer pricing aspects of intangibles, and not wanting to duplicate or interfere with OECD work, the JTPF members have decided at a first stage to direct the scope of JTPF work to CCAs focused on services not creating intangibles.

2. Risk assessment

Risk assessment is considered an important factor of transfer pricing policy. It is aimed at allowing both tax administrations and taxpayers to maximize the effective use of their limited resources. A transfer pricing review can be complex and costly for both sides and therefore risk assessment is useful in several areas such as the selection of taxpayers or transactions for an audit or the choice of the most relevant aspects to be reviewed.

It was agreed that it would be useful to exchange information on best practices and have an open and general discussion on the various approaches. It is unlikely that binding conclusions or recommendations will be formulated. The aim will rather be to gather information on avenues for the implementation of risk assessment tools.

The first discussions will take place in October 2011 on the basis of four presentations (from AT, NL, UK and private sector members).

3. Compensating/year end adjustments

For the purpose of this JTPF discussion, these adjustments refer to those made by the taxpayer after the associated transactions have taken place in order to realign the initial price with the arm's length range. In this area, the acceptance or refusal (some TAs do not consider that independent parties would make ex-post adjustments to a transaction), as well as the form and the timing of the adjustment constitute relevant factors. MS have different approaches in the tax treatment of these adjustments, which may lead to double taxation. This is negative not only for taxpayers but also for TAs.

JTPF members have considered that it would be useful to take stock of the situation prevailing in each MS and prepare an overview. This will be achieved by launching a questionnaire. Based on an analysis of the answers additional work might take place.

4. Secondary adjustments

It is possible that a transfer pricing adjustment is accompanied by a so-called "secondary adjustment". The OECD defines secondary adjustments as *an adjustment that arises from imposing tax on a secondary transaction in transfer pricing cases,* and a secondary transaction as *a constructive transaction that some States assert under their domestic transfer pricing legislation after having proposed a primary adjustment in order to make the actual allocation of profits consistent with the primary adjustment. Secondary transactions may take the form of constructive dividends (that is items treated as though they are dividends, even though they would not normally be regarded as such), constructive equity contributions, or constructive loans.*

JTPF members have considered that it is useful to take stock of the situation prevailing in each MS and prepare an overview. This will be achieved by launching a questionnaire on the legal and administrative/practical aspects in the different MS, including on whether these adjustments fall within the scope of the AC.

Based on an analysis of the answers additional work might take place.

5. Monitoring of previous achievements

Monitoring will cover the Codes of Conduct on the effective implementation of the Arbitration Convention and on transfer pricing documentation in the EU, respectively, and the Guidelines on APAs in the EU.

Monitoring will be conducted with the aim of establishing to what extent the previous works of the JTPF are implemented, to evaluate their effectiveness and to consider how improvements might be made.

The following specific areas were identified where practical issues could usefully be addressed.

On the Arbitration Convention :

- Facilitate the monitoring of the performance by improving the present table and study a proposal to provide some additional data.
- Analyse MS's conditions for access to the AC: e.g. are secondary adjustments and compensating adjustments within the scope of the AC.

- Discuss possible improvement of the AC procedure based on TAs' practical experience with new Article 25.5 of the OECD DTC model.

On the EUTPD:

- Compare MS's national legislation with EUTPD provisions.

- Obtain information on the use and common acceptance of pan European comparables.

- Analyse the reasons and search appropriate solutions to the fact that MNEs do use the EUTPD in their daily practise but do not opt officially for it.

On the APAs Guidelines:

- Review of APA policy/programmes in MS (based on private sector practical experience)

6. <u>Others</u>

Alternative dispute resolution will remain on this work programme as a reserve item. Other items may be added during the mandate.