



EUROPEAN COMMISSION

DIRECTORATE-GENERAL

TAXATION AND CUSTOMS UNION

Direct taxation, Tax Coordination, Economic Analysis and Evaluation

Direct Tax Policy and Cooperation

JTPF/005/2018/EN

Brussels, 12 April 2018

Summary Record

51st Meeting of the **EU Joint Transfer Pricing Forum (JTPF)** [E00951]
8 March 2018, Brussels (BE)

1. Introduction, adoption of the agenda and documents adopted under written procedure

The Chair welcomed the members and presented two new colleagues as new members of the EC Secretariat. The Agenda (doc. JTPF/001/2018/EN) was adopted. The summary record of the June 2017 meeting (doc. JTPF/007/2017/EN) and the Report on the Use of Economic Valuation Techniques in Transfer Pricing (doc: JTPF/003/2017/FINAL/EN) were approved under written procedure. They are available on the JTPF webpage.

2. Information by the Commission Services on current ongoing issues

The Commission Services provided an update on current developments:

- The Commission will present its package addressing the digital economy, with a targeted and comprehensive solution for the EU and the external dimension, in the coming weeks.
- Update on the state of play of the EU List of Non-Cooperative Jurisdictions with the major effect that now 47 jurisdictions have committed to change their rules.
- The Commission's initiative on whistleblowing is led by DG JUST, but DG TAXUD contributes to it in delineating the material scope for the protection of whistle-blowers in the field of direct taxation.
- Public Country-by-Country Reports (CbCR) involves a proposal to amend the Accounting Directive and is subject to the ordinary legislative procedure. The European Parliament adopted its mandate for the trilogue in July 2017, but the discussions in Council are still ongoing.
- The Proposal for a Directive on the Mandatory Disclosure of Potentially Aggressive Cross-Border Tax Planning Arrangements by Intermediaries (DAC 6). (The update was given before the ECOFIN Council reached political agreement on 13 March 2018; so, it is no longer up-to-date).
- The Dispute Resolution Directive was adopted by the Council on 10 October; it will apply as of 1 July 2019 and would enable complaints relating to income or capital in a tax year commencing on or after 1 January 2018.
- The Proposal amending Regulation No 904/2010 on VAT administrative cooperation and fight against fraud was adopted by the Commission on 30 November 2017. It provides for a new instrument that will allow tax authorities to conduct joint audits.

- A brief update on the Commission's State Aid work covered: (i) the negative decision of 26 February 2018 with regard to Amazon Luxembourg; (ii) the Decision of 24 November 2017 to initiate the formal investigation procedure into the UK CFC rules in the field of financial operations; and (iii) an initiation of the formal investigation procedure into IKEA Netherlands.

3. Statistics on Mutual Agreement Procedures (MAP) under the EU Arbitration Convention and APAs in the EU for 2016 and call for 2017 statistics

The Commission introduced the finalised statistics for 2016. The MAP inventory features an increase, especially in respect of cases pending for more than 2 years. The few interventions called for: (i) aligning methodologies with the OECD in order to reduce the reporting work; (ii) looking closer into the reasons for the increased inventory; and (iii) having more solutions to prevent MAPs in the first place. Furthermore, it was mentioned that in terms of the compilation of future APAs statistics, we should refer to the definitions used in the 2007 JTPF APAs guidelines. The APAs statistics show that taxpayers are eager to apply for APAs. The increase in the statistics on APAs in Belgium may be due to other advance rulings being reported as APAs.

4. Approach to Transfer Pricing Audits within the EU

The two co-chairs summarised the views of the Member States and non-governmental members respectively. Member States were clearly in favour of first focusing on simultaneous controls but were prepared to discuss joint audits as a second step, depending on the outcome of the work on the former. In fact, Member States pointed out that the result of a simultaneous control may in practice be close to that of a joint audit, provided that there is an appropriate legal base (in domestic law). Member States underlined that it was important to avoid duplication of work with other groups or institutions. Non-governmental members were more eager to discuss the substance, rather than spend long on trying to decide how to call the specific type of audit. The overview by the co-chairs was followed by input from individual members. The main points for follow-up that emerged are:

- There is interest in arriving at some guidelines of best practices in simultaneous controls by both Member States and non-governmental members.
- A coordinated work on simultaneous controls in transfer pricing with established communication channels would already go a long way in preventing potential future disputes or accelerating their resolution, even in the absence of formal joint audit procedures.
- The EU legal framework in combination with domestic law enables procedures that are quite close to joint audits.
- There may be a need to recommend that a Member State has to justify its refusal to participate in a simultaneous control or joint audit.
- The following were identified during the meeting as potential starting areas for future work:
 - Indicators of the cases suitable for the use of simultaneous controls or joint audits, such as thresholds, complexity (e.g. business restructurings), transfer pricing method used (e.g. profit split method), etc.
 - Administrative aspects for an initial agreement between tax administrations before a control begins, bilaterally agreed timelines, guidelines on documentation and communication, role of the taxpayer (rights and liabilities), while respecting domestic rules.

- How and in what format information should be exchanged between tax authorities?
- Interaction of simultaneous controls with APAs and MAPs and taxpayer certainty for the future following completion of a simultaneous control, including a commitment by tax authorities to endeavour to reach a result that does not create double taxation.
- SWOT (Strengths, Weaknesses, Opportunities and Threats) analysis of the instrument as compared to MAPs (information is more current) or unilateral audits (no steps towards alleviating double taxation).
- It should be considered who holds the right to request a simultaneous control or joint audit – only the tax authorities or also the taxpayer?

The Chair concluded that there is sufficient interest in moving forward on simultaneous controls and suggested that the group follow a pragmatic approach which would focus on the substance of the relevant procedures. It was also agreed to form an informal sub-group which, with the participation of a few members, would contribute expertise towards an Issues Paper on these potential areas of work for discussion at the JTPF meeting in June 2018.

5. The Transactional Profit Split Method (PSM)

There was a discussion as to whether the JTPF should embark on this topic before the OECD finalises its Guidance on the PSM. In this regard, some members highlighted the fact that not everyone at the JTPF has access to the OECD material and that the group should therefore wait until the OECD publishes its Guidance. Those in favour of pursuing with the PSM independently from the timing of the OECD explained that the OECD work is likely to remain at a high level and therefore, there is scope for future work on the PSM. In this context, some referred to the profit-splitting factors as a potential area of work for the JTPF. Other members saw the determination of the profits to be split as worth exploring.

Although the members expressed divergent views, both Member States and non-governmental members referred to the usefulness of starting off by gathering information on practical issues; identifying which industries the PSM could be applied to; and exploring the reasons that make the PSM an appropriate method in this context.

The Chair reminded the group that the PSM features on the Work Programme of the JTPF and found that there is willingness to move forward by both the JTPF members and the Commission. Considering the tight timing until the end of the current mandate, the Chair urged the group to first take stock of the state of play in relation to the PSM. He suggested to circulate a questionnaire in order to collect information about the types of cases and facts that the PSM has been used so far, including the sectors of the economy that the PSM has mainly featured in. In particular, more input and examples/issues may need to be collected, focusing on industries and activities where the PSM has been applied. This would help identify several technical areas on which further work would be done.

The questionnaire will be circulated to all members within a few weeks from the meeting. The input that will be collected will determine the content of the deliverable for the meeting of the JTPF in June.

6. Any other business

Under that point possible other items from the work programme until the end of the Group's mandate were discussed, in particular the need for more guidance by tax administrations on

the use of the CbC Reports. However, given the work on the two subjects mentioned above it was agreed that time would not allow for that.

7. Next meeting

Subject to the availability of rooms, the date for the next meeting 26 June 2018 was confirmed.

8. List of participants

All Member States were present. From the Non-Governmental Members, the representatives of ITC Leiden and Financial Transparency Coalition were absent. The OECD was represented at the meeting. The EP and the UN were not represented. On the side of the Commission, besides DG TAXUD, DG COMP was also represented.

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