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## International Taxation in Cross Border Transactions: The Recent Work of the Joint Transfer Pricing Forum

By [Orestis Omran](#), [Nora Wouters](#) on July 30, 2014

On June 4, the European Commission (“the Commission”) published a [Communication](#) to the European Parliament, the Council and the European Economic and Social Committee on the work of the EU Joint Transfer Pricing Forum (“JTPF”) in the period from July 2012 to January 2014. The JTPF was set up by the Commission in 2002 as an important source to its work on improving the practices of transfer administration and functioning in the EU in the context of international taxation of cross border transactions. The Communication addresses three different aspects of transfer pricing through three annexed reports respectively:

- **Secondary Adjustments:** The report includes an assessment of secondary adjustments as differently applied in some Member States in order to allow for profit allocation between consecutive transactions. Secondary adjustments might lead to double taxation, thus Member States which have not made such a measure mandatory under applicable legislation, are advised not to use it. The report suggests that secondary adjustments can be re characterized as constructive dividends or constructive capital contribution pursuant to the [Parent Subsidiary Directive](#) (Council Directive 2011/96/EU of 30 November 2011 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States) and operate as such.
- **Transfer Pricing Risk Management:** The report includes advice on managing transfer pricing risks by adequate cooperation between the tax payer and the tax authorities as well as by proper identification of high and low risks areas, through the use also of special tools such as the exchange of information, common working procedures for audits, a common documentation standard under the [Code of Conduct](#) on transfer pricing documentation for associated enterprises in the EU and the dispute resolution mechanism provided by the EU Arbitration Convention. The latter provides for the procedure to resolve disputes, where double taxation occurs between enterprises of different Member States as a result of an upward adjustment of profits of an enterprise of one Member State.
- **Compensating adjustments:** Different practice between Member States with respect to compensating adjustments may result in double taxation or double non-taxation. To that end, the relevant report suggests that Member States should only accept compensating adjustments initiated by the taxpayer, if the taxpayer satisfies certain conditions such as reporting of the price of the transaction to each Member State concerned, historical consistency in approach by the taxpayer, ability to explain differences between forecasts and actual results etc.

The Commission invites the Council to endorse the three reports annexed to the non binding in nature Communication and the Member States to implement the recommendation provided therein in their national legislation. All in all, the JTPF has produced considerable work over the years in the field of transfer pricing in the EU and its recommendations and their subsequent implementation in the different Member States should be closely and frequently observed by U.S. and multinational corporations (and their tax departments) alike operating in Europe to allow for efficient and compliant tax payments in accordance with adequate pricing of cross border transactions.



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