

AUSTRALIAN TRANSFER PRICING RULES CHANGES

November 2011

Proposed re-alignment of Australian transfer pricing rules will affect cross border profit allocations for tax purposes.

A transfer pricing regime exists in Australia to regulate multinational enterprises that have international dealings with other associates or branches within the multinational enterprise. The transfer pricing rules provide guidance on how to price international dealings for tax purposes. The rules are particularly significant for dealings between related parties. Their correct application is critical in determining the right amount of Australian income tax and withholding tax payable in connection with cross border transactions.

Whilst the transfer pricing rules have remained unchanged for some time, international thinking and business practices on transfer pricing have evolved significantly since the introduction of the rules in 1982. In 2010, the Organisation for Economic Co-operation and Development (**OECD**) released guidelines that contained a number of changes to the internationally accepted approach to transfer pricing.

In recent times, Australian judicial opinion in transfer pricing cases has highlighted differences between the meaning of the domestic rules and the internationally accepted arm's length principles. On 1 June 2011 the Full Court of the Federal Court of Australia delivered a judgment in the case of *Commissioner of Taxation v SNF Australia Pty Ltd (SNF Case)*.¹ The Court,² in finding for the taxpayer, confirmed that profit based transfer pricing methodologies are not consistent with current Australian legislation.

Following the SNF Case, on 1 November 2011, the Commonwealth Treasury Department released a Consultation Paper announcing that it will introduce changes to the existing transfer pricing rules to bring them in line with Australian and international developments in the area.

The Consultation Paper highlights a range of issues with Australia's transfer pricing rules. One specific issue relates to the extent to which the Australian legislation and treaty rules should be aligned with international standards. The Consultation Paper also outlines a number of suggested areas for change. These include the introduction of an arm's length standard that reflects the international norms and interpretation of new rules in a manner that best secures consistency with the OECD principles.

If you are a multinational enterprise with an Australian permanent establishment or are seeking to establish operations in Australia, please contact us to discuss how the developments in the transfer pricing rules might affect your international dealings.

Submissions may be made until 30 November 2011. The Consultation Paper can be accessed [here](#).

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¹ *Commissioner of Taxation v SNF (Australia) Pty Ltd* [2011] FCAFC 74. Previously heard as single judge of Federal Court of Australia *SNF (Australia) Pty Ltd v Commissioner of Taxation* [2010] FCA 635.

² Full Court of the Federal Court upheld the decision of the single judge in the Federal Court.