BUSINESS RESTRUCTURINGS: RECENT CHANGES TO THE OECD TRANSFER-PRICING GUIDELINES

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In July 2010, the Organisation for Economic Co-operation and Development published revisions to its transfer-pricing guidelines for multinational enterprises and tax administrations. The revised guidelines include a new chapter dealing with business restructurings. At its core, the new chapter unequivocally approves the application of the arm’s-length principle to transactions that are part of a cross-border business restructuring. It discusses some of the theoretical and practical difficulties that multinationals and tax authorities typically encounter when applying the arm’s-length principle to a business restructuring for transfer-pricing purposes.

This article provides a summary of the new chapter and analyzes the potential impact of these new guidelines on Canadian taxpayers who are required to determine the Canadian income tax consequences of participating in a cross-border business restructuring and to prepare documentation supporting this determination. The author also comments on examples and guidance included in the new chapter that in some ways may be helpful in the resolution of transfer-pricing disputes relating to business restructurings, but in other ways may create additional uncertainty and thereby frustrate the resolution of such disputes.

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