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Switzerland Tax Alert

BEPS: New discussion drafts published by the OECD

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Five Transfer Pricing Discussion Drafts

As expected, the OECD issued five public discussion drafts on transfer pricing topics during the week of December 15-19. The first two discussion drafts were issued December 16 under Action 10 of the BEPS Action Plan.

The discussion draft on commodity transactions addresses problems reported by countries where the commodities sector provides the major source of economic activity, including difficulties in determining adjustments made to quoted prices, verifying the pricing date, and accounting for the involvement of other parties in the supply chain.

[Read more](#)

The second OECD release, on the use of profit splits in the context of global value chains, examines eight scenarios in which it may be more difficult to apply one-sided transfer pricing methods to determine transfer pricing outcomes that are in line with value creation, and in which the application of a transactional profit split method may be appropriate. The responses should provide guidance on the use of the transactional profit split method in Chapter II of the transfer pricing guidelines.

[Read more](#)

The third discussion draft, issued December 18 pursuant to Action 14 (make dispute resolution mechanisms more effective) of the BEPS Action Plan, adopts four organizing principles:

The draft then identifies 22 obstacles to the resolution of

treaty-related disputes through the mutual agreement procedure (MAP) mechanism, and presents 34 options to address those obstacles.

[Read more](#)

The fourth discussion draft, issued under Action 4 of the BEPS Action Plan, which calls for limiting base erosion via interest deductions and other financial payments, is a consultation document that seeks input on key issues concerning the design of rules to address base erosion and profit shifting using interest and similar financial payments.

Some of the options discussed include general interest limitation rules that set out an overall limit on the amount of interest expense in an entity, by linking interest deductibility to the position of a group or to fixed ratios, as well as targeted interest limitation rules that address specific base erosion and profit shifting risks.

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The final discussion draft on risk, recharacterization, and special measures – and the last one to be issued in 2014 – tackles issues raised under Actions 8, 9, and 10 of the BEPS Action Plan, whose general aim is to ensure that transfer pricing outcomes are in line with value creation, and more specifically call for the development of rules to prevent base erosion and profit shifting by transferring risks among group entities, to clarify the circumstances under which transactions could be recharacterized, and rules or special measure for transfers of hard-to-value intangibles.

[Read more](#)

The OECD has invited interested parties to submit comments on the discussion drafts by February 6, 2015, with the exception of comments on the dispute resolution discussion draft, which are due on January 16.

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