



Tax and Legal News



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OECD releases guidance on the Transfer Pricing treatment of Financial Transactions for the first time

The treatment for foreign intra group financial assistance to South African members of multinational groups has always been a hot topic.

The withdrawal of SARS Practice Note 2 on Thin Capitalisation last year, with retrospective effect from 2012, has further highlighted the uncertainty regarding the treatment of financial transactions, from a South African perspective.

However, after long debate, the Organisation for Economic Cooperation and Development (OECD) released a Report regarding the transfer pricing treatment of Financial Transactions on 11 February 2020. Most items set out in this report will be incorporated in a new Chapter X of the OECD Transfer Pricing Guidelines. It is the first time in the history of the OECD Transfer Pricing Guidelines that provisions regarding the transfer pricing treatment of financial transactions are included in the Guidelines.

Although the OECD Transfer Pricing Guidelines constitute guidance only and South Africa is also not a member of the OECD, but has observer status only, paragraph 3.2.1 of Practice Note 7 on transfer pricing states that because of the international importance of the OECD Transfer Pricing Guidelines, Practice Note 7 is based on, *inter alia*, those guidelines. Furthermore paragraph 3.2.3 of Practice Note 7 requires that the OECD Transfer Pricing Guidelines should be followed in the absence of specific guidance in terms of Practice Note 7, the provisions of the South African Transfer Pricing Legislation or the tax treaties entered into by South Africa. Since there is currently no other guidance on financial transactions from a South African perspective, it is widely expected that SARS will adopt the guidance set out in the new Chapter X of the OECD Transfer Pricing Guidelines.

Taxpayers involved in cross-border financial assistance transactions should take note of this development.

For any questions, please contact a member of our Transfer Pricing Team:



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