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The case for unitary taxation with formulary apportionment in the finance sector and the effect on developing nations – *Kerrie Sadiq*

In 2013 the OECD released its 15-point action plan to deal with base erosion and profit shifting (BEPS), which recognised that BEPS has a significant effect on developing countries because the lack of tax revenue can lead to a critical underfunding of public investment that would help promote economic growth. To this end, the BEPS project is aimed at ensuring an inclusive approach to take into account not only views of the G20 and OECD countries but also the perspective of developing nations. The purpose of this article is to consider a possible solution to profit shifting which occurs under the current transfer pricing regime, with that solution being unitary taxation with formulary apportionment. It does so using the finance sector as a specific case for application. Multinational financial institutions (MNFIs) play a significant role in financing activities of their clients in developing nations. Consistent with the "follow-the-client" phenomenon that explains financial institution expansion, these entities are increasingly profiting from activities associated with this growing market. Further, not only are MNFIs persistent users of tax havens but also, more than other industries, have opportunities to reduce tax through transfer pricing measures. This article establishes a case for an industry-specific adoption of unitary taxation with formulary apportionment as a viable alternative to the current practice. While it would be difficult for developing nations to adopt such a regime, it is argued that it would be no more difficult than addressing issues they face with the current transfer pricing regime. 75

The implications of the Multilateral Convention and the Foreign Account Tax Compliance Act: An Australasian perspective – *Adrian Sawyer*

Global initiatives to combat cross-border tax avoidance and evasion have focused upon ways in which revenue authorities can gather and share information to ascertain whether their residents are engaged in unacceptable tax practices. Two recent initiatives that address these issues from contrasting perspectives are the Organisation for Economic Co-operation and Development's revitalised Multilateral Convention for Mutual Administrative Assistance in Tax Matters, and the United States Government's controversial enactment of the Foreign Account Tax Compliance Act (FATCA). While there is an emerging literature examining each of these initiatives and their associated implications broadly, there is a dearth of analysis from an Australasian perspective. With both Australia and New Zealand recently ratifying their signing of the Multilateral Convention, and both countries negotiating an intergovernmental agreement under the FATCA, these two important "global" initiatives have implications for this part of the world. 99

The politics of tax: Rethinking the basis for an independent accountants tax advice privilege – *Robin H Woellner* and *Andrew J Maples*

In recent times, there has been increasing pressure in a number of jurisdictions – including Australia – to protect tax advice given by non-lawyers. In 2007, the Australian Law Reform Commission recommended introduction of an accountants' privilege, but favoured a separate specific statutory regime (such as has been introduced in New Zealand) rather than the United States approach in the Internal Revenue Code 1986, s 7525 of applying the common law legal advice privilege to tax advice given by non-lawyers. This is perhaps not surprising, as the operation of s 7525 has revealed a number of serious design flaws. However, if the policy aim is to provide the same protection to tax advice given by accountants as to that given by lawyers, there is a strong case conceptually for the view that the best way of achieving this protection is through a provision drafted along the lines of s 7525. 120