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ARTICLES

The Application of Australia's Domestic Tax Laws and Tax Treaties Where a Foreign Company is a Resident – *Norman Hanna*

This article provides an examination of the Australian income tax implications that may arise if the Commissioner is successful in applying TR 2018/5 such that a foreign incorporated company is considered an Australian tax resident on the basis of central management and control. Many of the foreign incorporated companies caught by TR 2018/5 will also be regarded as resident in their country of incorporation and thus a "dual resident". Although Australia has a tax treaty network that is available in some cases to potentially resolve the issue of dual residence for treaty purposes, a range of domestic tax law implications will arise when a foreign incorporated company is a dual resident. This article highlights the Australian tax issues faced by a dual resident, including the importance of the relationship between tax treaties and domestic law in addressing these issues. 163

Streaming of Franking Credits Curtailed by Bamford-Induced Amendments – an Unintended Consequence? – *Brett Freudenberg and Dale Boccabella*

In 2011, the provisions providing for allocation to beneficiaries of a trust's franked distributions and associated tax attributes (franking credit tax offsets) were amended in light of the High Court decision in *Commissioner of Taxation v Bamford*. The concern from Bamford was that streaming of receipts of a discretionary trust may no longer be available in light of the proportionate view interpretation of the rule that allocates the trust's taxable income to beneficiaries. The overwhelming aim of the 2011 amendments was to cement the streaming of a trust's franked distributions and associated tax attributes (and net capital gains) to selected beneficiaries to the exclusion of other entitled beneficiaries. However, the amended provisions prevent streaming of franking credits where the distribution is extinguished by related expenses. However, the old provisions, as confirmed in the recent *Thomas v Federal Commissioner of Taxation* decisions, permitted streaming in these situations. 190

Tax Implications of Intangibles in the World of the BEPS: Do APAs Still Have a Role to Play in the Tax Planning Strategies of Multinationals? – *Ranjana Gupta*

This article investigates the use of Advance Pricing Agreements (APAs) by multinational enterprises (MNEs) for tax planning and risk allocation purposes in relation to cross-border transactions. The use of APAs for intellectual property (IP) transactions by MNEs to adjust or defer their tax liability is evaluated in light of the recent developments implemented by various jurisdictions under the Organisation for Economic Co-operation and Development's Base Erosion and Profit Shifting (BEPS) Action Plan. To determine how MNEs engage in APAs to "validate" their strategies to adjust or defer their tax liability through complicated arrangements that focus on the use of IP and exploiting differences

in countries' laws and regulations, recent European Commission investigations relating to IKEA, Starbucks, Amazon and McDonald's are analysed. The article demonstrates that given the rising number of APAs in the global market, trends indicate that APAs will continue to remain an optimal and preferred solution for transfer-pricing disputes in the foreseeable future. 219