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Transfer Pricing: Implications of the Recent SNF Judgment

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Room 2, LG1 Floor Library Extension Building
University of Hong Kong

Transfer pricing is the price which multinational enterprises charge for transactions between associated enterprises for goods and services. Transfer prices affect the respective taxable profits of associated enterprises, and most jurisdictions have transfer pricing measures to ensure that transfer prices are appropriate. Transfer pricing measures require transfer prices to reflect market prices charged in transactions between independent and unrelated enterprises. But it is often difficult to obtain comparable market prices.

Australia has transfer pricing measures in its domestic tax law which are reflected in its tax treaties. While Australian transfer pricing measures were enacted in 1982 the only transfer pricing court decision occurred earlier this year, in June 2011, in the SNF case. The full Federal Court rejected the Taxation Commissioner's contention that an Australian associated enterprise, SNF Australia Pty Ltd, had been over-charged for its purchases of industrial chemicals from associated enterprises in France, the US and China. Paradoxically, the Court found that SNF Australia had been undercharged.

Dr Michael Kobetsky is an Associate Professor at the University of Melbourne, Melbourne Law School. Dr Kobetsky is the principal author of one of Australia's leading taxation texts which is now in its seventh edition. His new book, titled *'International Taxation of Permanent Establishments: Principles and Policy'* (Cambridge University Press), was published in September 2011. Dr Kobetsky is a member of the United Nations Sub-Committee on Transfer Pricing which is preparing a transfer pricing manual for developing countries. As a consultant to the OECD Centre for Tax Policy and Administration since 2004 he has presented seminars and conference papers in several Asian countries. Since 2007 Dr Kobetsky has made presentations on tax treaties and transfer pricing at the Asian Development Bank Institute's Tokyo annual tax conference for developing Asian economies.

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