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**OECD – Discussion Draft  
Focuses on Termination of  
Employment Payments**

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## *flash* International Executive Alert

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This *Flash International Executive Alert* highlights a recent Organization for Economic Cooperation and Development (OECD) discussion draft<sup>1</sup> that focused on the OECD Model Tax Convention's treatment of various payments made following the termination of employment in a cross-border situation.

### Background

The OECD Committee on Fiscal Affairs, through a sub-group, studied the potential issues that could arise from the limited guidance contained in the Commentary on the OECD Model Tax Convention ("OECD Model"). The proposed changes and additions in the discussion draft are a result of the sub-group's work.

Currently, the Commentary on the OECD Model addresses only the extent to which termination-related payments constitute "pensions or other similar remuneration" under article 18, Pensions. It does not address how other provisions, such as article 15, Income from Employment, apply to various other types of payments made following the termination of employment in cross-border situations. The limited guidance can result in inconsistent treaty characterization, creating a risk of both double taxation and non-taxation.

### Highlights of Discussion Draft: Types of Remuneration Concerned

In June 2013, the OECD released a discussion draft intended to clarify the application of the OECD Model to various types of payments that were not addressed in the prior Commentary. The discussion draft relates to payments made to persons following the termination of their employment in cross-border situations and addresses which article of the OECD Model should apply and, in some cases, to what time period the payments are considered to relate. The following types of remuneration are addressed in the draft discussion, and generally fall under article 15, Income from Employment:

- Remuneration for previous work.
- Payment for unused holidays or sick leave.
- Payment in lieu of notice of termination.
- Severance payment.
- Payment of damages for unlawful dismissal.
- Non-competition payment.
- Payment related to pension rights.
- Deferred remuneration.

- Payment under an incentive compensation arrangement.
- Fringe benefits for the period after employment.
- Compensation for loss of earning on or after termination following injury or disability.
- Compensation for loss of future commissions.
- Partial retirement payments.

### Next Steps

The OECD Committee on Fiscal Affairs has requested comments on the discussion draft before September 13, 2013, in order for the comments to be examined at the September 2013 meeting of the Working Party.

### KPMG Note

The discussion draft details what is deemed to be the proper taxation treatment of various termination-related payments. The draft generally provides a framework in which the payments are treated in accordance with the source of the underlying obligation. In other words, where the obligation arises in a specific period or based on specific work performed before termination, generally the termination-related payment should be sourced to the corresponding state when the obligation arose.

The detailed discussion of how such termination payments are to be treated for tax purposes by countries party to a treaty should provide useful guidance for treaty negotiators and tax practitioners, and ultimately help clarify matters for employees and their employers.

### Footnote:

1 See: <http://www.oecd.org/tax/treaties/terminationpayments.htm> .

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The information contained in this newsletter was submitted by KPMG LLP's Washington National Tax practice. The information contained herein is of a general nature and based on authorities that are subject to change. Applicability of the information to specific situations should be determined through consultation with your tax adviser.

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