

## PRESENTERS



### **Betsy-Ann Howe, K&L Gates, Sydney**

Betsy is a tax partner in the K&L Gates global tax practice and leads the firm's Australian tax practice. She specialises in cross border mergers and acquisitions, inbound and outbound investment and structured and asset finance. Prior to moving to Australia in 2001, Betsy was a tax partner at Russell McVeagh and Chapman Tripp and she continues to have a strong involvement in trans-Tasman tax issues.



### **Kim Jarrett, KPMG, Auckland**

Kim is a cross-border tax specialist and leads KPMG's New Zealand Transfer Pricing and Customs Practice. She joined KPMG in 1996 (conveniently the same year that the current transfer pricing regime was introduced) and has a broad range of transfer pricing and customs experience. She specialises in assisting New Zealand headquartered clients develop efficient global transfer pricing strategies, and managing Advance Pricing Agreement negotiations and transfer pricing audits with Inland Revenue.

# CONTENTS

<b>TRANSFER PRICING ISSUES IN INTERCOMPANY FINANCE</b> .....	<b>1</b>
ABSTRACT .....	1
TRANSFER PRICING AND INTERCOMPANY FINANCE.....	1
TRANSFER PRICING RULES IN AUSTRALIA.....	2
FORMER DIVISION 13 .....	3
THE ATO VIEW .....	4
<i>Treaty power and Subdivision 815-A</i> .....	7
<i>Subdivisions 815-B, 815-C and 815-D</i> .....	8
THE <i>CHEVRON</i> CASE .....	10
<i>The facts</i> .....	10
<i>ATO determinations</i> .....	11
<i>Issues considered in court</i> .....	12
TRANSFER PRICING DEVELOPMENTS IN NEW ZEALAND.....	14
<i>New Zealand's transfer pricing legislation</i> .....	14
HOW DO NEW ZEALAND TRANSFER PRICING RULES DIFFER TO AUSTRALIAN RULES? .....	14
<i>Power of reconstruction</i> .....	15
<i>Acceptance multinationals may trade in a manner that is different to independent companies</i> .....	15
<i>'Most reliable method' requirement</i> .....	15
ESTABLISHING INTERCOMPANY INTEREST RATES IN NEW ZEALAND .....	16
<i>Use of bank loans and bank quotes as reference points</i> .....	16
<i>Establishing the credit worthiness of the borrower</i> .....	16
<i>Comparison to the Australian process</i> .....	17
IMPORTANCE OF INTERCOMPANY CONTRACTS .....	17
CONCLUSION .....	19