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Normative Conflicts when Applying the Arm's Length Principle: When Soft Law Developments Meet Hard Law Realities of National Legislation

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The broad nature of the arm's length principle embedded in article 9 of tax treaties gives rise to various interpretative issues. Even though the transfer pricing rules are drafted to reach an approximate arm's length result, the open-ended nature of these rules make it difficult to assess their correct application. Adoption of these rules or norms within the domestic legal system leads to various normative conflicts at different levels. The aim of the authors in this article is to evaluate how the domestic application of the arm's length principle takes place at different normative levels. Further, it also brings out the practical problems that could arise when “new” developments to the arm's length principle are adopted at these normative levels.