

## BEPS Actions implementation by country

### Action 5 – Harmful tax practices

On 5 October 2015, the G20/OECD published 13 final reports and an explanatory statement outlining consensus actions under the base erosion and profit shifting (BEPS) project. The output under each of the BEPS actions is intended to form a complete and cohesive approach covering domestic law recommendations and international principles under the OECD model tax treaty and transfer pricing guidelines.

It is now for governments to digest and introduce the necessary legislation. The table below sets out a summary of the expected implementation and timing of the proposals under Action 5 by territory.

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Country	Notes on implementation	Expected timing	Last reviewed by Deloitte
Argentina	Not yet known.	Not yet known	August 2017
Australia	The Australian Taxation Office has already started exchanging rulings with other jurisdictions.	Occurring	July 2017
Austria	In October 2016, the Ministry of Finance issued a decree on the automatic exchange of information regarding tax rulings. The decree implements the automatic exchange of information based on the EU Council Directive 2015/2376, as well as the mandatory spontaneous exchange of information with non-EU countries adopted under Action 5.	<p>Exchange of information with EU countries:</p> <ul style="list-style-type: none"> <li>- Rulings entered/ changed/ renewed after 31 December 2016: exchange within three months following end of calendar half-year.</li> <li>- Rulings entered/ changed/ renewed between 1 January 2012 and 31 December 2016: exchange before 1 January 2018.</li> </ul> <p>Exchange of information with non-EU countries:</p> <ul style="list-style-type: none"> <li>- Rulings entered/ changed/ renewed after 31 March 2016: exchange within three months following the date of issuance.</li> </ul> <p>Rulings entered/ changed/ renewed between 1 January 2010 and 31 December 2013: exchange before 1 January 2017.</p>	March 2017
Belgium	The patent income deduction (PID) was abolished as from 1 July 2016 subject to a grandfathering regime, according to which the PID regime may be applied until 30 June 2021 for (qualifying)	1 July 2016 (abolition of patent income deduction and availability of new	May 2017

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patents received or applications filed before 1 July 2016 (some anti-avoidance rules apply). A new regime, the “innovation income deduction,” which is based on the “modified nexus approach” replaced the PID as from 1 July 2016.

innovation income deduction)

Belgium must implement into its domestic law the changes made to the EU directive on administrative cooperation in the field of taxation regarding the exchange of tax rulings.

31 December 2016 (implementation of the amended directive), which may result in the exchange of rulings issued, amended or renewed as from 1 January 2012; full implementation date is not yet known but exchange of rulings already initiated in practice

	Brazil disallows deductions for payments made to tax havens (“black list”) and tax privileged regimes (“grey list”) jurisdictions where the payments do not satisfy “substance” requirements.	1 October 2016	
Brazil	Normative Ruling (NR) No. 1,658 enacted on 15 September 2016 addresses the concept of substantive economic activities of holding companies in the context of Brazil’s grey list. The NR may be considered an initial action by Brazil in the context of ensuring transparency and substance.		July 2017
	Normative ruling (NR) No. 1,689 enacted on 21 February 2017 contains guidance on measures to implement the OECD recommendations under BEPS action 5. The NR regulates ruling procedures relating to the interpretation of the tax law. Rulings on transfer pricing, permanent establishments and certain R&D incentives will be subject to the mandatory exchange of information with other tax authorities. Private letter rulings, resolution acts and interpretative acts will fall within the scope of the exchange of information.	1 March 2017	
Canada	In the March 2016 federal budget, the government indicated its intention to introduce procedures for the spontaneous exchange of tax rulings with other countries that have undertaken the same procedure in accordance with the BEPS Action 5 minimum standard.	N/A – no specific actions	July 2017

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On 22 April 2016, the Canada Revenue Agency (CRA) released Income Tax Information circular IC70-6R7, Advance Income Tax Rulings and Technical Interpretations, which contains new paragraphs 54 and 55 under the heading "Exchange of Information on Rulings under BEPS Action 5." These paragraphs indicate Canada's commitment to the spontaneous exchange of information on tax rulings with participating countries in five areas: cross-border rulings relating to preferential regimes; cross-border rulings related to transfer pricing; cross-border rulings relating to a downward adjustment not directly reflected in the taxpayer's accounts; PE rulings; and related-party conduit rulings.

At the federal level, Canada currently does not have a patent box regime, so no changes are required regarding the minimum standard in this area.

China	The government is reviewing relevant regimes to ascertain whether they are affected by the Action 5 conclusions. The reduced EIT rate for high and new technology enterprises has been reviewed by the OECD and is not regarded as harmful, so no change is expected in the short term.	Ongoing	July 2017
Czech Republic	The Czech Republic has implemented the EU directive on administrative cooperation in the field of taxation regarding the exchange of tax rulings (EU DAC III), with effect from 1 April 2017. The exchange will take place on a biannual basis, with one-off information exchanges taking place in respect of rulings issued between 1 January 2012 and 31 December 2013, providing they were effective on 1 January 2014. Information will also be exchanged on rulings issued between 1 January 2014 and 31 December 2016.	1 April 2017	April 2017
Denmark	No existing regimes are considered to fall within the scope of "harmful tax practices".	N/A	April 2017

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Estonia	Estonia does not have any preferential regimes, and it is not yet known whether there will be any actions implemented in respect of harmful tax practices in other tax jurisdictions.	Not yet known	July 2017
Finland	Not yet known.	Not yet known	May 2017
France	Informal discussions have taken place with respect to patent boxes. The existing regime eventually may evolve, but there are no details on further changes.	Not yet known	May 2017
Germany	There have been discussions on how research and development could be better promoted in Germany, one option being the introduction of a patent box regime.  With regard to foreign non-nexus based patent box regimes, Germany recently introduced a limitation on the deductibility of intercompany royalty payments (see below under "Unilateral BEPS actions").	Not yet known	July 2017
Greece	Greece already has a GAAR.  The anti-avoidance provision regarding the application of the EU parent-subsidiary directive was introduced into Greek law in March 2016 to disallow the dividend income exemption and a withholding tax exemption in the case of artificial transactions.	1 January 2016	May 2017
Hong Kong	The IRD will review and amend provisions found to be harmful, and consider the mandatory spontaneous exchange of information on certain rulings. The Hong Kong Government (Financial Services and the Treasury Bureau) has issued a consultation paper to the public and will introduce bills to the Legislative Council for further review and approval.	Published consultation paper on 26 October 2016  Plan to introduce the relevant amendment bill(s) to the Legislative Council in 2017	July 2017

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Hungary	<p>Changes have been made to Hungary's IP regime to adopt the nexus approach recommended by the OECD.</p> <p>Hungary has implemented into domestic law the changes made to the EU directive on administrative cooperation in the field of taxation regarding the exchange of tax rulings.</p>	16 July 2016	April 2017
Iceland	Not yet known.	Not yet known	June 2017
India	<p>India has a concessional regime for taxation of royalty income from patents. The rate is 10% of the gross amount for patents developed and registered in India by a person resident in India.</p>	1 April 2016	May 2017
Indonesia	Not yet known.	Not yet known	July 2017
Ireland	Patent box legislation was included in Finance Act 2015.	1 January 2016	March 2017
Israel	<p>The Israeli Law for the Encouragement of Capital Investments was amended in Dec 2016 and a new IP box regime was introduced, which offers even lower tax rates (6%/12%) in order to encourage multinational companies to maintain the IP in Israel.</p>	As from tax year 2017	April 2017
Italy	<p>Italy has introduced a patent box regime for entities deriving income from certain R&amp;D activities. The incentive is in line with the "nexus approach" in the Action 5 report and, therefore, aims to restrict the applicability of the patent box regime to situations where "substantial activities" are carried out in Italy. The 2016 Finance Bill restricted the application of the patent box regime to copyrighted software, in line with the standards provided by Action</p>	1 January 2015	May 2017

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5. Trademarks have just been excluded from the eligible assets in order to align Italian provisions with OECD recommendations. The new provision does not affect trademarks included in the patent box regime before the end of the FY 2016.

Japan	Japan is not considered to have harmful tax practices (such as a patent box or harmful ruling system).	N/A	May 2017
Luxembourg	The previous IP box regime was repealed on 1 July 2016. The draft law revising the IP regime is expected soon.	Not yet known	March 2017
Mexico	Not yet known.	Not yet known	March 2017
Netherlands	<p>The (modified) nexus approach has been implemented into the Dutch innovation box regime.</p> <p>The government supports the exchange of information regarding tax rulings. First exchanges have already taken place.</p> <p>Taxpayers are requested to complete a questionnaire to facilitate the exchange of information on new rulings and existing rulings, based on both EU rules and OECD recommendations. In the absence of any input from taxpayers, the Dutch tax authorities are expected to commence completing the questionnaires on their own.</p>	<p>1 January 2017 ((modified) nexus approach)</p> <p>Exchange of information in line with the (OECD) recommendations already occurred in 2016. Exchanges based on EU rules, as from 1 January 2017</p>	May 2017
New Zealand	<p>New Zealand has no harmful tax practices as identified by the G20/OECD.</p> <p>New Zealand has an active unilateral APA and other binding rulings regime; the country has confirmed it will disclose any rulings given that fall into one of the six categories highlighted as part of Action</p>	<p>Information exchange obligations will apply to:</p> <ul style="list-style-type: none"> <li>Past rulings issued on or after 1 January 2010 and still in effect on or after 1 January 2014</li> </ul>	June 2017

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5.

- Rulings issued on or after 1 April 2016

Norway	<p>No Norwegian tax regimes currently are considered as harmful.</p> <p>Norway has implemented necessary legislation for the exchange of tax rulings.</p>	1 January 2017	August 2017
Poland	<p>Not yet known, although Poland is participating in G20/OECD initiatives in respect of Action 5.</p> <p>Poland recently introduced a general anti-avoidance rule that requires economic substance.</p> <p>The provisions regarding the exchange of tax information (including automatic exchange of tax rulings, safeguarding opinions and transfer pricing decisions) have been recently implemented.</p>	<p>General anti-avoidance rule: 15 July 2016</p> <p>Exchange of tax information: April 2017</p>	May 2017
Portugal	<p>Portugal's intellectual property (IP) regime was amended in 2016 to bring it in line with the "modified nexus approach."</p> <p>Portuguese legislation now contains the suggested approach for calculating qualifying R&amp;D expenditure to define the substantial activity requirement in the context of intangible assets.</p> <p>The amendments should apply only to IP assets registered on or after 1 July 2016. The application of the previous regime was safeguarded as regards IP registered on or before 30 June 2016, which may continue to benefit under the previous regime until 30 June 2021.</p>	1 July 2016	July 2017
Russia	<p>Russia does not have a patent box and is not expected to have any rulings to exchange with other tax authorities.</p>	N/A	July 2017



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Saudi Arabia	Not yet known.	Not yet known	May 2017
Singapore	<p>Budget 2017 includes a proposal to introduce a BEPS-compliant patent box regime that would incentivise income derived from the exploitation of intellectual property (IP) called the IP Development Incentive (IDI).</p> <p>Details of the IDI were expected to be released by May 2017, but there has been a delay and the details are now expected to be released in the latter part of 2017.</p> <p>“IP income” for purposes of the IDI is expected to include royalties from the licensing of IP, as well as embedded royalties in the profits derived by a supply chain principal.</p> <p>The Finance Minister also announced that the government is “in consultation with businesses, refining [Singapore’s] schemes and implementing the [BEPS] standards”. This could imply that the implementation of BEPS standards could go beyond the proposed changes in regard to the IDI and that changes may need to be made to some of Singapore’s other tax incentives.</p> <p>In revised transfer pricing guidelines issued on 12 January 2017, the IRAS enhanced the guidance on mutual agreement procedure (MAP) and advance pricing arrangements (APA) as part of its commitment to BEPS Action 5. The IRAS will spontaneously exchange information on cross-border unilateral APAs under a tax treaty or an exchange of information instrument, subject to certain conditions, with:</p> <ul style="list-style-type: none"> <li>• Jurisdictions of all related parties with whom the taxpayer enters into transactions that are covered by unilateral APAs; and</li> <li>• Jurisdictions of the taxpayer’s ultimate parent entity and the immediate parent entity.</li> </ul>	N/A	August 2017
			Information relating to unilateral APAs issued before 1 April 2017 will be exchanged by December 2017 and those issued after 1 April 2017 will be exchanged within three months after the date of agreement

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Slovakia	Slovakia intends to introduce a patent box.	Planned for 1 January 2018	August 2017
Slovenia	Not yet known.	By 31 December 2018	December 2016
South Africa	There is some concern about the possibility that South Africa's headquarter company regime could constitute a harmful tax practice. It is not yet known when or if there will be any changes to the existing legislation.	Not yet known	June 2017
South Korea	There is no indication of adopting the recommendation.	Not yet known	April 2017
Spain	The patent box regime has been amended to adopt the "nexus approach" endorsed in the final report.	1 July 2016	May 2017
Sweden	Sweden does not have a patent box regime.	N/A	July 2017
Switzerland	As part of the legislative process for a revised corporate tax reform, preferential tax regimes are expected to be abolished and a new patent box regime implemented in line with the Action 5 recommendations.	By 2020 or 2021	February 2017
	The government is expected to introduce new legislation to define the legal basis for the exchange of tax rulings.	FY 2018	

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Turkey	While Turkish legislation provides for a 30% withholding tax on payments made to tax havens, the rule cannot be applied because the Council of Ministers has not issued a list of jurisdictions engaged in harmful tax practices.	Not yet known	June 2017
United Kingdom	Legislation to modify the patent box rules to comply with the new international framework and G20/OECD “nexus approach” was enacted in September 2016; the existing regime closed to new entrants from 1 July 2016.	1 July 2016	May 2017
United States	US law does not have a preferential IP regime of the type discussed in Action 5. Other than unilateral APAs, the US generally does not issue rulings of the type that must be spontaneously exchanged under Action 5.	N/A	March 2017



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