

BEPS Actions implementation by country

Actions 8-10 – Transfer pricing

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 Actions 8-10 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	<p>The OECD's transfer pricing guidelines are incorporated in Australia's transfer pricing law (currently referring to the 2010 guidelines).</p> <p>The government has enacted legislation to give effect to the 2015 OECD transfer pricing recommendations (Actions 8-10, "Aligning Transfer Pricing Outcomes with Value Creation").</p>	1 July 2016	July 2017

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Austria	An official statement on the expected implementation of Actions 8-10 has not yet been made, although it is possible that the Austrian tax authorities will consider the changes in the OECD transfer pricing guidelines to be effective immediately.	Not yet known	March 2017
Belgium	The Finance Minister has indicated that the new transfer pricing guidance will be applied by the tax authorities in the context of transfer pricing audits, and that the transfer pricing department within the tax authorities would be expanded.	In principle already applied (the authorities have adopted the standard in audits etc.)	May 2017
Brazil	Brazil's transfer pricing legislation diverges significantly from the current OECD guidelines. However, Brazil has adopted minimum/maximum mark-ups for certain transfer pricing methods (e.g. resale price, cost plus methods). Intellectual property is not subject to transfer pricing scrutiny. No further changes to the transfer pricing rules are expected in the near future.	N/A	July 2017
Canada	In the March 2016 budget, Canada indicated that it plans follow the revised OECD transfer pricing guidelines.	Many of the BEPS concepts related to transfer pricing already have been articulated and are followed by CRA auditors even in the context of historical years	July 2017
China	The recommendations in the Actions 8-10 reports are in line with long-standing practices of the SAT. The draft changes to Circular 2 would incorporate the recommendations, adapted as appropriate for China. Relevant provisions in Circular 2 are expected to be revised in a new circular(s).	Not yet known	July 2017

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Czech Republic	The OECD transfer pricing guidelines are directly applied in administrative tax practice through the general provision on transfer pricing (contained in the Income Taxes Act). The Czech tax authorities typically focus on the economic substance of transactions. The introduction of specific measures generally follows updates to the OECD guidelines.	Ongoing	April 2017
Denmark	The proposed changes will be implemented retroactively in Denmark on the basis that the proposed changes under Actions 8-10 are considered a “clarification” of the existing OECD guidelines.	Not yet known	April 2017
Estonia	Estonia follows the OECD transfer pricing guidelines to the extent they do not conflict with the 2006 regulation issued by the Ministry of Finance with respect to the methods for determining the value of related party transactions. According to information from the ministry, changes are being made to the regulation.	Not yet known	July 2017
Finland	A discussion on amendments to the transfer pricing provisions on recharacterisation is ongoing. Immediate adoption of other measures is expected.	Ongoing / immediate	May 2017
France	The transfer pricing rules refer to the OECD guidelines, so the new recommendations are applicable immediately. No new laws are anticipated.	1 January 2016	May 2017
Germany	These actions are likely to be adopted as they operate via the arm’s length principle, which is already established in German tax law.	Not yet known	July 2017
Greece	The existing transfer pricing rules refer to the OECD guidelines, so any changes to the guidelines are likely to be effective immediately.	Not yet known	May 2017

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Hong Kong	<p>Hong Kong has two DIPNs that provide guidance on transfer pricing and these generally follow the OECD guidelines. The IRD has placed transfer pricing as a high priority amongst the 15 BEPS actions. The key proposals of Actions 8-10 will be focused on the alignment of profits with economic activities. The government has issued a consultation paper to the public and the IRD will introduce bills to the legislative council for further review and approval.</p>	<p>Published consultation paper on 26 Oct 2016</p>	<p>July 2017</p>
Hungary	<p>The standards in Actions 8-10 are expected to be implemented in Hungary.</p>	<p>Likely 2017</p>	<p>April 2017</p>
Iceland	<p>On 1 January 2014, three new articles were added to the Income Tax Act granting the tax authorities the right to evaluate and adjust pricing and terms of related party transactions if the pricing and terms are not in accordance with the arm's length principles as laid down in the OECD guidelines. No changes have been made to the rules to bring them in line with the final BEPS actions reports.</p>	<p>Not yet known</p>	<p>June 2017</p>
India	<p>With respect to DEMPE, several aspects of the BEPS guidance in Action 8-10 are in line with the practices and additional guidance provided already by the Indian tax authorities. Therefore, there has been no discussion/communication from the Indian Tax Authorities regarding the specific introduction of BEPS Actions 8-10 into Indian TP regulations.</p> <p>Given the manner in which low value-add services are currently defined, India is unlikely to adopt the simplified approach in the current form.</p> <p>Adoption of other concepts/actions is not yet known.</p>	<p>Not yet known</p>	<p>May 2017</p>
Indonesia	<p>Regulations issued in 2013 require taxpayers to prove the role of parties in developing intellectual property, in line with the OECD transfer pricing guidelines, to align the allocation of taxable income with value creation. It is not yet known whether additional</p>	<p>Not yet known</p>	<p>July 2017</p>

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measures in line with Actions 8-10 will be implemented.

Ireland	Historically, Ireland has followed OECD guidance with regard to transfer pricing. As such, it is expected that Ireland will adopt the revised OECD transfer pricing guidance.	Not yet known	March 2017
Israel	<p>The tax authorities have published a circular that provides high-level guidance on conducting a functional analysis when attributing profits to a permanent establishment in Israel.</p> <p>The tax authorities have not made any further announcements with respect to Actions 8-10.</p>	Not yet known	April 2017
Italy	Not yet implemented. However, the international tax decree published in September 2015 contained rules regarding the determination of the taxable profits of a PE in Italy, formally recognising the “functional separate entity” approach.	Not yet known	May 2017
Japan	Japan is looking to the further discussions at the G20/OECD that are expected to take place in 2017	Not yet known	May 2017
Luxembourg	The 2017 budget law incorporates most of the transfer pricing aspects in BEPS Actions 8-10 into domestic legislation.	As from 1 January 2017	March 2017
Mexico	Mexico’s existing transfer pricing rules generally follow the OECD transfer pricing guidelines. It is not yet known how the proposed changes to the guidelines will be implemented.	Not yet known	March 2017
Netherlands	Existing Dutch transfer pricing policy is considered to be consistent with the proposed changes under Actions 8-10.	N/A	May 2017

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New Zealand	<p>New Zealand endorses the OECD transfer pricing guidelines and the Inland Revenue has publicly stated that it will apply the strengthened guidelines. Legislation should not be required to give effect to any changes to the guidelines, but the government intends to amend the legislation to include an explicit reference to the latest OECD transfer pricing guidelines (this is part of the consultation referred to below).</p> <p>Consultation is underway on a package of reforms to strengthen New Zealand’s transfer pricing rules. Proposals include aligning transfer pricing rules with economic substance, the ability to recharacterise transactions, reversing the burden of proof (which is currently on Inland Revenue when contemporaneous documentation is prepared by the taxpayer), extending the statute of limitations for transfer pricing adjustments from four to seven years and applying the transfer pricing rules to investors acting in concert.</p>	<p>Timing will follow OECD updates to transfer pricing guidelines</p> <p>Legislation is not expected until 2018</p>	June 2017
Norway	<p>Norway’s transfer pricing rules generally follow the OECD guidelines and refer to various chapters of the guidelines. Any changes made to these chapters of the guidelines by the OECD are immediately adopted into Norwegian legislation.</p>	N/A	August 2017
Poland	Not yet known.	Not yet known	May 2017
Portugal	<p>Subject to finalisation of the OECD guidelines. A review of the existing provisions in respect of intra-group transactions may take place.</p>	Not yet known	July 2017
Russia	<p>New transfer pricing guidelines are being developed and the Russian tax authorities are considering the application of certain recommendations arising from the BEPS project.</p>	Not yet known	July 2017

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Saudi Arabia	The GAZT will be issuing specific transfer pricing guidelines in the near future. Given that Saudi Arabia is a member of the G20, the guidelines are expected to take into account the outcome of BEPS actions.	Not yet known, but likely in 2017	May 2017
Singapore	On 12 January 2017, the IRAS released updates to Singapore's transfer pricing guidelines. IRAS has clarified that the interpretation and application of the arm's length principle should be consistent with that under Actions 8-10, namely, profits should be aligned to value creation, and where the real economic activities are located. Accordingly, the determination of risk for transfer pricing analysis purposes also is aligned with that under Actions 8-10.	1 January 2017	August 2017
Slovakia	Slovakia has implemented transfer pricing rules and documentation requirements that generally follow the OECD guidelines and BEPS Actions 8-10.	Not yet known	August 2017
Slovenia	Not yet known.	Not yet known	December 2016
South Africa	With regards to intangibles, South Africa has very strict exchange control which requires approval for payments for the use of IP, as well as restricting in some instances the sale of IP. No specific guidance has been issued by SARS in relation to Actions 8 – 10, however it is expected that SARS will follow the OECD recommendations as set out in Actions 8 – 10.	Not yet known	June 2017
South Korea	Not yet known.	Not yet known	April 2017
Spain	Changes to the transfer pricing rules include a new definition of related parties, revisions to the valuation rules and advance pricing agreement rules. The tax authorities' powers have been strengthened and they can impose penalties under certain GAARs.	12 October 2015	May 2017

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Sweden	<p>No changes to domestic law are required since Sweden follows the OECD transfer pricing guidelines. The tax authorities have stated that Actions 8-10 do not result in any actual changes to the guidelines and, therefore, it is possible to apply the new guidance both retroactively and going forward.</p> <p>In recent reassessments, the Swedish tax authorities have retroactively applied guidance in Actions 8-10. This approach has not been addressed by Swedish courts.</p>	N/A	July 2017
Switzerland	<p>In the absence of specific transfer pricing rules in domestic law, the OECD transfer pricing guidelines form the basis for determining the arm's length nature of intragroup transactions for Swiss tax purposes. As such, the new guidelines are valid with immediate effect.</p>	With immediate effect	February 2017
Turkey	<p>Draft Transfer Pricing General Communiqué No. 3, announced by the tax authorities on 16 March 2016 would introduce concepts such as "location savings and other local market features," "assembled workforce" and "group synergies" and require these concepts to be taken into account in transfer pricing comparability analyses. The draft communiqué also includes new rules on cost contribution arrangements.</p>	Expected to be finalised in 2017 and applicable retroactively	June 2017
United Kingdom	<p>The revisions to the OECD transfer pricing guidelines made by the final report on Actions 8-10 "Aligning Transfer Pricing Outcomes with Value Creation" have been enacted into UK law.</p>	HMRC already follow the guidelines.	May 2017
United States	<p>The Treasury Department has stated that the consistency of existing domestic transfer pricing principles with Actions 8-10 means that harmonizing the two will not require "substantial" changes to the US transfer pricing regulations. The application of article 9 of US tax treaties is expected to be generally consistent with Actions 8-10.</p>	N/A	March 2017

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