

BEPS Actions implementation by country

Australia



Last reviewed by Deloitte: July 2017

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. The G20/OECD output broadly falls into the following categories:

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OECD categorisation	Definition
Minimum standard	All G20/OECD members are committed to consistent implementation
Revision of existing standard	
Common approach	Common approaches to facilitate convergence of national practices
Best practice	Guidance drawing on best practices

It is now for governments to digest and introduce the necessary legislation. The table below sets out a summary of the expected local country implementation and timing in Australia.

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Action	OECD categorisation	Notes on local country implementation	Expected timing
VAT on business to customers digital services (Action 1)	Common approach	The law imposing GST on supplies of digital products and other imported services by nonresidents to Australian customers has been enacted.	Taxable supplies attributable to tax periods starting on or after 1 July 2017
Hybrids (Action 2)	Common approach	Following a consultation initiated by the Board of Taxation on the implementation of anti-hybrid rules, the government released a report on 3 May 2016 as part of the 2016-17 federal budget, and has confirmed that Australia will introduce anti-hybrid rules modelled on the OECD approach. However, legislation has not yet been drafted.	Payments made on or after 1 January 2018 or six months after the relevant law is enacted, whichever is later
CFCs (Action 3)	Best practice	The Australian CFC rules are considered to be stronger than the OECD standards, so no action is expected.	N/A
Interest deductions (Action 4)	Common approach	The government has indicated that it is unlikely to change the existing thin capitalisation rules (based on debt-to-asset ratios) at this time since the rules were tightened in 2014.	N/A
Harmful tax practices (Action 5)	Minimum standard	The Australian Taxation Office (ATO) has already started exchanging rulings with other jurisdictions.	Occurring
Prevent treaty abuse (Action 6)	Minimum standard	Australia has included the PPT clause in its 2015 treaty with Germany, which is regarded as Australia's new model treaty. Australia has signed the OECD's multilateral instrument (MLI) and intends to adopt the PPT provisions via the MLI.	Ongoing in bilateral tax treaty negotiations Subject to ratification and entry into force of the MLI (see Action 15)

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Permanent establishment (PE) status (Action 7)	Revision of existing standard	<p>Australia has taken unilateral action on PE issues through the enactment of the Multinational Anti-Avoidance Law (MAAL) (see below under "Unilateral BEPS actions).</p> <p>Australia has included all of the BEPS revisions with respect to the PE status in its 2015 tax treaty with Germany.</p> <p>Australia has signed the MLI. Australia intends to adopt most of the BEPS revisions with respect to the PE status contained in the MLI, with the exception of the expanded dependent agent PE definition relating to commissionaire and similar arrangements.</p>	<p>1 January 2016 (MAAL)</p> <p>Ongoing in bilateral tax treaty negotiations</p> <p>Subject to ratification and entry into force of the MLI (see Action 15)</p>
Transfer pricing (Actions 8-10)	Revision of existing standard	<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
Disclosure of aggressive tax planning (Action 12)	Best practice	A government consultation is underway on the implementation of mandatory disclosure rules for taxpayers and tax advisers.	Not yet known
Transfer pricing documentation (Action 13)	Common approach	Laws requiring CbC reporting and master and local file reporting have been enacted. The Australian approach is broadly in line with the G20/OECD approach.	1 January 2016
CbC reporting (Action 13)	Minimum standard	Australia has signed the multilateral competent authority agreement for the automatic exchange of CbC reports.	1 January 2016

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Dispute resolution (Action 14)	Minimum standard Complemented by best practice	Australia has included the mutual agreement procedure and mandatory arbitration provisions in its 2015 tax treaty with Germany.	Ongoing in bilateral tax treaty negotiations
		Australia has signed the MLI. Australia intends to adopt the mutual agreement procedure recommendations contained in the MLI and is committed to binding arbitration.	Subject to ratification and entry into force of the MLI (see Action 15)
Multilateral Instrument (Action 15)	Applicable across all four categories	Australia has signed the MLI. See comments above in respect of specific actions.	Australia signed the MLI in June 2017 and is expected to ratify it in 2018. The provisions are expected to apply in Australia on 1 July 2019 (withholding taxes) and 1 July 2019 (other treaty benefits)

Unilateral BEPS Actions

The MAAL, which applies as from 1 January 2016, aims to tackle the artificial avoidance of Australian permanent establishments and broadly applies to significant global entities ("SGEs", i.e. members of a global group with annual global income of AUD 1 billion or more).

The Diverted Profits Tax (DPT) applies as from 1 July 2017. Broadly, the DPT applies to SGEs and imposes a 40% tax rate (as opposed to the normal 30% rate) on profits transferred offshore (the "diverted profit") through related party transactions.

Other Tax Developments

From 1 July 2017, the maximum penalties for SGEs relating to the late submission of tax documents increased from AUD 4,500 to AUD 525,000, and penalties relating to making false and misleading statements to the Australian Tax Office are doubled.

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New tax transparency laws require the ATO to publicly disclose the tax information of public companies with total income of at least AUD 100 million and private companies with total income of at least AUD 200 million. In addition, a voluntary Tax Transparency Code that applies as from 1 July 2016 encourages the disclosure of more tax and accounting information of businesses with at least AUD 100 million turnover.



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