

## BEPS Actions implementation by country

### Brazil

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:

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 Brazil.



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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	Not yet known. There are a few rulings and decisions related to downloaded software. It should be noted that VAT legislation in Brazil is enacted by the states, which creates issues related to uniformity and consistency.	Not yet known
Hybrids (Action 2)	Common approach	<p>The Brazilian tax authorities tried to introduce through a Provisional Measure (PM) a cap limit on the deductibility of interest on net equity (maximum interest rate limited to 5% per year). However, the Congress repealed the PM.</p> <p>No further changes on hybrids expected in the near future.</p>	N/A
CFCs (Action 3)	Best practice	<p>Brazil's CFC rules have been modified to address the adoption of IFRS, as well as separate treatment for profits earned abroad by controlled entities and non-controlled affiliates.</p> <p>No further changes are expected in the near future.</p>	<p>1 January 2015 (with an early adoption election allowed for 1 January 2014)</p> <p>N/A</p>
Interest deductions (Action 4)	Common approach	<p>Brazil has thin capitalisation rules that apply to intercompany foreign loans. The rules are based on debt-to-equity ratios, with more stringent rules applying to intercompany loans with a party resident in a tax haven jurisdiction.</p> <p>Transfer pricing rules require that foreign loans between related parties observe minimum/maximum market rates (Brazilian sovereign debt bonds and/ or LIBOR), as well as a spread defined in the tax legislation.</p> <p>No further changes are expected in the near future.</p>	<p>1 January 2011</p> <p>1 January 2012, with a voluntary early adoption in 2011</p>

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Harmful tax practices (Action 5)	Minimum standard	<p>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.</p> <p>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.</p> <p>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&amp;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.</p>	1 October 2016
Prevent treaty abuse (Action 6)	Minimum standard	Not yet known.	Not yet known
Permanent establishment status (Action 7)	Revision of existing standard	Not yet known.	Not yet known
Transfer pricing (Actions 8-10)	Revision of existing standard	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	N/A

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pricing scrutiny.

No further changes to the transfer pricing rules are expected in the near future.

Disclosure of aggressive tax planning (Action 12)	Best practice	The tax authorities tried to introduce a mandatory disclosure regime in 2015, but this was rejected by the congress.	Not yet known
Transfer pricing documentation (Action 13)	Common approach	Brazil's transfer pricing legislation diverges significantly from the current OECD guidelines, although Brazil has adopted extensive documentation and reporting requirements. Global studies and economic models are not accepted as documentation since the country uses a transaction approach.	N/A
		No further changes to the transfer pricing rules are expected in the near future.	
CbC reporting (Action 13)	Minimum standard	<p>Decree No. 8,842, enacted on 30 August 2016, approves the Convention on Mutual Administrative Assistance on Tax Matters, originally signed by Brazil on 11 November 2011, which will support the implementation of CbC reporting.</p> <p>On 21 October 2016, Brazil signed the Multilateral Competent Authority Agreement on the Exchange of CbC Reports and the Multilateral Competent Authority Agreement on the Automatic Exchange of Financial Account Information.</p> <p>On 29 December 2016, the tax authorities issued Normative Instruction No. 1,681 on CbC reporting, which will constitute part of the Annual Electronic Corporate Income Tax Return (ECF).</p>	First submission of CbC comprising FY 2016 within the ECF as from July 2017

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Dispute resolution (Action 14)	Minimum standard Complemented by best practice	On 21 February 2017, the tax authorities issued NI No. 1,689, which regulates the dispute resolution mechanism applicable to Brazil's tax treaties.	21 February 2017
Multilateral Instrument (Action 15)	Applicable across all four categories	Brazil participated in the ad hoc group for the development of the multilateral instrument, but did not sign the MLI on the 7 June 2017.	Not yet known

### Unilateral BEPS Actions

None

### Other Tax Developments

On 29 December 2016, the tax authorities issued NI No. 1,680 that regulates common reporting standards (CRS). Banks, insurance companies and other entities operating into financial markets subject to filing of e-Financeira must comply with CRS. The first submission of CRS, comprising the first half of FY2017 must be filed by August 2017.



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