

## BEPS Actions implementation by country

### Canada

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 Canada.



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## Canada: BEPS Actions implementation

Last updated: July 2017

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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     | There are no specific legislative changes to date as a result of the BEPS project.  | N/A – no specific actions |
| Hybrids (Action 2)                                       | Common approach     | There are no specific legislative changes to date as a result of the BEPS project.  | N/A – no specific actions |
| CFCs (Action 3)  | Best practice       | There are no specific legislative changes to date as a result of the BEPS project.  | N/A – no specific actions |
| Interest deductions (Action 4)                           | Common approach     | There are no specific legislative changes to date as a result of the BEPS project.  | N/A – no specific actions |
| Harmful tax practices (Action 5)                         | Minimum standard    | <p>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.</p> <p>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</p> | N/A – no specific actions |

## Canada: BEPS Actions implementation

Last updated: July 2017

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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.

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|---|-------------------------------|---|--|
| Prevent treaty abuse (Action 6)                   | Minimum standard              | In the March 2016 budget, Canada announced it would adopt the approach outlined in Action 6.                                    | See comments under Action 15 below   |
| Permanent establishment (PE)status (Action 7)     | Revision of existing standard | Canada has reserved the right for the changes to the permanent establishment definition not to be included in its tax treaties. | See comments under Action 15 below   |
| Transfer pricing (Actions 8-10)                   | Revision of existing standard | 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 have already been articulated and are followed by CRA auditors even in the context of historical years |
| Disclosure of aggressive tax planning (Action 12) | Best practice                 | Canada has a reporting regime, but no specific actions have been announced in relation to the Action 12 recommendations.        | N/A – no specific actions  |

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## Canada: BEPS Actions implementation

Last updated: July 2017

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|--|---|--|--|
| Transfer pricing documentation (Action 13) | Common approach                                   | Canada has transfer pricing documentation requirements, but no new specific requirements have been announced other than regarding CbC reporting.   |  |
|  |   | Canada has not introduced a requirement to utilize a master file and local file approach to transfer pricing documentation recommended under Action 13, but instead existing Canadian transfer pricing documentation requirements as stipulated in subsection 247(4) of the Income Tax Act will continue to apply.   | N/A – no specific actions  |
| CbC reporting (Action 13)                  | Minimum standard                                  | <p>Final legislation to implement CbC reporting requirements for Canadian multinational enterprises was passed in Canada on 15 December 2016. The prescribed form (RC4649) to be used for CbC reporting was released by the CRA on 3 February 2017, followed by detailed guidance in RC4651 released on 2 March 2017. Canadian CbC reporting legislation generally conforms to the OECD model legislation.</p> <p>Canada is one of the countries that signed a multilateral competent authority agreement for the automatic exchange of CbC reports.</p> | Applicable for 2016  |
| Dispute resolution (Action 14)             | Minimum standard<br>Complemented by best practice | Canada is one of the countries participating in the BEPS project that are committed to binding arbitration.  | See comments under Action 15 below.  |
| Multilateral Instrument (Action 15)        | Applicable across all four categories             | Canada signed the multilateral instrument (MLI) on 7 June 2017, but has registered provisional reservations with respect to most measures. Canada has adopted those provisions that set out the BEPS minimum standards for preventing treaty abuse, as well as provisions that relate to dispute resolution. Canada has opted into the mandatory binding arbitration provisions, as recommended in BEPS action 14.   | Subject to ratification of the MLI (application of the new and/or amended rules as from 1 January 2019 possible) |

## Canada: BEPS Actions implementation

Last updated: July 2017

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Canada has indicated that it will continue to review its reservations with respect to the MLI provisions, with a view to the removal of some if considered appropriate.

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### Unilateral BEPS Actions

A domestic anti-treaty shopping measure proposed in Budget 2014 would have overridden tax treaties. While the proposal was not specifically addressed in the 2016 Budget, Canada now instead plans to follow the treaty abuse recommendations set out in Action 6, discussed above.

### Other Tax Developments



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