

BEPS Actions implementation by country

Germany

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 Germany.



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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 EU VAT directive applies and is already implemented into domestic law.	1 January 2015
Hybrids (Action 2)	Common approach	<p>Some anti-arbitrage rules for hybrids already exist (in relation to hybrid dividends and the double deduction of negative income in tax groups). Further, a new "anti-double dip" rule for certain partnership structures was enacted in December 2016.</p> <p>As an EU member state, Germany must adapt its national law to the EU Anti-Tax Avoidance Directive (ATAD) I and II, which contain minimum standard provisions against hybrid mismatches involving taxpayers in the EU and in third countries. Member states are required to adopt the domestic legislation necessary to comply with the directives by 31 December 2019 (with an extension until 31 December 2021 for the reverse hybrid provisions).</p> <p>A draft law has not yet been presented.</p>	1 January 2020 (1 January 2022 for reverse hybrid provisions)
CFCs (Action 3)	Best practice	<p>As an EU member state, Germany must adapt its national law to the ATAD I, which contains minimum standard provisions for CFC rules. The provision of the ATAD I must be implemented into domestic law by 31 December 2018.</p> <p>Germany already has a comprehensive CFC regime and it is not yet known what changes may be made.</p>	1 January 2020
Interest deductions (Action 4)	Common approach	An EBITDA-related interest deduction limitation rule already exists. The constitutionality of the rule has been challenged and the case is currently pending before the	

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Federal Constitutional Court.

As an EU member state, Germany must adapt its national law to the ATAD I, which contains minimum standard provisions for an interest limitation rule similar to that of German legislation. The provision of the ATAD I must be implemented into domestic law by 31 December 2018.

1 January 2019 unless the transitional rules apply to the existing Swedish regime, in which case, 1 January 2024

Harmful tax practices (Action 5)	Minimum standard	<p>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.</p> <p>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").</p>	Not yet known
Prevent treaty abuse (Action 6)	Minimum standard	<p>Some German tax treaties contain PPT clauses or clauses that allow the application of domestic anti-abuse rules in cases of treaty abuse. Other domestic legislation prevents certain forms of treaty abuse and double nontaxation by way of a tax treaty override.</p> <p>Germany signed the multilateral instrument (MLI) and intends to generally apply the PPT clause of the MLI.</p>	Subject to ratification of the MLI (application of the new and/or amended rules as from 1 January 2019 possible) and bilateral negotiations
Permanent establishment status (Action 7)	Revision of existing standard	<p>Germany signed the MLI and opted for narrowing the exemptions for fixed place of business permanent establishments by requiring activities to be "preparatory or auxiliary" in character. Germany filed reservations not to apply the anti-fragmentation rule and the rule on splitting up of contracts in the MLI.</p>	Subject to ratification of the MLI (application of the new and/or amended rules as from 1 January 2019 possible) and bilateral negotiations
Transfer pricing (Actions 8-10)	Revision of existing standard	<p>These actions are likely to be adopted as they operate via the arm's length principle, which is already established in German tax law.</p>	Not yet known

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Disclosure of aggressive tax planning (Action 12)	Best practice	<p>The upper house of parliament requested the introduction of disclosure rules several times, but no action has been taken. According to a research institution (tasked by the Federal Ministry of Finance to make recommendations in 2016), disclosure rules would be in line with the German constitution and EU legislation and, therefore, possible.</p> <p>The European Commission recently proposed an amendment to the directive on administrative cooperation in the field of taxation that would introduce an obligation for intermediaries to disclose potentially aggressive cross-border tax planning arrangements to the tax authorities.</p>	Not yet known Not yet known
Transfer pricing documentation (Action 13)	Common approach	Legislation on new transfer pricing documentation requirements passed parliament in December 2016.	Financial years commencing after 31 December 2016
CbC reporting (Action 13)	Minimum standard	<p>Legislation to implement CbC reporting and to transpose the amended EU mutual assistance directive regarding the mandatory automatic exchange of information in the field of taxation into German law was enacted in December 2016.</p> <p>Germany is one of the countries that signed a multilateral competent authority agreement for the automatic exchange of CbC reports.</p>	Financial years commencing after 31 December 2015 (after 31 December 2016 in cases of secondary reporting)
Dispute resolution (Action 14)	Minimum standard Complemented by best practice	<p>Germany is one of the countries committed to binding arbitration. Some of Germany's treaties already have binding arbitration clauses.</p> <p>Germany signed the MLI and opted for the mandatory binding arbitration clause with the reservation to replace the two-year period of the MLI with a three-year period.</p>	Subject to ratification of the MLI (application of the new and/or amended rules as from 1 January 2019 possible) and bilateral negotiations

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Multilateral Instrument (Action 15)	Applicable across all four categories	Germany signed the MLI on 7 July 2017 notifying 30 tax treaties as being covered by the convention. Several reservations were made. The legislative process for implementing the convention is expected to start after the federal elections in September 2017.	Subject to ratification of the MLI (application of the new and/or amended rules as from 1 January 2019 possible)
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Unilateral BEPS Actions

The German government generally is cautious with regard to unilateral actions; currently, the main focus is on implementing what has been agreed within the EU. However, to reduce competition from preferential IP regimes that are not based on the OECD nexus approach, the parliament has enacted a law that limits the tax-deductibility of intercompany royalty payments where the payment recipient benefits from a non-nexus-based low-tax IP regime. The new rule applies to royalty payments incurred after 31 December 2017.

Other Tax Developments

None.



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