

BEPS Actions implementation by country

Hong Kong

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 Hong Kong.



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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	Hong Kong does not impose VAT. The tax authorities (IRD) intend to issue a Departmental Interpretation and Practice Note (DIPN) on the digital economy.	Not yet known
Hybrids (Action 2)	Common approach	<p>Although Hong Kong has a DIPN on the Taxation of Financial Instruments that addresses the tax treatment of hybrids, the DIPN is not aimed at avoiding double non-taxation with a treaty country.</p> <p>Legislation was introduced to clarify that the tax treatment of regulatory capital securities comprising certain hybrid instruments under Basel III would follow that of debt.</p> <p>The IRD plans to introduce legislation to address hybrid mismatch arrangements.</p>	<p>The legislation was passed into law on 26 May 2016</p> <p>Not yet known</p>
CFCs (Action 3)	Best practice	Hong Kong has a source-based taxation system and does not tax dividend income, so no specific rules in relation to Action 3 are expected.	N/A
Interest deductions (Action 4)	Common approach	<p>Hong Kong already has specific anti-avoidance provisions limiting certain interest deductions, especially with regard to interest paid to nonresidents. However, Hong Kong does not have thin capitalisation rules.</p> <p>The IRD may further review the interest deduction rules.</p>	Not yet known
Harmful tax practices (Action 5)	Minimum standard	The IRD will review and amend provisions found to be harmful, and consider the mandatory spontaneous exchange of information on certain rulings. The government (Financial Services and the Treasury Bureau) has issued a consultation paper and will introduce bills to the Legislative Council for further review and approval.	<p>Published consultation paper on 26 October 2016</p> <p>Plan to introduce the relevant amendment bill(s) to the Legislative Council in 2017</p>

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Prevent treaty abuse (Action 6)	Minimum standard	In processing an application for a certificate of residence status, the IRD will consider whether the applicant would be entitled to benefits under a tax treaty before issuing the certificate. A DIPN will be issued to clarify the tax treatment. The government has issued a consultation paper to the public and the IRD plans to incorporate a "principal purposes test" in future double taxation agreements (DTAs) and a symmetrical approach if a DTA partner has a different approach.	Published consultation paper on 26 October 2016 Plan to change future DTAs and issue a DIPN
Permanent establishment status (Action 7)	Revision of existing standard	The IRD will amend the legislation and issue a DIPN to provide more guidelines.	Not yet known
Transfer pricing (Actions 8-10)	Revision of existing standard	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.	Published consultation paper on 26 October 2016 Plan to introduce the relevant amendment bill(s) to the Legislative Council in 2017
Disclosure of aggressive tax planning (Action 12)	Best practice	The IRD will keep under review the question of how disclosure rules could be translated into domestic legislation.	Not yet known
Transfer pricing documentation (Action 13)	Common approach	The IRD considers transfer pricing to be a high priority amongst the 15 BEPS actions. The IRD is reviewing the need to update current practices, including the revised documentation approach recommended by the G20/OECD. The IRD will require multinationals to provide high level information on their global business operations and transfer pricing policies, transactional transfer pricing documentation specific to each country and annual CbC	Plan to introduce the relevant amendment bill(s) to the Legislative Council in 2017

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reports for each jurisdiction in which they do business. In addition, the consultation paper proposed to introduce the three-tier transfer pricing documentation requirements as recommended in BEPS Action 13 (i.e. CbC report, master file and local file).

CbC reporting (Action 13)	Minimum standard	<p>The government has issued a consultation paper and the IRD indicated it would introduce bills to the legislative council for further review and approval, and enter into competent authority agreements for the exchange of CbC reports.</p> <p>Hong Kong will implement CbC reporting for the accounting periods commencing on or after 1 January 2018, subject to necessary legislative amendments. As a transitional arrangement, parent surrogate filing will be made available for the accounting periods commencing between 1 January 2016 and 31 December 2017.</p>	Published consultation paper on 26 October 2016
Dispute resolution (Action 14)	Minimum standard Complemented by best practice	<p>The IRD considers improvements in cross-border tax dispute resolutions to be a high priority and has issued a consultation paper. Bills will be introduced to the legislative council for further review and approval.</p>	Published consultation paper on 26 October 2016 Plan to introduce the relevant amendment bill(s) to the Legislative Council in mid-2017
Multilateral Instrument (Action 15)	Applicable across all four categories	<p>Hong Kong has signed the multilateral instrument and all existing DTAs will be amended to implement tax treaty-related BEPS measures.</p>	Signed on 7 June 2017; effective date not yet known

Unilateral BEPS Actions

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None

Other Tax Developments

Legislation on the Automatic Exchange of Financial Account Information (AEOI) was introduced and the AEOI has been expanded to a network of 75 reportable jurisdictions. The legislation enabling AEOI was enacted with effect from 30 June 2016 and the first automatic exchange will commence by the end of 2018.



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