

BEPS Actions implementation by country

India

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 India.



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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	<p>An equalisation levy (an amount to be withheld on payments for online advertising to be deposited in the government exchequer) has been introduced at a rate of 6% on the amount of consideration for “specified services” received by a nonresident that does not have a PE in India. Specified services for these purposes means online advertising or the provision of digital advertising space or any other facility or service for the purpose of online advertisement, or any other service as may be notified by the central government.</p> <p>Service Tax provisions relating to Online Information and Database Access or Retrieval (OIDAR) services have been amended:</p> <ul style="list-style-type: none"> • The scope of OIDAR services is broadened. • Cross-border OIDAR services provided by a person in another territory other than India and received by a person in India fall within the scope of the service tax. • OIDAR services provided by a person in another territory other than India to a nontaxable recipient in India, such as a government or an individual, for purposes other than business also are subject to service tax. The liability to collect and discharge the service tax obligation in such cases is on the overseas service provider on its own account or via a representative appointed in India. Where a nonresident intermediary arranges or facilitates the provision of such services (except on its own account), the intermediary will be subject to service tax in India. <p>Special rules relating to compliance (registration, invoicing, and returns) apply persons located outside India.</p>	1 June 2016
			1 December 2016

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Hybrids (Action 2)	Common approach	Not yet known.	Not yet known
CFCs (Action 3)	Best practice	Not yet known. India does not currently have CFC regulations.	Not yet known
Interest deductions (Action 4)	Common approach	Not yet known. There is a proposal to restrict the deduction of excess interest.	1 April 2017
Harmful tax practices (Action 5)	Minimum standard	India has a concessional regime for taxation of royalty income from patents. The rate is 10% of the gross amount for patents developed and registered in India by a person resident in India.	1 April 2016
Prevent treaty abuse (Action 6)	Minimum standard	India has introduced a general anti-avoidance rule into the domestic tax law.	1 April 2017
Permanent establishment status (Action 7)	Revision of existing standard	Not yet known.	Not yet known
Transfer pricing (Actions 8-10)	Revision of existing standard	With respect to DEMPE, several aspects of the BEPS guidance in Action 8-10 are in line with the practices and additional guidance provided already by the Indian tax authorities. Therefore, there has been no discussion/communication from the Indian Tax Authorities regarding the specific introduction of BEPS Actions 8-10 into Indian TP regulations. Given the manner in which low value-add services are currently defined, India is unlikely to adopt the simplified approach in the current form.	Not yet known

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Adoption of other concepts/actions is not yet known.

Disclosure of aggressive tax planning (Action 12)	Best practice	Not yet known.	Not yet known
Transfer pricing documentation (Action 13)	Common approach	<p>The Finance Act 2016 introduced the concept of the master file into India's transfer pricing rules, although details of the master file requirement have not yet been prescribed.</p> <p>No changes have been proposed to the existing documentation requirements to align with requirements of the local file as per Action 13.</p>	Not yet known
CbC reporting (Action 13)	Minimum standard	<p>The Finance Act 2016 introduced CbC reporting into the transfer pricing rules, although details of the reporting obligation have not been released. The rules are in line with the recommendations in Action 13, with stringent penalties for noncompliance.</p> <p>India is a signatory to the multilateral competent authority agreement for the automatic exchange of CbC reports.</p>	Effective from financial year 2016-17
Dispute resolution (Action 14)	Minimum standard Complemented by best practice	Not yet known, although government sources have indicated that mandatory and binding arbitration is unlikely to be acceptable to India.	Not yet known
Multilateral Instrument (Action 15)	Applicable across all four categories	There are indications that India is likely to sign the multilateral instrument	Not yet known

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Unilateral BEPS Actions

There are no clear signs that the government or the tax authorities are adopting tougher BEPS views during tax audits or litigation.

Other Tax Developments

India has amended its tax treaties with Cyprus, Israel, Korea, Mauritius and Singapore.



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