

BEPS Actions implementation by country

Mexico

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 Mexico.



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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.	Not yet known
Hybrids (Action 2)	Common approach	<p>The 2014 tax reform introduced a rule that disallows a deduction for payments made in the form of interest, royalties or technical assistance fees to a nonresident entity that controls or is controlled by a Mexican taxpayer, if:</p> <ul style="list-style-type: none">• The nonresident recipient is considered transparent and its owners are not subject to tax in that jurisdiction; and• The country of residence of the recipient considers the payment to be disregarded or the recipient does not include the payment in its taxable income.	1 January 2014
CFCs (Action 3)	Best practice	<p>CFC provisions already exist in Mexican tax law and these were updated in 2014. It is not yet known whether there will be further changes to the rules.</p> <p>In 2016, a miscellaneous tax rule was abolished that allowed taxpayers not to report investments in CFCs when Mexico had an adequate information exchange agreement in place with the CFC country. The first information return must be filed by May 2017.</p>	Not yet known
Interest deductions (Action 4)	Common approach	General back-to-back and thin capitalization rules already exist in Mexico. It is not yet known whether further changes will be made to the rules.	Not yet known

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Harmful tax practices (Action 5)	Minimum standard	Not yet known.	Not yet known
Prevent treaty abuse (Action 6)	Minimum standard	The 2014 tax reform introduced provisions addressing the application of tax treaties in related party transactions. The Mexican tax authorities can require foreign taxpayers to prove they are resident in the treaty jurisdiction by having a legal representative submit a sworn declaration stating that double taxation would arise in the recipient's country of residence if treaty benefits were not granted.	1 January 2014
Permanent establishment status (Action 7)	Revision of existing standard	Not yet known.	Not yet known
Transfer pricing (Actions 8-10)	Revision of existing standard	Mexico's existing transfer pricing rules generally follow the OECD transfer pricing guidelines. It is not yet known how the proposed changes to the guidelines will be implemented.	Not yet known
Disclosure of aggressive tax planning (Action 12)	Best practice	The Mexican tax authorities are implementing a new procedure to carry out electronic audits of taxpayers through the tax authorities' platform. While no additional measures or details have been disclosed, the procedure is designed to enhance the review process and eventually replace physical audits.	September 2016
Transfer pricing documentation (Action 13)	Common approach	The 2016 tax reform amended the Income Tax Law to implement the transfer pricing (master file/local file) documentation requirements. Mexican companies must submit the required documents by the end of the year (i.e. 31 December) following the fiscal year.	31 December 2016, to be reported by March 2017

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CbC reporting (Action 13)	Minimum standard	The 2016 tax reform introduced CbC reporting by large multinational enterprises based in Mexico. The rules conform to the minimum standard in Action 13. Mexico is one of the countries that signed a multilateral competent authority agreement for the automatic exchange of CbC reports.	31 December 2016, to be reported by March 2017
Dispute resolution (Action 14)	Minimum standard Complemented by best practice	Not yet known.	Not yet known
Multilateral Instrument (Action 15)	Applicable across all four categories	Not yet known.	Not yet known

Unilateral BEPS Actions

The 2014 tax reform included a number of BEPS-related measures, and the government considers these measures to be aligned with the BEPS recommendations, so additional measures are not expected.

An amending protocol to the Mexico-Spain tax treaty, which was signed on 17 December 2015 (exchange of notes is pending, the date for publishing and implementation has not been confirmed), includes the following BEPS-related provisions:

- The Preamble is replaced by the preamble proposed in Action 6;
- A provision on corresponding adjustments in the case of economic double taxation between related parties is added to article 9 (Associated enterprises);
- A new article 22 is added, which provides that a permanent establishment will be deemed to exist when a person carries out economic activities regarding the exploration, exploitation, production, refinery, processing, transport, distribution, storage or commercialisation of hydrocarbons for more than 30 days in any 12-month period. The provision contains anti-splitting clauses.
- A new article (Article 28) on assistance in the collection of taxes is added to the treaty;
A provision in the protocol will allow treaty benefits to be denied in certain circumstances;
- Both states are entitled to apply their anti-abuse provisions (article 1(a) of the protocol);
- Under a main purpose test, treaty benefits will not be granted in respect of an item of income or capital if it is reasonable to conclude, taking into account all facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or

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transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit under those circumstances would be in accordance with the object and purpose of the treaty (article 1(b) of the protocol); and

- Regarding new article 26 (Mutual agreement procedure) of the treaty, the protocol includes a provision that, if Mexico subsequently concludes a treaty with a third state in which an arbitration provision substantially similar to the arbitration provision contained in the OECD model is included, that treaty will apply automatically between Spain and Mexico as from the date of entry into force.

Other Tax Developments

No other tax developments to note.



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