



BEPS/ATAD implementation
Netherlands

Last reviewed by Deloitte Netherlands: August 2020

The table below sets out a summary of the local country implementation and expected changes.

The information included in the matrix reflects that which was available at the date of the last review by Deloitte and may be subject to change as the country develops its position as reflected in legislation and guidance. In addition, the information contained in the matrix is a summary of the country's position or expected position and, therefore, will not reflect all the details or complexities that likely will be involved.

For tax developments relating to the Netherlands, see [Deloitte tax@hand](mailto:Deloitte_tax@hand).

Action	Notes on local country implementation	Effective date
<p>Action 1: Addressing the Tax Challenges Arising from the Digitalisation of the Economy <i>EU proposals on taxation of the digitalized economy</i></p>	<p>One of the recommendations in the OECD's 2015 report related to the implementation of the destination principle for value added tax (VAT) and goods and services tax (GST) so that tax would be applied in the jurisdiction of consumption. This issue is addressed in the EU VAT directive with some exceptions and the same has been implemented into domestic law.</p>	<p>1 January 2015 (VAT)</p>
	<p>The Netherlands' current position in respect of the EU digital services tax (DST) directive proposed by the European Commission is that it remains committed to addressing tax avoidance in the digitalized economy internationally and prefers a global (OECD) solution.</p>	<p>Not yet implemented (DST)</p>

Action	Notes on local country implementation	Effective date
<p>Action 2: Neutralising the Effects of Hybrid Mismatch Arrangements <i>EU Anti-Avoidance Directives (ATAD 1 & 2)</i></p>	<p>The recommendations in the OECD Action 2 report are not a minimum standard, meaning that implementation of the recommendations is not mandatory. However, ATAD 1 & 2 include provisions to counteract hybrid mismatches, with ATAD 2 containing anti-hybrid rules that follow the Action 2 recommendations. As an EU member state, the Netherlands is required to implement the provisions in ATAD 2.</p> <p>The Netherlands implemented the hybrid mismatch measures in line with ATAD 2 by the required deadlines. Measures apply as from fiscal years starting on or after 1 January 2020, with the exception of the provision specifically targeting reverse hybrid mismatches, which will apply as from fiscal years starting on or after 1 January 2022.</p>	<p>1 January 2020/1 January 2022</p>
<p>Action 3: Designing Effective Controlled Foreign Company Rules <i>EU ATAD 1</i></p>	<p>The recommendations in the OECD Action 3 report are not a minimum standard, meaning that implementation of the recommendations is not mandatory. However, ATAD 1 includes provisions for controlled foreign company (CFC) rules that had to be implemented into EU member states' domestic law by 31 December 2018.</p> <p>The directive provides two approaches to CFC rules. The Netherlands has chosen option B (attribution of undistributed income from nongenuine arrangements), since it already applied this method through transfer pricing principles. The Netherlands also has implemented a version of option A (attribution of predefined categories of undistributed (passive) income) that applies only to CFCs in blacklisted jurisdictions (i.e., jurisdictions with a low statutory tax rate (lower than 9%), or included on the EU list of non-cooperative jurisdictions) where the CFC does not meet predefined minimum substance requirements.</p>	<p>1 January 2019</p>

Action	Notes on local country implementation	Effective date
Action 4: Limiting Base Erosion Involving Interest Deductions and Other Financial Payments <i>EU ATAD 1</i>	<p>The recommendations in the OECD Action 4 report are not a minimum standard, meaning that implementation of the recommendations is not mandatory. However, ATAD 1 requires EU member states to introduce interest deduction limitation rules similar to those recommended by the Action 4 report. These provisions were required to be implemented into domestic law by 1 January 2019 unless a member state already had rules as effective as those set out in the directive.</p> <p>The Netherlands has introduced interest deduction limitation rules in accordance with ATAD 1 and has chosen to adopt a safe harbor of EUR 1 million (i.e., excess borrowing costs up to this amount are deductible). The 30% of EBITDA (earnings before interest, tax, depreciation, and amortization) rule applies at the level of a fiscal unity and there is no group exception.</p>	<p>1 January 2019</p>
Action 5: Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance	<p>The (modified) nexus approach for intellectual property and patent box regimes, agreed by the OECD and G20, has been incorporated into the Dutch innovation box regime.</p> <p>The Netherlands supports the exchange of information regarding tax rulings. The first exchanges took place in 2016 under the OECD provisions with exchanges being made in 2017 under the provisions of the EU directive on administrative cooperation, 2011/16/EU (DAC 3).</p>	<p>1 January 2017 ((modified) nexus approach)</p> <p>Exchange of information in line with the OECD recommendations as from 1 January 2016. Exchanges based on EU rules as from 1 January 2017</p>
Action 6: Preventing the Granting of Treaty Benefits in Inappropriate Circumstances	<p>Some of the Netherlands' existing tax treaties already contain limitation on benefits (LOB) or principal purpose test (PPT) provisions, and the government plans to renegotiate treaties with developing countries to amend the anti-abuse clauses. In addition, in October 2016 the Netherlands expressed its commitment to include a PPT provision in all tax treaties being negotiated or renegotiated.</p> <p>The Netherlands has opted to apply a PPT in order to combat treaty abuse and this is reflected in the Netherlands' choices in respect of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI).</p>	<p>See Action 15, below, for tax treaty changes</p>

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<p>Action 7: Preventing the Artificial Avoidance of Permanent Establishment Status</p>	<p>The Netherlands introduced a permanent establishment (PE) definition aligned with the 2017 OECD model tax convention and the MLI into domestic legislation as from 1 January 2020. This includes the following:</p> <ul style="list-style-type: none"> • A definition of agency PE under which e.g., commissionnaires may qualify as a PE; • An anti-fragmentation rule based on which activities of liaised persons (broadly equivalent to affiliates) are relevant to determine whether a PE exists; • A specific activity exemption rule, under which the preparatory and auxiliary activity exemptions would not apply if the overall activity is not of a preparatory and auxiliary nature; and • An anti-splitting rule based on which the total duration of split contracts is taken into account in determining the duration of a project PE. <p>The Netherlands has chosen not to adopt all of the changes to the definition of a PE proposed by the MLI. The Netherlands has opted out of article 12 of the MLI, that applies to commissionaire arrangements and similar strategies. However, the Netherlands has announced that it may reconsider this in 2020.</p>	<p>1 January 2020 (domestic legislation) See Action 15, below, for tax treaty changes</p>
<p>Actions 8–10: Aligning Transfer Pricing Outcomes with Value Creation</p>	<p>The existing Netherlands’ transfer pricing policy prior to the publication of the BEPS reports in 2015 is considered to be consistent with the proposed changes under Actions 8-10.</p>	<p>N/A</p>

Action	Notes on local country implementation	Effective date
<p>Action 12: Mandatory Disclosure Rules <i>EU directive on administrative cooperation</i></p>	<p>As an EU member state, the Netherlands is required by the amended EU directive on administrative cooperation, 2018/822 (DAC 6) to introduce additional legislation requiring intermediaries and relevant taxpayers to disclose certain cross-border arrangements. These provisions were transposed into domestic law by 31 December 2019 and apply from 1 July 2020.</p> <p>It was agreed to allow EU member states the option to delay the reporting deadlines for six months and delay the exchange of information. As a result, reporting obligations are as follows:</p> <ul style="list-style-type: none"> • Historic arrangements (first step of implementation has been made between 25 June 2018 and 30 June 2020): report ultimately on 28 February 2021; • Arrangements that are made available for implementation, are ready for implementation or of which the first step of implementation has been made between 1 July and 31 December 2020: report ultimately on 31 January 2021; • Arrangements that are made available for implementation, are ready for implementation or of which the first step of implementation has been made as of 1 January 2021: report within 30 days as of the first mentioned moment. <p>The Netherlands' government implemented DAC 6 by the required deadline. They also published guidance on the interpretation of the hallmarks that necessitate the exchange of information. They have decided to apply the optional six-month extended reporting deadlines.</p>	<p>1 January 2020 (the European Commission has introduced optional extended deadlines in view of COVID-19)</p>
<p>Action 13: Guidance on Transfer Pricing Documentation and Country-by-Country Reporting</p>	<p>Country-by-country (CbC) reporting has been introduced. The Netherlands has signed the multilateral competent authority agreement for the automatic exchange of CbC reports.</p>	<p>1 January 2016</p>

Action	Notes on local country implementation	Effective date
Action 14: Making Dispute Resolution Mechanisms More Effective	The Netherlands has chosen to apply part VI of the MLI which relates to arbitration and dispute resolution.	See Action 15, below, for tax treaty changes
Action 15: Developing a Multilateral Instrument to Modify Bilateral Tax Treaties	The Netherlands signed the MLI on 7 June 2017 and deposited its instrument of ratification with the OECD on 29 March 2019. The MLI entered into force for the Netherlands on 1 July 2019.	Depends on entry into force and entry in effect dates for specific covered tax agreement



Other tax developments

The Netherlands is to introduce a conditional withholding tax on interest and royalties as from 2021. The withholding tax will cover intragroup payments to corporate recipients in blacklisted countries as defined under the CFC legislation (see under Action 3, above).



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