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BEPS Actions implementation by country
Netherlands

Last reviewed by Deloitte: May 2017

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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 the Netherlands.

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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	No unilateral action is expected in relation to Action 2. The government has implemented the amended EU parent-subsidiary directive into domestic legislation. As an EU member state, the Netherlands is subject to the two EU anti-tax avoidance directives (ATAD and ATAD 2) and, therefore, is required to implement the directives into its domestic law. The ATAD and ATAD 2 include anti-hybrid rules that cover hybrid mismatches between EU member states, and between EU member states and non-member states, respectively. 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). It is not yet known how the existing provisions will be amended to comply with ATAD and ATAD 2.	1 January 2016 (EU parent-subsidiary directive) 1 January 2020 (1 January 2022 for reverse hybrid provisions)
CFCs (Action 3)	Best practice	No unilateral action is expected in relation to Action 3. The government supports a coordinated international approach to further development of the rules. As an EU member state, the Netherlands is subject to the ATAD, which must be implemented into its domestic law by 31 December 2018. The ATAD includes a CFC rule.	1 January 2019

Interest deductions (Action 4)	Common approach	The Netherlands already has general and targeted rules relating to the deduction of interest expense. No unilateral action in relation to Action 4 is expected, but the government supports an internationally coordinated approach. As an EU member state, the Netherlands is subject to the ATAD, which must be implemented into its domestic law by 31 December 2018. The ATAD includes an interest limitation provision to discourage artificial debt arrangements designed to minimise taxes, although a transition period may apply for member states that already have national, targeted rules for preventing BEPS that are equally effective as Action 4. The transition period lasts until 31 December 2023. It is not yet known how the existing provisions will be amended to comply with ATAD, nor whether the transition period will apply.	1 January 2019, unless the transitional rules apply to the existing regime, in which case 1 January 2024
Harmful tax practices (Action 5)	Minimum standard	The (modified) nexus approach has been implemented into the Dutch innovation box regime. The government supports the exchange of information regarding tax rulings. First exchanges have already taken place. Taxpayers are requested to complete a questionnaire to facilitate the exchange of information on new rulings and existing rulings, based on both EU rules and OECD recommendations. In the absence of any input from taxpayers, the Dutch tax authorities are expected to commence completing the questionnaires on their own.	1 January 2017 ((modified) nexus approach) Exchange of information in line with the (OECD) recommendations already occurred in 2016. Exchanges based on EU rules, as from 1 January 2017

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Prevent treaty abuse (Action 6)	Minimum standard	Some of the Netherlands' existing tax treaties already contain LOB or PPT provisions and the government plans to renegotiate 23 treaties with developing countries to amend the anti-abuse clauses. The government supports the Action 6 proposals and has expressed a preference for a PPT over an LOB provision in view of the multilateral instrument (MLI). The government intends to advocate the inclusion of a PPT in future bilateral treaty negotiations.	Subject to implementation of the MLI and bilateral negotiations
Permanent establishment status (Action 7)	Revision of existing standard	The government supports the new definition of a PE as part of current Dutch tax treaty policy.	Subject to implementation of the MLI and bilateral negotiations
Transfer pricing (Actions 8-10)	Revision of existing standard	Existing Dutch transfer pricing policy is considered to be consistent with the proposed changes under Actions 8-10.	N/A
Disclosure of aggressive tax planning (Action 12)	Best practice	The Dutch tax authorities consider the existing rules to be sufficient to counter aggressive tax planning.	N/A
Transfer pricing documentation (Action 13)	Common approach	Measures have been introduced to implement the transfer pricing master file and local file requirements.	1 January 2016
CbC reporting (Action 13)	Minimum standard	CbC reporting has been introduced. The Netherlands is one of the countries that signed a multilateral competent authority agreement for the automatic exchange of CbC reports. Guidance has been issued relating to the timing of the first notification to be made and the intention was announced to accept so-called "voluntary filing," although no official policy has been published.	1 January 2016

Dispute resolution (Action 14)	Minimum standard Complemented by best practice	The Netherlands is one of the countries committed to binding arbitration and, therefore, includes this in its tax treaty policy.	Subject to implementation of the MLI and bilateral negotiations
Multilateral Instrument (Action 15)	Applicable across all four categories	The Netherlands supports the mechanism of the MI and, therefore, intends to bring as many tax treaties under the MLI as possible.	Expected to be signed the first half of 2017. Ratification by the Dutch parliament will then be required. Effective date also depends on bilateral treaty partners

Unilateral BEPS Actions

As mentioned above, the government has indicated that it will renegotiate 23 treaties with developing countries. This has led to results (e.g. implementing an anti-abuse clause in their treaties) in nine treaties, discussions are ongoing with 11 countries and renegotiations have not yet commenced with the remaining three countries.

Other Tax Developments

No other tax developments to note.