

BEPS Actions implementation by country

Poland

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 Poland.



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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.	Already implemented
Hybrids (Action 2)	Common approach	<p>The government has implemented the amended EU parent-subsidiary directive into domestic legislation with respect to hybrid instruments.</p> <p>As an EU member state, Poland 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 and publish 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).</p>	<p>Already implemented</p> <p>1 January 2020 (1 January 2022 for reverse hybrid provisions)</p>
CFCs (Action 3)	Best practice	Poland has existing CFC rules and currently does not have plans to change these rules.	Already implemented
Interest deductions (Action 4)	Common approach	As an EU member state, Poland 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. Poland has amended its thin capitalisation rules and introduced an alternative,	1 January 2019 unless the transitional rules apply to the existing Polish regime, in which case 1 January 2024

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operating profit based method for interest deduction limitation. It is not yet known whether the existing regime will qualify for the transition period.

Harmful tax practices (Action 5)	Minimum standard	<p>Not yet known, although Poland is participating in G20/OECD initiatives in respect of Action 5.</p> <p>Poland recently introduced a general anti-avoidance rule that requires economic substance.</p> <p>The provisions regarding the exchange of tax information (including automatic exchange of tax rulings, safeguarding opinions and transfer pricing decisions) have been recently implemented.</p>	<p>General anti-avoidance rule: 15 July 2016</p> <p>Exchange of tax information: April 2017</p>
Prevent treaty abuse (Action 6)	Minimum standard	<p>Poland is in the process of renegotiating some of its tax treaties.</p> <p>Poland has introduced a specific anti-avoidance rule relating to the tax exemption (based on Parent-Subsidiary Directive) for dividends, as well as a "beneficial owner" requirement (for interest exemption based on Interest-Royalty Directive) and a "real estate company clause" into its domestic law.</p>	<p>Subject to bilateral negotiations</p> <p>Anti-avoidance rule for dividends: 1 January 2016</p> <p>Beneficial owner/real estate company: 1 January 2017</p>
Permanent establishment status (Action 7)	Revision of existing standard	Not yet known.	Subject to implementation of the Multilateral Instrument (MLI) and bilateral negotiations
Transfer pricing (Actions 8-10)	Revision of existing standard	Not yet known.	Not yet known
Disclosure of aggressive tax planning (Action 12)	Best practice	Not yet known.	Not yet known

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Transfer pricing documentation (Action 13)	Common approach	Changes have been made to the transfer pricing documentation requirements that reflect the recommendations in Action 13.	1 January 2017
CbC reporting (Action 13)	Minimum standard	<p>Changes to the transfer pricing documentation requirements in Action 13 are being implemented gradually. Polish parent companies are required to file a CbC report. Additional CbCR obligations for local Polish subsidiaries apply as from 2017 (legal act on exchange of tax information (including CbC reporting) has been recently introduced).</p> <p>Poland is one of the countries that signed a multilateral competent authority agreement for the automatic exchange of CbC reports.</p>	First tax year to be covered – 1 January 2016 (Polish parent entities) and 1 January 2017 (Polish subsidiaries)
Dispute resolution (Action 14)	Minimum standard Complemented by best practice	Poland is one of the countries committed to binding arbitration.	Subject to implementation of the MLI
Multilateral Instrument (Action 15)	Applicable across all four categories	The government has not made any official statements on specific actions resulting from the release of the final text of the MLI.	Poland is expected to sign and ratify the MLI in 2017

Unilateral BEPS Actions

None

Other Tax Developments

Due to the recent changes in the tax environment in Poland, including the need to increase fiscal revenue, the practice of the tax authorities has become stricter. In particular, the tax authorities are expected to strictly apply the GAAR.

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Many transfer pricing audits were initiated in 2016 and 2017. There are cases where the tax authorities have used the BEPS Action 8-10 approach to challenge tax planning schemes even for the periods before the GAAR was introduced.



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