

## BEPS Actions implementation by country

### Portugal

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 Portugal.



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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 has been implemented into domestic law.	1 January 2015
Hybrids (Action 2)	Common approach	<p>As an EU member state, Portugal 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.</p> <p>Anti-hybrid rules were implemented before the Action 2 recommendations and ATAD directives were released, and no further changes are expected.</p>	Already implemented
CFCs (Action 3)	Best practice	Portugal already has CFC legislation and this was recently strengthened.	N/A
Interest deductions (Action 4)	Common approach	As an EU member state, Portugal 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 prevent artificial debt arrangements designed to minimise taxes. Existing tax legislation already contains limitations on the deductibility of financing costs and no further changes are expected.	N/A
Harmful tax practices (Action 5)	Minimum standard	<p>Portugal's intellectual property (IP) regime was amended in 2016 to bring it in line with the "modified nexus approach."</p> <p>Portuguese legislation now contains the suggested approach for calculating qualifying R&amp;D expenditure to define the substantial activity requirement in the context</p>	1 July 2016

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of intangible assets.

The amendments should apply only to IP assets registered on or after 1 July 2016. The application of the previous regime was safeguarded as regards IP registered on or before 30 June 2016, which may continue to benefit under the previous regime until 30 June 2021.

Prevent treaty abuse (Action 6)	Minimum standard	Portugal has LOBs, as well as PPT provisions, in some tax treaties. Following the signature of the multilateral instrument (MLI), and according to the provisional notifications to be made by Portugal, the PPT provision should be adopted. The authorities increasingly have been focusing on transactions involving treaty shopping.	Subject to implementation of the MLI and bilateral negotiations
Permanent establishment status (Action 7)	Revision of existing standard	Not yet known.	Not yet known
Transfer pricing (Actions 8-10)	Revision of existing standard	Subject to finalisation of the OECD guidelines. A review of the existing provisions in respect of intragroup transactions may take place.	Not yet known
Disclosure of aggressive tax planning (Action 12)	Best practice	Disclosure obligations relating to aggressive tax planning structures have already been implemented.	Already implemented
Transfer pricing documentation (Action 13)	Common approach	Some changes to domestic law are expected to address the concepts of master file and CbC reporting.	Not yet known
CbC reporting (Action 13)	Minimum standard	The CbC reporting obligation, under terms and conditions similar to those stipulated by the OECD, has been introduced into domestic law.  Portugal is one of the countries that signed a multilateral competent authority agreement for the automatic exchange of CbC reports.	1 January 2016

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Dispute resolution (Action 14)	Minimum standard complemented by best practice	Portugal is one of the countries committed to binding arbitration. Pursuant to article 23(4) of the MLI, Portugal has chosen to apply article 23(5) that enforces the non-disclosure of information received during arbitration proceedings.	Subject to implementation of the MLI
Multilateral Instrument (Action 15)	Applicable across all four categories	Following the signature of the MLI on 7 June 2017, Portugal still must ratify this instrument.	Not yet known

### Unilateral BEPS Actions

None

### Other Tax Developments

No other tax developments to note.



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