

BEPS Actions implementation by country

United States



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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:

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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 United States.

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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 US does not have VAT and there are no proposals to introduce a VAT.	N/A
Hybrids (Action 2)	Common approach	The US has dual consolidated loss rules that generally embody Recommendations 6 (deductible hybrid payments rule) and 7 (dual resident payer rule) in Part I of Action 2. US law and tax treaties generally embody the treaty recommendations in Part II of Action 2. No legislative proposals on other Action 2 recommendations are currently active.	N/A
CFCs (Action 3)	Best practice	The existing CFC regime already incorporates many of the recommendations from Action 3. No legislative proposals on changes to the CFC regime are currently active.	N/A
Interest deductions (Action 4)	Common approach	An existing fixed-ratio limit on the deductibility of net interest expense generally applies to foreign-owned corporations, but the ratio is generally 50% instead of 10% to 30%. There are no legislative proposals on Action 4 recommendations.	N/A
Harmful tax practices (Action 5)	Minimum standard	US law does not have a preferential IP regime of the type discussed in Action 5. Other than unilateral APAs, the US generally does not issue rulings of the type that must be spontaneously exchanged under Action 5.	N/A
Prevent treaty abuse (Action 6)	Minimum standard	The US generally meets the Action 6 minimum standard through its LOB provisions in treaties in force or in treaties or protocols awaiting ratification, and in its anti-conduit rules. Signed tax treaties that would add LOB	

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provisions to US treaties with Hungary and Poland have been awaiting Senate consent since 2011, with no definite prospects for completion of the process in the foreseeable future

The Treasury Department released a revised US model income tax convention in February 2016, which makes the LOB model provision more restrictive. The Congress remains opposed to, and will not adopt, a PPT.

Permanent establishment status (Action 7)	Revision of existing standard	The Treasury Department appears to be somewhat favorably disposed to some, but not all, of the recommendations in Action 7, but is awaiting the completion of the report on the attribution of profits. Signed tax treaties have been delayed in the Senate since 2011 and may remain so indefinitely, so the timing of any changes is unknown.	N/A
Transfer pricing (Actions 8-10)	Revision of existing standard	The Treasury Department has stated that the consistency of existing domestic transfer pricing principles with Actions 8-10 means that harmonizing the two will not require "substantial" changes to the US transfer pricing regulations. The application of article 9 of US tax treaties is expected to be generally consistent with Actions 8-10.	N/A
Disclosure of aggressive tax planning (Action 12)	Best practice	Existing US law has statutory and regulatory disclosure rules for aggressive tax planning. There are no active proposals for change.	N/A
Transfer pricing documentation (Action 13)	Common approach	Existing US law has documentation requirements that are at least equivalent to, or serve the same purpose as, the Action 13 local file. The US has thus far not indicated that it will require creation or filing of master file but the IRS likely would ask for a taxpayer's master file, if it exists, in the event of an audit.	N/A
CbC reporting (Action 13)	Minimum standard	The Treasury Department released final regulations on 29 June 2016 that require annual CbC reporting by US entities that are the ultimate parent entity of a multinational	Final regulations issued on 29 June 2016 apply to taxable years of parent

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enterprise with annual revenue of USD 850 million or more. The IRS also has indicated that it will accept and automatically exchange CbC reports for taxable years beginning on or after 1 January 2016, but before the effective date of the final regulations. On 8 December 2016, the IRS issued draft versions of Form 8975 (Country-by-Country Report) and the accompanying Schedule A (Tax Jurisdictions and Constituent Entity Information), and on 23 February 2017, the IRS released draft instructions for both Form 8975 and Schedule A.

companies of US MNE groups that begin on or after 30 June 2016

The US has not signed the multilateral competent authority agreement or any bilateral agreements for the exchange of CbC information, but is expected to enter into bilateral agreements in 2017, before the first automatic exchanges beginning in 2018 (for 2016 taxable year).

Dispute resolution (Action 14)	Minimum standard Complemented by best practice	Action 14 is broadly consistent with the existing US position on dispute resolution. US tax treaties provide for mandatory binding arbitration. Signed tax treaties that would add arbitration provisions to US treaties with Japan, Spain and Switzerland are awaiting Senate consent, with no definite prospects for completion of the process in the foreseeable future. The US is one of the countries committed to binding arbitration.	Not yet known
Multilateral Instrument (Action 15)	Applicable across all four categories	The Treasury Department released a revised US model income tax convention in February 2016, and has not indicated any intention to modify the US model convention to conform to the multilateral instrument released by the OECD.	N/A

Unilateral BEPS Actions

Prior to the November 2016 elections, the US Congress was not directly involved in the BEPS project, despite various expressions of concern by key House and Senate tax writers. Key policymakers see an opportunity to make progress in reforming the US tax code in

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2017 now that one party controls the White House and both chambers of Congress. However, there currently is no clear sense of how action on tax reform may translate into specific policy on BEPS.

Certain influential tax policy voices in Congress have advocated the adoption of a territorial tax system that includes strong base erosion measures, such as a destination-based cash flow tax that provides for "border adjustments" through an as-yet unspecified mechanism that would serve to eliminate US tax on products, services, and intangibles exported abroad (regardless of their production location), and impose US tax on products, services, and intangibles imported into the US (also regardless of production location). The proposal has become a focus of increased attention within the US business community.

Other policymakers want to build on the US's current worldwide tax system by repealing deferral on resident firms' active foreign-source income and tightening existing provisions aimed at curbing inversion transactions.

Beyond some rhetoric directed at inverting companies, a momentary call for repealing deferral on active foreign-source income, and general calls for "a level playing field" between the US and other countries on tax and trade policy, President Donald Trump has not offered a detailed proposal on international tax issues and we may not get a clear sense of his tax policy priorities until his administration sends its first budget package to Congress sometime in 2017.

Other Tax Developments

No other tax developments to note.



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