



## BEPS implementation

### United States

Last reviewed by Deloitte US: May 2021



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 positions as reflected in legislation and guidance. In addition, the information contained in the matrix is a summary of a country's position or expected position, and therefore, will not reflect all the details or complexities that are likely to be involved.

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

Action	Notes on local country implementation	Effective date
<b>Action 1: Addressing the Tax Challenges Arising from the Digitalisation of the Economy</b>	The US does not have a Value Added Tax (VAT) and there are no proposals to introduce a VAT.	N/A
	With respect to direct taxation, the US is committed to participation in the OECD <i>Programme of Work to Develop a Consensus Solution to the Tax Challenges Arising from the Digitilisation of the Economy</i> adopted in May 2019, and which calls for a solution to be delivered in 2021.	N/A
<b>Action 2: Neutralising the Effects of Hybrid Mismatch Arrangements</b>	The US has enacted hybrid mismatch rules as part of US Tax Reform for certain amounts paid or accrued to related parties. The hybrid mismatch rules are consistent with the recommendations in the OECD Action 2 report. Proposed guidance on the rules was issued by the US Treasury Department (Treasury) and the Internal Revenue Service (IRS) in December 2018 and finalized in April 2020.	Effective for taxable years beginning after 31 December 2017 and for taxable years beginning on or after 20 December 2018 (depending on specified transaction)

Action	Notes on local country implementation	Effective date
<p><b>Action 3: Designing Effective Controlled Foreign Company Rules</b></p>	<p>The existing US Controlled Foreign Corporation (CFC) regime already incorporates many of the recommendations from the OECD Action 3 report. US Tax Reform resulted in a significant expansion of the US CFC regime with enactment of the Global Intangible Low-taxed Income (GILTI) rules. Guidance has been issued in proposed and final form on various CFC-related issues.</p>	<p>Effective for taxable years of foreign corporations beginning after 31 December 2017, and taxable years of US shareholders in which or with such taxable years of foreign corporations end</p>
<p><b>Action 4: Limiting Base Erosion Involving Interest Deductions and Other Financial Payments</b></p>	<p>The US repealed existing interest limitation rules as part of US Tax Reform and replaced those with new interest limitation rules applicable to all business interest which are generally consistent with the approach of the OECD Action 4 report proposals. The deduction for business interest expense is generally limited to the amount of business interest income plus 30% of adjusted taxable income. There are several exceptions and exemptions to the interest rules, and excess interest expense can be carried forward indefinitely. Under the CARES Act, enacted in response to COVID-19, for 2019 and 2020 taxpayers can compute their 2019 and 2020 deduction based on 50% of adjusted taxable income.</p>	<p>Effective for taxable years beginning after 31 December 2017</p>
<p><b>Action 5: Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance</b></p>	<p>The US has enacted the Foreign-derived Intangible Income (FDII) regime as part of US Tax Reform, which provides a lower effective tax rate for certain income from sales or services by domestic corporations to non-US persons; depending on a taxpayer's circumstances, the rate reduction may apply to income from intangible property. Proposed FDII regulatory guidance was issued by the Treasury and the IRS in March 2019 and finalized in July 2020.</p> <p>The FDII regime has been identified by the OECD as a preferential tax regime triggering the FHTP review process.</p> <p>Other than Advance Pricing Agreements (APAs), the US generally does not issue rulings of the type that must be spontaneously exchanged under the OECD Action 5 report.</p>	<p>Effective for taxable years beginning after 31 December 2017</p>

Action	Notes on local country implementation	Effective date
<b>Action 6: Preventing the Granting of Treaty Benefits in Inappropriate Circumstances</b>	<p>The US generally meets the OECD Action 6 report’s minimum standard through its Limitation on Benefits (LOB) provisions in tax treaties and in its anti-conduit rules, subject to minor exceptions. The US government has signed treaties with Hungary and Poland that have comprehensive LOB provisions and that would replace in-force treaties with no LOB provisions. Those treaties await Senate approval.</p> <p>The Treasury released a revised US Model income tax convention in February 2016 (2016 Model), which makes the LOB provision more restrictive.</p>	N/A
<b>Action 7: Preventing the Artificial Avoidance of Permanent Establishment Status</b>	<p>The 2016 Model incorporates certain recommendations in the OECD Action 7 report, including a rule intended to protect against contract splitting abuses for construction sites and installation projects. The 2016 Model has not adopted the other OECD recommendations regarding the Permanent Establishment (PE) threshold, notably the revised rules related to dependent and independent agents and the exemption for preparatory and auxiliary activities.</p>	N/A
<b>Actions 8–10: Aligning Transfer Pricing Outcomes with Value Creation</b>	<p>The Treasury 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.</p>	N/A
<b>Action 12: Mandatory Disclosure Rules</b>	<p>The US has existing statutory and regulatory disclosure rules addressing aggressive tax planning. There are no active proposals for change.</p>	N/A

Action	Notes on local country implementation	Effective date
<b>Action 13: Guidance on Transfer Pricing Documentation and Country-by-Country (CbC) Reporting</b>	Existing US law has documentation requirements that are at least equivalent to, or serve the same purpose as, the local file in the OECD Action 13 report. The US has not indicated that it will require creation or filing of a master file, but the IRS may ask for the taxpayer's master file if there is an audit.	N/A
	CbC reporting has been introduced for US entities that are the ultimate parent entity of a multinational enterprise with annual revenue of USD 850 million or more.	Effective for taxable years beginning on or after 30 June 2016
	The US has not signed the multilateral competent authority agreement but has entered into bilateral Competent Authority Arrangements (CAAs) for the exchange of CbC reports.	Ongoing
<b>Action 14: Making Dispute Resolution Mechanisms More Effective</b>	The OECD Action 14 report is broadly consistent with the existing US position on dispute resolution. Seven US tax treaties (those with Belgium, Canada, France, Germany, Japan, Spain, and Switzerland) provide for mandatory binding arbitration.	Ongoing
<b>Action 15: Developing a Multilateral Instrument to Modify Bilateral Tax Treaties</b>	The US is not a signatory to the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI) and has not indicated any intention to modify the US model convention to conform to the MLI.	N/A



## Other tax developments

The 2017 tax reform reconciliation act included an anti-abuse tax that imposes a new minimum tax and additional tax liabilities on the income of domestic corporations that make base erosion payments to related foreign parties. The Base Erosion and Anti-Abuse Tax (BEAT) applies to any amount paid or accrued by a taxpayer to a related foreign person with respect to which a deduction is allowed in tax years beginning after 31 December 2017. Certain thresholds must be met for BEAT to be applicable, and the base erosion minimum tax equal percentage may vary depending on the applicable year.



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