BEPS Actions implementation by country

Spain

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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 Spain.

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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	The government has implemented the amended EU parent-subsidiary directive into domestic legislation. As an EU member state, Spain 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).	1 January 2015 1 January 2020 (1 January 2022 for reverse hybrid provisions)
CFCs (Action 3)	Best practice	Existing CFC rules have already been amended.	1 January 2015
Interest deductions (Action 4)	Common approach	As an EU member state, Spain 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. Spain already has rules that limit the deductibility of interest expense, but it is not yet known whether they will opt for the transition period under ATAD.	1 January 2012 for existing rules The transition rules will apply from 1 January 2024

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Harmful tax practices (Action 5)	Minimum standard	The patent box regime has been amended to adopt the "nexus approach" endorsed in the final report.	1 July 2016
Prevent treaty abuse (Action 6)	Minimum standard	Spain has PPT clauses in some of its tax treaties and is expected to add more through protocols to existing treaties, new treaties and the multilateral instrument (MLI).	Subject to implementation of the MLI and bilateral negotiations
Permanent establishment status (Action 7)	Revision of existing standard	No changes have been made to existing law, although changes are expected. Some Spanish courts have been interpreting the PE concept in line with BEPS standards.	Subject to implementation of the MLI
Transfer pricing (Actions 8-10)	Revision of existing standard	Changes to the transfer pricing rules include a new definition of related parties, revisions to the valuation rules and advance pricing agreement rules. The tax authorities' powers have been strengthened and they can impose penalties under certain GAARs.	12 October 2015
Disclosure of aggressive tax planning (Action 12)	Best practice	Not yet known.	Not yet known
Transfer pricing documentation (Action 13)	Common approach	Documentation and reporting requirements have been enacted. It is unclear whether further changes will be made.	1 January 2015
CbC reporting (Action 13)	Minimum standard	CbC reporting requirements have been enacted. Spain is one of the countries that signed a multilateral competent authority agreement for the automatic exchange of CbC reports.	1 January 2016
Dispute resolution (Action 14)	Minimum standard Complemented by best practice	Spain is one of the countries committed to binding arbitration.	Subject to implementation of the MLI

Multilateral Instrument (Action 15)	Applicable across all four categories	Spain is expected to sign the MLI.	Not yet known

Unilateral BEPS Actions

A new corporate income tax law that applies as from 1 January 2015 includes measures in response to the BEPS initiative:

- A specific anti-abuse rule for hybrid entities that disallows deductions for expenses incurred in certain transactions;
- The application of the CFC rules to more transactions and types of income;
- Recharacterisation of intragroup profit participating loans as equity instruments (rather than debt), with the result that "interest" payments on such loans will be non-deductible; and
- Introduction of limits on the deductibility of financing expenses incurred in leveraged buyout transactions.

Rules enacted in July 2015 include changes to the transfer pricing rules, such as the introduction of country by country (CbC) reporting and changes to other reporting and documentation obligations of taxpayers. The rules apply retroactively to tax periods beginning on or after 1 January 2015, although the CbC and other transfer pricing and documentation requirements apply for periods beginning on or after 1 January 2016. The rules apply to entities and groups with an aggregate net turnover of EUR 45 million or more.

Furthermore, any Spanish-resident entity that belongs to a group that is required to submit the CbC reporting must inform the tax authorities of the identification and country of residence of the entity required to prepare this information before the end of the fiscal period to which it refers. The CbC reporting obligations are in line with Action 13. Spanish law meets all of the requirements imposed by OECD in terms of deadlines, implementation and sanctions for non-compliance.

On 2 December 2016, the Council of Ministers approved a Royal Decree-Law that includes measures inspired by the BEPS framework. The most relevant measures are as follows:

<u>Rules that apply to fiscal years starting on or after 1 January 2016</u>:

- Accelerated reversal of deductible equity impairments;
- Limitation of carried forward loss offsetting by large enterprises; and
- Limitation of application of double taxation credits by large enterprises.

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Rules that apply to fiscal years starting on or after 1 January 2017:

- Non-deductibility of losses incurred on the transfer of a participation that qualifies for the Spanish participation exemption regime or relating to a company that is resident in a tax haven or low taxation jurisdiction; and
- Non-deductibility of losses incurred on the transfer of a permanent establishment.

It is not possible to request to make instalments payments or a postponement of payment of tax liabilities relating to withholding tax, chargeable tax (e.g. VAT) and advance payment of corporate income tax.

Other Tax Developments

None