BEPS Actions implementation by country

Italy

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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 Italy.

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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 amended EU VAT directive has been implemented into domestic law.	1 January 2015
Hybrids (Action 2)	Common approach	As an EU member state, Italy 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). Italy already has domestic legislation applicable to hybrid mismatch agreements. It is not yet known if these rules will need to be amended as a result of ATAD.	1 January 2016
CFCs (Action 3)	Best practice	Italy already has CFC rules, which were amended by the 2016 Finance Bill.	N/A
Interest deductions (Action 4)	Common approach	As an EU member state, Italy 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. A “fixed ratio rule” already applies in Italy for computing	Not yet known

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		the maximum amount of deductible interest (30% of EBITDA). However, the existing rule is not fully in line with the Action 4 recommendations and it is not yet known whether further changes will be made.	
Harmful tax practices (Action 5)	Minimum standard	Italy has introduced a patent box regime for entities deriving income from certain R&D activities. The incentive is in line with the "nexus approach" in the Action 5 report and, therefore, aims to restrict the applicability of the patent box regime to situations where "substantial activities" are carried out in Italy. The 2016 Finance Bill restricted the application of the patent box regime to copyrighted software, in line with the standards provided by Action 5. Trademarks have just been excluded from the eligible assets in order to align Italian provisions with OECD recommendations. The new provision does not affect trademarks included in the patent box regime before the end of the FY 2016.	1 January 2015
Prevent treaty abuse (Action 6)	Minimum standard	A statutory domestic general anti-avoidance rule applies to both direct and indirect taxes. Additionally, in July 2016, the government introduced legislation that transposed the anti-abuse rule in the amended EU parent-subsidiary directive into Italian law. The domestic GAAR is directly applicable for these purposes.	1 October 2015 Effective from 1 January 2016

Permanent establishment status (Action 7)	Revision of existing standard	Not yet known.	Not yet known
Transfer pricing (Actions 8-10)	Revision of existing standard	Not yet implemented. However, the international tax decree published in September 2015 contained rules regarding the determination of the taxable profits of a PE in Italy, formally recognising the "functional separate entity" approach.	Not yet known
Disclosure of aggressive tax planning (Action 12)	Best practice	Not yet known.	Not yet known
Transfer pricing documentation (Action 13)	Common approach	Not yet known.	Not yet known
CbC reporting (Action 13)	Minimum standard	CbC reporting was introduced by the 2016 Financial Bill. A decree published on 8 March 2017 clarifies the requirements, deadlines and information needed for CbC reporting.	FY beginning on 1 January 2016
Dispute resolution (Action 14)	Minimum standard Complemented by best practice	An international tax decree published in September 2015 introduced a new advance ruling procedure for transfer pricing, exit taxes, the migration of tax residence, the attribution of profits or losses to an Italian PE, PE issues arising from an investment in Italy and cross-border payments of dividends, interest or royalties. The ruling procedure is available to companies with cross-border activities and any rulings issued will bind the taxpayer and the tax authorities for five years. In January 2017, the Italian tax authorities issued their first clarification relating to this ruling procedure.	1 January 2016 (new investments ruling available from 12 May 2016)

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Multilateral Instrument (Action 15)	Applicable across all four categories	Not yet known.	Not yet known

Unilateral BEPS Actions

The government has enacted a law that aims to deal with cross-border transactions, including transactions related to the advertising industry and the digital economy. The law authorises the government to issue rules for such services “consistent with the recommendations of international organisations and with any decision taken at any European level”. Italian Ministry Of Finance announced Italy is considering opportunity of discussing the introduction of a “web tax” aimed to tackle problems of digital economy.

The government has repealed certain domestic law provisions relating to the digital economy due to conflicts with EU principles.

A new ruling procedure for proposed investments in Italy exceeding EUR 30 million allows taxpayers to inquire about the potential tax risks and implications of the proposed investment.

In January 2017, the Italian tax authorities released an official clarification in the context of the new investments ruling procedure (see above). The clarification specifically related to the circumstances in which a PE could arise.

Higher tax penalties apply as from FY 2016 for advisors marketing tax evasion schemes

Other Tax Developments

None