BEPS Actions implementation by country

Turkey

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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 Turkey.

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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	Turkey has enacted rules that require internet service providers, banks, internet advertising agencies, and cargo and logistics service companies in the country to submit information on a monthly basis about their transactions with Turkish customers (individuals and companies). Information on digital sales of goods and services, as well as payments internet advertising and logistics services, must be submitted to the Data Collection Centre of the tax authorities.	1 July 2016
		The VAT rules are expected to be expanded to cover digital sales.	Not yet known
		A provision added to the Tax Procedures Code that authorises the Council of Ministers to determine the extent of withholding tax for parties or intermediaries in taxable transactions, regardless of whether (i) the recipient of the payment is a taxpayer; (ii) taxpayers or intermediaries of the payments are obliged to withhold tax; (iii) the payment relates to the trading of goods or services; (iv) the transaction is digital; or (v) the payment is deducted from tax base. The withholding tax rates must be within the minimum and maximum limits as specified by the relevant Tax Codes with respect to business groups, types of transactions, sectors and commodity groups. However, the withholding tax rates to be applied have not been announced yet by the Council of Ministers.	7 September 2016
Hybrids (Action 2)	Common approach	Not yet known.	Not yet known
CFCs (Action 3)	Best practice	The existing CFC rules are not expected to be amended.	N/A

Interest deductions (Action 4)	Common approach	Turkey already has rules that limit the deduction of interest (e.g. thin capitalisation, restrictions on the deduction of financing expenses). The Council of Ministers is authorized to determine the non-deductible interest portion to the extent the maximum limitation does not exceed 10%. Although the interest deduction limitation rule was introduced with effect from 1 January 2013, a decree setting the percentage of the limitation has not been announced, so the restriction cannot be applied in practice.	Not yet known as to when the decree will be issued
Harmful tax practices (Action 5)	Minimum standard	While Turkish legislation provides for a 30% withholding tax on payments made to tax havens, the rule cannot be applied because the Council of Ministers has not issued a list of jurisdictions engaged in harmful tax practices.	Not yet known
Prevent treaty abuse (Action 6)	Minimum standard	Turkey already has anti-abuse clauses in some of its tax treaties. It is expected that more will be added either through treaties or the multilateral instrument (MLI).	Subject to implementation of the MLI and bilateral negotiations
Permanent establishment status (Action 7)	Revision of existing standard	The definitions of a "work place" and a PE have been revised in the draft Tax Procedures Code to cover digital / electronic commercial activities.	The Draft Code still is pending and it is not yet known when it will be enacted
		Corporate tax-exempt status of liaison offices that are permitted by the Ministry of Economy to operate as "regional management centres" has been clarified through Law No. 6728 by the inclusion of such liaison offices operating as regional management centers within the list of entities which are exempt from corporation tax (Article 4/(1)/ö of the Corporation Tax Law).	9 August 2016
		The income tax exemption for salaries of employees of liaison offices that are permitted to operate as "regional management centers" has been incorporated into the Turkish Individual Income Tax Law through the amendment made by Law No. 6728 in Article 23 of the Individual Income Tax Law.	1 September 2016

Transfer pricing (Actions 8-10)	Revision of existing standard	Draft Transfer Pricing General Communiqué No. 3, announced by the tax authorities on 16 March 2016 would introduce concepts such as "location savings and other local market features," "assembled workforce" and "group synergies" and require these concepts to be taken into account in transfer pricing comparability analyses. The draft communiqué also includes new rules on cost contribution arrangements.	Expected to be finalised in 2017 and applicable retroactively
Disclosure of aggressive tax planning (Action 12)	Best practice	The current wording of the draft tax procedures code would shift the burden of proof to the taxpayer where a tax loss is incurred in the context of a tax planning arrangement. The concepts of "tax planning" and "aggressive tax planning" still are under discussion.	Not yet known
Transfer pricing documentation (Action 13)	Common approach	Draft Transfer Pricing General Communiqué No. 3 includes rules that introduce the three-tier documentation approach recommended by Action 13. Additionally, a draft Decree has also been announced recently to incorporate the changes re – BEPS Action 13 related documentation into the existing Transfer Pricing Decree, in effect.	Expected to be finalised in 2017 and to be effective retroactively as from 1 January 2016 with regard to CbC reporting; and from 2017 with regard to the preparation obligation of master file
CbC reporting (Action 13)	Minimum standard	Draft Transfer Pricing General Communiqué No. 3 includes rules that would introduce CbC reporting requirements.	Expected to be finalized in 2017 and to be effective retroactively as from 1 January 2016
		The Council of Ministers is authorized to require the reporting of information about the operations of non-resident related parties within the scope of the transfer pricing documentation rules and to set the procedure for the exchange of such information with the tax authorities of other countries in accordance with the international agreements. However, Turkey has not yet signed the Multilateral	9 August 2016

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		Competent Authority Agreement for the automatic exchange of CbC reports (CbC MCAA).	
Dispute resolution (Action 14)	Minimum standard Complemented by best practice	Not yet known	Subject to implementation of the multilateral instrument (MLI)
Multilateral Instrument (Action 15)	Applicable across all four categories	Turkey signed on 7 June 2017 the Multilateral Convention to implement Tax Treaty related measures to prevent BEPS. However, its implementation is subject to ratification procedures in Turkey. The Turkish Revenue Authority has also announced a list of its reservations with respect to the implementation of the Convention *(the list of reservations and notifications of the Republic of Turkey at the time of signature is attached).*	Implementation would start after the ratification procedures are completed.

Unilateral BEPS Actions

None.

Other Tax Developments (Effective from 9 August 2016)

- <u>Threshold introduced for “related party” definition:</u> At least 10% (direct or indirect).This rate can be modified by the Council of Ministers within a range between 1% and 25%.
- <u>Possibility to apply advance pricing agreements (APAs) to past open fiscal years:</u> Applicable under certain conditions. Additionally, the term of APAs is five years (increased from three years).
- <u>Partial penalty protection:</u> Tax loss penalty imposed as a result of a disguised profit distribution assessment will be reduced by 50% if the local annual transfer pricing documentation requirements are timely filed.