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BEPS Actions implementation by country
South Africa

Last reviewed by Deloitte: June 2017

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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 South Africa.

South Africa: BEPS Actions implementation
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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	South Africa's VAT Act was amended with effect from 1 April 2014 to require an enterprise rendering certain electronic services to register as a VAT vendor in South Africa and charge VAT on the supply of the services. Services include e-books, films and music. It was proposed that certain amendments will be made to the list of electronic services which is expected to be promulgated towards the end of the 2017 calendar year. These additions include software, services through online applications and cloud computing services.	Not yet known
Hybrids (Action 2)	Common approach	South Africa already has legislation addressing hybrids, although an expert group (Davis Tax Committee (DC)) examining the tax framework has recommended that the hybrid instruments legislation be simplified to focus on legal principles rather than specific transactions or instruments. The rules also should be in line with international leading practices.	Not yet known
CFCs (Action 3)	Best practice	South Africa's CFC rules are complex and, in some respects unclear, so the application of the recommendations in the report on Action 3 may be welcome in helping to overhaul the legislation. However, it is unclear whether South Africa will make any changes to the current rules.	Not yet known
Interest deductions (Action 4)	Common approach	South Africa's exchange control, transfer pricing and income tax rules generally prevent excessive interest deductions. However, the current legislative environment is complex and could create uncertainty for taxpayers. It is unclear whether any changes will be made.	Not yet known

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Harmful tax practices (Action 5)	Minimum standard	There is some concern about the possibility that South Africa's headquarter company regime could constitute a harmful tax practice. It is not yet known when or if there will be any changes to the existing legislation.	Not yet known
Prevent treaty abuse (Action 6)	Minimum standard	The DC has recommended that South Africa ensure that it preserves the use of the application of domestic anti-avoidance provisions in its tax treaties. The "main purpose" requirement in the GAAR is akin to the PPT recommended by the OECD. The DC also has recommended that South Africa take steps to renegotiate its older treaties or sign protocols amending the titles and preambles of older treaties to the effect they are not intended to create opportunities for non-taxation or reduced taxation through tax evasion or avoidance, including through treaty shopping arrangements.	Not yet known
Permanent establishment status (Action 7)	Revision of existing standard	It will be to South Africa's benefit to incorporate the changes to the definition of a PE into all of its tax treaties.	Not yet known
Transfer pricing (Actions 8-10)	Revision of existing standard	With regards to intangibles, South Africa has very strict exchange control which requires approval for payments for the use of IP, as well as restricting in some instances the sale of IP. No specific guidance has been issued by SARS in relation to Actions 8 – 10, however it is expected that SARS will follow the OECD recommendations as set out in Actions 8 – 10.	Not yet known
Disclosure of aggressive tax planning (Action 12)	Best practice	See Action 13 comment below regarding additional reporting requirements for multinational enterprises (MNEs).	Years of assessment starting on or after 1 October 2016
Transfer pricing documentation (Action 13)	Common approach	On 28 October 2016, the South African Revenue Authorities issued a final notice, which states that where the taxpayer's aggregate potentially affected transactions for a year of assessment exceed ZAR 100 million, the	Years of assessment starting on or after 1 October 2016

		taxpayer will be required to keep specified records, books of accounts or documents, presumably as part of its transfer pricing documentation. Significant additional reporting requirements have been introduced, for example, operational flows, including product flow, cash flow of the transactions, and a comparison to the flows in independent transactions; and where a tested party is outside South Africa, copies of invoices and contracts between the tested party and its customers.	
CbC reporting (Action 13)	Minimum standard	South Africa has introduced CbC reporting requirements. South Africa 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	While South Africa is not one of the countries that is committed to binding arbitration in its bilateral tax treaties, South Africa has tax treaties with most of the countries that have committed, so those treaties may need to be amended to include a specified timeframe for the resolution of disputes. In March 2015, the SARS published guidance on MAP procedures, including an explanation of what MAP entails and how to submit a request.	Not yet known
Multilateral Instrument (Action 15)	Applicable across all four categories	South Africa is one of the countries that have reached consensus on the multilateral instrument adopted in November 2016 with the aim to incorporate BEPS recommendations into the existing network of bilateral treaties.	Not yet known

Unilateral BEPS Actions

No other tax developments to note.

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Other Tax Developments

No other tax developments to note.

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