



BEPS Implementation Tracker

Action 1 – Addressing the Tax Challenges of the Digital Economy

United Kingdom

- Digital services tax proposed to apply from 2020.
- Withholding tax on royalty payments made in connection with UK sales to low or no-tax jurisdictions to be introduced from April 2019.

France

- A new tax on digital services is expected to apply retroactively from 1 January 2019: a draft bill was adopted by the National Assembly on 9 April 2019 and will be examined by the Senate in late May 2019.
- The new tax would apply at a rate of 3% to revenues generated in France by certain digital services.

European Union

- Ongoing work on two legislative proposals announced in March 2018:
 - reform of corporate tax rules so that profits are registered and taxed where businesses have significant interaction with users through digital channels; and
 - interim tax which covers the main digital activities that currently escape tax altogether in the EU, including selling online advertising space, digital intermediary activities and selling data generated from user-provided information.

United States of America

- In January 2019, a US treasury official commented on the increased involvement of the US with the aim of reaching a broad political consensus on the allocation of taxing jurisdiction between countries.
- Released in February 2016, the General Expectations of the Administration's Fiscal Year 2017 Revenue Proposals (under Obama) included proposals relating to digital goods and services.

Luxembourg

- Luxembourg has expressed strong reservations about the EU proposals to tax digital companies.
- The Luxembourg Tax Authority issued an administrative circular providing guidance on the characterisation of virtual currencies in July 2018.

The Netherlands

- The Netherlands have expressed strong reservations about the EU proposals to tax digital companies.

Action 2 – Neutralising the Effects of Hybrid Mismatch Arrangements

United Kingdom

- OECD agreed rules in effect from 1 January 2017.
- Amendments in Finance Bill 2019 to comply with ATAD.
- Signatory to the MLI amending tax treaties in line with BEPS recommendations. (See Action 15 below.)

France

- Abuse of law theory (which allows the tax authorities to disregard legal arrangements and, accordingly, to tax the corresponding transaction on the basis of its actual substance when it is purely tax-motivated) may also be applied to hybrid arrangements.
- Specific anti-hybrid rules introduced in recent years:
 - 2015: Domestic parent-subsidiary regime excluded for distributions giving rise to a deduction by the distributing entity; and
 - 2014: Interest deduction denied on loans from an affiliated lender if such lender is not subject to a minimum tax on such interest.
- The general anti-abuse rule contained in the amended parent-subsidiary directive was implemented as of 1 January 2016.
- In March 2018, France and Luxembourg signed a new tax treaty which is in line with the 2017 OECD Model Convention and contains a provision dealing with fiscally transparent entities. Its preamble clarifies that the tax treaty is not intended to be used to generate double non-taxation or reduced taxation through tax evasion.
- The Finance Law for 2019 contains a general anti-abuse rule in line with ATAD, which provides that non-genuine arrangements put in place for the main purpose (or one of the main purposes) of obtaining a tax advantage that defeats the object or purpose of the applicable tax law should be ignored.

European Union

- ATAD includes a provision to address hybrid mismatches.
- ATAD II extends these provisions to non-EU Countries.

United States of America

- Proposed regulations to implement anti-hybrid mismatch rules released in December 2018.

Luxembourg

- The anti-hybrid mismatch rules, implementing ATAD, entered into force on 1 January 2019.
- Rules relating to non-EU countries, implementing ATAD II, are expected to be proposed and enacted in 2019 and to apply from 1 January 2020.

The Netherlands

- Legislative proposals to comply with ATAD II are expected to be published in the first half of 2019 to come into force on 1 January 2020.

Action 3 – Designing Effective Controlled Foreign Company Rules

United Kingdom

- Changes to the CFC rules (to comply with ATAD) in the Finance Bill 2019 in effect from 1 January 2019.

France

- Already existing CFC rules. No changes currently proposed.

European Union

- ATAD includes provisions on CFC rules, for within the EU and externally.

United States of America

- Proposed regulations under the global intangible low-taxed income (GILTI) regime released in September 2018.
- Regulations package includes amendments to subpart F income and consolidated return regulations.

Luxembourg

- New CFC rules, implementing ATAD, entered into force on 1 January 2019.

The Netherlands

- New CFC rules, implementing ATAD, entered into force on 1 January 2019.
- A list of low-tax jurisdictions, to be used for the purposes of these rules, was published on 28 December 2018.

Action 4 – Limiting Base Erosion Involving Interest Deductions and Other Financial Payments

United Kingdom

- Restriction on tax deductibility of corporate interest expense consistent with OECD recommendations introduced from 1 April 2017.
- Amendments to these rules (to comply with ATAD) in the Finance Bill 2019 have effect for periods commencing on or after 1 January 2019.

France

- The Finance Law for 2019 amends the existing interest deduction rules. Net interest expenses would be deductible only up to the greater of 30% of the adjusted taxable income or €3 million (lower thresholds of 10% and €1 million apply in respect of intra group debt). Interest expenses that would be excluded from the deductible expenses of a given fiscal year could be carried forward indefinitely.

European Union

- ATAD includes provisions to limit interest deductions within the EU and externally.

United States of America

- On 21 October 2016, the IRS issued final regulations under section 385 addressing interest deductions from certain related-party indebtedness. Consistent with proposed regulations, the final regulations treat as stock certain related-party interests that otherwise would be treated as indebtedness. The IRS and Treasury concluded that the final regulations are consistent with Action 4.

Luxembourg

- The law implementing ATAD includes provisions limiting interest deductions. It entered into force on 1 January 2019.

The Netherlands

- The earnings stripping rule from ATAD came into force on 1 January 2019.

Action 5 – Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance

United Kingdom

- Legislation reforming Patent Box in Finance Act 2016.
- Withholding tax on royalty payments made in connection with UK sales to low- or no-tax jurisdictions introduced from April 2019.

France

- Abuse of law theory may apply to abuse of tax treaty.
- The Finance Law for 2019 amends the existing tax regime for intellectual property, under which, under certain conditions, royalties may benefit from a lower rate of taxation. The tax advantages would now generally be linked to the amount of R&D expenditure incurred in France.

European Union

- Code of Conduct Group monitoring Member States for changes to existing patent box regimes to comply with the modified nexus approach.
- Ongoing work to identify and limit the instances of abuse of the Interest and Royalties Directive.

United States of America

- The Tax Cuts and Jobs Act of 2017 was a complete overhaul of the US international tax regime. It introduced two new categories of income: GILTI and foreign derived intangible income (FDII).

Luxembourg

- New IP regime compliant with the nexus approach introduced from 1 January 2018.

The Netherlands

- The Dutch innovation box regime was brought in line with the modified nexus approach from 1 January 2017.
- Conditional withholding taxes on interest and royalty payments will be introduced as of 1 January 2021. The proposed withholding tax only applies to intercompany payments to companies that are tax resident in a jurisdiction with a low tax rate, or a jurisdiction listed on the EU blacklist for non-cooperative countries.

Action 6 – Preventing the Granting of Treaty Benefits in Inappropriate Circumstances

United Kingdom

- Signatory to the MLI amending tax treaties in line with BEPS recommendations. (See Action 15 below.)

France

- In March 2018, France and Luxembourg signed a new tax treaty which is in line with the 2017 OECD model tax convention, and contains a 'principal purpose test' (PPT), denying a treaty benefit if it is reasonable to conclude that obtaining such benefit was one of the principal purposes of an arrangement or transaction.
- Abuse of law theory may apply.
- Signatory to the MLI amending tax treaties in line with BEPS recommendations. (See Action 15 below.)

European Union

- ATA Recommendation on Tax Treaties encourages Member States to use an EU-compatible PPT approach.
- Limitation-on-benefits (LOB) clauses are less easily adapted to the needs of the Single Market.
- ATAD also includes rules on exit taxation so that Member States can impose tax on the value of a product before it was moved out of the EU.

United States of America

- Updated draft of Model Income Tax Convention released February 2016. US treaties already include LOB clauses and limited amendments were proposed. The US is currently in the process of negotiating a protocol to amend various provisions of the US-Luxembourg treaty and is in discussions with Ireland to update certain elements of the US-Ireland treaty in the context of the updated Model Income Tax Convention.
- Rev. Proc. 2015-40 issued by the IRS, giving guidance on obtaining assistance under US tax treaties from the US Competent Authority, has already incorporated new restrictions on discretionary grants of treaty benefits, based on similar BEPS concerns.

Luxembourg

- Signatory to the MLI amending tax treaties in line with BEPS recommendations.
- It has signed treaties with France, Cyprus and Senegal that include Action 6 treaty-based recommendations.

The Netherlands

- Signatory to the MLI amending tax treaties in line with BEPS recommendations.
- In November 2018, it amended its treaty with Denmark: the amending protocol included Action 6 treaty-based recommendations.

Action 7 – Preventing the Artificial Avoidance of Permanent Establishment (‘PE’) Status

United Kingdom

- Signatory to the MLI amending tax treaties in line with BEPS recommendations. (See Action 15 below.)
- Anti-fragmentation rule applies to exemption for ‘preparatory or auxiliary’ activities, in accordance with the MLI. Exemption does not apply if activities have been artificially fragmented to fall within the exemption.

France

- Signatory to the MLI amending tax treaties in line with BEPS recommendations. (See Action 15 below.)
- In March 2018, France and Luxembourg signed a new tax treaty that is in line with the 2017 OECD Model Convention. The PE clause contains an anti-fragmentation rule and the new definition of agency PE.

European Union

- ATA Recommendation encourages Member States to use the amended OECD approach for PEs.

United States of America

- Draft Model Income Tax Convention does not include OECD recommendation to tighten PE threshold.
- PE definition in final CbCR Regulations is intended to be consistent with the final BEPS report.

Luxembourg

- Signatory to the MLI amending tax treaties in line with BEPS recommendation.
- In February 2019, the Luxembourg Tax Authority issued an administrative circular explaining how the new domestic PE provision applies. The new PE provision came into force on 1 January 2019.
- In March 2018, France and Luxembourg signed a new tax treaty that is in line with the 2017 OECD Model Convention. The PE clause contains an anti-fragmentation rule.

The Netherlands

- Signatory to the MLI amending tax treaties in line with BEPS recommendations. It has made a reservation in respect of Article 12 (commissionaire arrangements) until an effective dispute resolution mechanism between a sufficient number of signatories to the MLI and the Netherlands is in place.

Actions 8-10 – Aligning Transfer Pricing Outcomes with Value Creation

United Kingdom

- Legislation in Finance Act 2016 updates the link in UK’s transfer pricing rules to the BEPS guidelines.
- Continuing participation in OECD work on further developing guidelines as well as calling for targeted measures to be introduced to protect them from abuse.
- Tax charge on offshore receipts in relation to intangible property to apply from April 2019.

France

- No specific new legislation currently proposed.

European Union

- Joint Transfer Pricing Forum working on EU approach to review and update transfer pricing (TP).
- Work includes looking at more economic analysis in TP, better use of companies' internal systems, and improving TP administration.

United States of America

- Proposed changes to the transfer pricing regulations under section 482 include the use of subjective terminology and greater use of aggregation, mirroring the BEPS proposals.

Luxembourg

- A new law on transfer pricing, in line with BEPS recommendations, was adopted in December 2016.

The Netherlands

- A new law on transfer pricing, in line with BEPS recommendations, was published in May 2018.

Action 11 – Measuring and Monitoring BEPS

United Kingdom

- Nothing specific at country level.

France

- Nothing specific at country level.

European Union

- EU study underway on the impact of some types of aggressive tax planning on Member States' effective tax rates.

United States of America

- No official public comment.

Luxembourg

- Nothing specific at country level.

The Netherlands

- Nothing specific at country level.

Action 12 – Mandatory Disclosure Rules

United Kingdom

- UK's mandatory disclosure regime (DOTAS) has been in place since 2004. The DOTAS rules are not as wide as the new EU reporting rules.
- It is expected that the UK will implement the additional requirements under the new EU reporting rules, irrespective of the outcome of Brexit: Finance Bill 2019 enables HM Treasury to make regulations accordingly.

France

- Legislation was adopted at the end of 2013 which required the disclosure of tax optimisation schemes, but was never implemented as it was immediately rejected as unconstitutional by the Constitutional Court. No alternative legislation has yet been proposed.
- The new EU reporting rules are expected to be implemented under French law by the end of 2019,

European Union

- Amendments to the Directive for Administrative Cooperation (DAC) require Member States to enact rules obliging intermediaries and, in some cases taxpayers, to report information to tax authorities about cross-border arrangements that contain certain hallmarks.

United States of America

- No official public comment.

Luxembourg

- Luxembourg is required to implement the new EU reporting rules by 31 December 2019.

The Netherlands

- The draft law implementing the new EU reporting rules is expected to be submitted to the House of Representatives in July 2019. A public consultation was held on the draft law in early 2019.

Action 13 – Guidance on Transfer Pricing Documentation and Country-by-Country Reporting ('CbCR')

United Kingdom

- UK multinationals required to file reporting template with HMRC for 2016 accounting periods onwards.
- Pressing for public CbCR on a multilateral basis. Finance Act 2016 allows HM Treasury to make rules requiring public CbCR. Not expected until there is international agreement.

France

- The Finance Law for 2018 includes provisions updating the required contents of transfer pricing documentation for companies that are members of large economic groups.
- CbCR was implemented as of the beginning of 2016 and France has recently ratified the Multilateral Competent Authority Agreement on the Exchange of CbC Reports.
- The French government supports public CbCR. A recent attempt to introduce public CbCR into French law was, however, struck down by the French Constitutional Court.

European Union

- CbCR in force by way of an amendment to the DAC.
- Proposal to introduce public CbCR in progress.

United States of America

- Final regulations implementing CbCR adopted 30 June 2016. Regulations are generally consistent with proposed regulations issued in December 2015 and the OECD approach but have also been tailored to be consistent with the pre-existing information reporting requirements applicable to US persons.
- The U.S. has committed to enter into competent authority arrangements (CAAs) for exchanging country-by-country reports with other jurisdictions that have adopted Action 13 and have both (i) a legal instrument for exchange with the United States and (ii) adequate data safeguards in place. The U.S. is in the process of negotiating with its treaty and tax information exchange agreement partners towards implementing these agreements, which will allow U.S. companies to file their information directly with the IRS rather than foreign jurisdictions which have adopted similar filing requirements.
- It has signed CAAs with various jurisdictions.

Luxembourg

- CbCR in force since 2016.

The Netherlands

- CbCR in force since 2016.

Action 14 – Making Dispute Resolution Mechanisms More Effective

United Kingdom

- One of 20 countries committed to adopting mandatory binding arbitration in their tax treaties through the MLI.

France

- One of 20 countries committed to adopting mandatory binding arbitration in their tax treaties through the MLI.

European Union

- On 10 October 2017, the Council of the EU adopted new rules to better resolve tax disputes (directive on tax dispute resolution mechanisms in the European Union).

United States of America

- One of 20 countries committed to adopting mandatory binding arbitration in their tax treaties developed through the MLI.

Luxembourg

- One of 20 countries committed to adopting mandatory binding arbitration in their tax treaties through the MLI.

The Netherlands

- One of 20 countries committed to adopting mandatory binding arbitration in their tax treaties through the MLI.

Action 15 – Developing a Multilateral Instrument to Modify Bilateral Tax Treaties

United Kingdom

- Signatory to the MLI covering:
 - (i) Hybrid mismatches;
 - (ii) Preventing the granting of treaty benefits in inappropriate circumstances;
 - (iii) Artificial avoidance of PE status; and
 - (iv) Dispute resolution mechanisms.
- The MLI entered into force for the UK on 1 October 2018.
- It will apply to bilateral tax treaties from the date it is in force for the relevant treaty partner.

France

- Signatory to the MLI covering:
 - (i) Hybrid mismatches;
 - (ii) Preventing the granting of treaty benefits in inappropriate circumstances;
 - (iii) Artificial avoidance of PE status; and
 - (iv) Dispute resolution mechanisms.
- The MLI entered into force for France on 1 January 2019.
- It will only apply to bilateral tax treaties once it is in force for both parties. 67 bilateral treaties entered into by France are potentially impacted.

European Union

- ATA Recommendation sets out the Commission's views on treaty-related issues and their compatibility with EU law.

United States of America

- Participated in development of the MLI, principally for purpose of advancing binding arbitration. General comment is that it is unlikely the US will sign the MLI, however.

Luxembourg

- Luxembourg deposited its instrument of ratification on 9 April 2019. The MLI will enter into force for Luxembourg on 1 August 2019.
- It will apply to bilateral treaties from the date it is in force for both treaty partners.

The Netherlands

- Luxembourg deposited its instrument of acceptance on 29 March 2019. The MLI will enter into force for the Netherlands on 1 July 2019.
- With its instrument of acceptance, the Netherlands covers Curaçao and the (European and Caribbean parts of the) Netherlands.
- It will apply to bilateral treaties from the date it is in force for both treaty partners.

Other comments

European Union

- *ATA Package includes a Communication on an External Strategy for Effective Taxation setting out an EU approach to working with third countries on tax good governance matters.*
- *The Council of the EU adopted an updated 'EU list of non-cooperative jurisdictions for tax purposes' on 12 March 2019. This list includes a "blacklist" of 12 jurisdictions.*
- *The European Parliament has approved (with suggested amendments) the proposed Council Directives on the Common Corporate Tax Base and Common Consolidated Corporate Tax Base.*

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Please contact BEPS@Debevoise.com to discuss further.