

How is Australia Implementing the OECD/G20 Inclusive Framework on BEPS Package?

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Action 2:

Neutralising the Effects of Hybrid Mismatch Arrangements

The Australian Taxation Office (ATO), in consultation with the Board of Taxation, has implemented hybrid mismatch rules that prevent MNEs from gaining an unfair competitive advantage by ignoring their income tax obligations or by acquiring double tax benefits via hybrid mismatch arrangements.

The Treasury Laws Amendment (Tax Integrity and Other Measures No. 2) Act 2018—which empowers Action 2—was given Royal Assent on 24 August 2018. New Division 832 of the ITAA 1997 was introduced via Schedules 1 and 2. Amendments were also made to empower the OECD’s Hybrid Mismatch rules.

“The rules apply to certain payments after 1 January 2019 and income years commencing on or after 1 January 2019,” the ATO said.



Action 5:

Countering Harmful Tax Practices

Action 5 aims to counter harmful tax practices by bolstering tax transparency through the compulsory exchange of information on six categories of rulings. These six categories of rulings were built upon the rulings framework that was implemented on preferential regimes.

The exchange of information will only occur with member countries that Australia has a comprehensive tax treaty with. Information exchange is also permitted if the member country is a signatory to the OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters.



Action 6:

Preventing Tax Treaty Abuse

As part of the BEPS Multilateral Instrument, Australia adopted the *principal purposes test in Article 7*. The goal is to prevent tax treaty abuse, as well as deny tax treaty benefits in specific circumstances. The updated PS LA 2020/2, which was released on 1 October 2020, provides guidance on the process of applying a main purposes test or principal in Australia's tax treaties.



Actions 8-10:

Addressing Transfer Pricing Guidance

Australia's transfer pricing legislation was updated to improve alignment with the OECD's *Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2017*. It was applied retrospectively for income years beginning on or after 1 July 2017.

Action 13:

Re-evaluating Transfer Pricing Documentation

Amendments were made to legislation to accommodate country-by-country (CBC) reporting. According to the ATO, CBC reporting applies to income years starting from 1 January 2016.

Certain entities will need to lodge the following three CBC reporting statements:

1 CBC report

2 Master file

3 Local file



Action 14:

Making Dispute Resolution Mechanisms More Effective

The Mutual Agreement Procedure (MAP) is designed to relieve double taxation, as well as resolve treaty-related disputes in regards to interpreting or applying a tax treaty.

In October 2018, the ATO updated its MAP guidance to implement the recommendations outlined in BEPS Action 14.

“Taxation Ruling TR 2000/16 Income tax: international transfer pricing and profit reallocation adjustments, relief from double taxation and the Mutual Agreement Procedure was withdrawn,” the ATO clarified.



Action 15:

Developing a Multilateral Instrument to Amend Bilateral Tax Treaties

On 7 June 2017, Australia signed the *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (MLI)*. This treaty went into force on 1 January 2019. The MLI will modify 35 of Australia's tax treaties to implement integrity provisions (which prevent exploitation), as well as improve tax treaty-related dispute resolution mechanisms.

