

Tax Flash

Tax Flash is an electronic newsletter prepared by PricewaterhouseCoopers Česká republika, s.r.o. to keep you up to date on the latest tax and legal news. A more complex look at key tax changes and their impact on your business is provided in our monthly newsletter, Tax & Business News.

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22 July 2013

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Implications of the BEPS Action Plan

On 19 July 2013, the Organisation for Economic Co-operation and Development (OECD) published an Action Plan regarding Base Erosion and Profit Shifting (BEPS) at the G20 leadership meeting of finance ministers in Moscow. The Action Plan addresses the perceived flaws in the international tax and transfer pricing rules that were discussed in the OECD's February 2013 Base Erosion and Profit Shifting (BEPS) report. The main purpose of the Action Plan is a proposal of 15 separate action points regarding transparency and disclosure actions, treaty-related actions, and permanent establishment (PE) and transfer pricing (TP) actions.

Unlike the OECD's previous February BEPS Report, the Action Plan not only identifies areas of concern, but also provides concrete actions and timelines to address double non-taxation.

The Action Plan lists **15 action points** with accompanying timelines in the next 18-24 months. The OECD's proposed actions may be grouped into **four major categories**:

1. general actions on BEPS (i.e. digital economy, hybrid mismatch arrangement, strengthening controlled foreign company (CFC) rules – not available in the Czech Republic so far, interest deductions and other financial payments, and countering harmful tax practices);
2. treaty-related actions;
3. PE and TP actions; and
4. data disclosure and transparency actions.

The document is available on the OECD website here: <http://www.oecd.org/ctp/BEPSActionPlan.pdf>.

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BEPS action points:

General actions	Deadline*
Address the tax challenges of the digital economy	September 2014
Neutralize the effects of hybrid mismatch arrangements	September 2014
Strengthen CFC rules	September 2015
Limit base erosion via interest deductions and other financial payments	December 2015
Counter harmful tax practices more effectively, taking into account transparency and substance	December 2015
Treaty actions	Deadline*
Prevent treaty abuse	September 2014
Make dispute resolution mechanisms more effective	September 2015
Develop a multilateral instrument	December 2015
PE and TP actions	Deadline*
Prevent the artificial avoidance of PE status	September 2015
Assure that transfer pricing outcomes are in line with value creation – intangibles	September 2015
Assure that transfer pricing outcomes are in line with value creation – risks and capital	September 2015
Assure that transfer pricing outcomes are in line with value creation – other high-risk transactions	September 2015
Re-examine transfer pricing documentation	September 2014
Data and transparency actions	Deadline*
Establish methodologies to collect and analyze data on BEPS and the actions to address it	September 2015
Require taxpayers to disclose their aggressive tax planning arrangements	September 2015

*Some actions have multiple deadlines. The chart above reflects the latest deadline.

PwC Observation

The Action Plan contains a wide range of actions and it is likely that some of these will prove easier to pursue than others within a short timeframe. There is a very high **focus on substance** in the Action Plan and this comes through in various ways – for example in the comments on the PE rule, on recharacterisation of transactions, on the ownership of intellectual property and the focus on legal contracts for risk shifting and the general comments on TP in relation to the need of aligning TP with value creation activities.

Taxpayers may be pressed for more transparency by shareholders, the media, civil society organisations, etc. Businesses will need a common approach. This will facilitate ease of compliance for business and the provision of the most informative data for regulators and the public, if such data is disclosed.

Specifically, the Action Plan sets a tight deadline of one year to re-examine TP documentation in order to ensure transparency for the tax administration (e.g. taxpayers are expected to provide information on their global allocation of the income, economic activity and taxes paid among countries).

We recommend monitoring the progress of the OECD Action Plan, especially with regard to the PE and TP actions and data disclosure. Taxpayers proactively should perform internal risk assessments of their existing and planned structures, considering the increased focus on 'substance' and the potential for more transparency and public disclosure of their tax return information and allocation of profits around the world.

We will follow up with more details on the potential impact of the Action Plan on Czech taxpayers.