BEPS ACTION PLAN IMPLEMENTATION IN ASIAN-PACIFIC COUNTRIES

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National tax legislation cannot always respond adequately to the new challenges that arise from economic globalization, complexity of transnational corporations' activities, capital flows volatility and active development of the digital economy. These factors create conditions for tax avoidance, especially by major international companies, thus undermining universality and fairness of the existing tax systems.

One of the main tools MNEs use for tax avoidance (i.e. practices aimed at reducing taxes without formal violation of legislation) is Base Erosion and Profit Shifting (BEPS) — a set of tax planning strategies that enable companies to declare their profits for taxation in low or no-tax jurisdictions where they do not carry out economic activities.

BEPS negatively affects national tax bases, with the greatest negative impact on developing countries, due to their heavy reliance on corporate income tax.

BEPS is a serious challenge as confirmed by a number of studies. According to the OECD, the minimal losses from BEPS reach 4–10 percent of the global income tax charges, i.e. from USD100 to 240 billion annually.[1]

Thus, BEPS is a global problem challenging both developed and developing countries. In addition, the global economic crisis led to increased attention to its underlying factors and defined the need to develop new requirements to business, which were discussed almost exclusively in the framework of international institutions. In these circumstances, for the first time in the history of international cooperation on taxation the efforts of two key institutions — the OECD and G20 — were put together to address BEPS. This allowed engage states, both developed and developing, which are members of these institutions, as well as many non-member partner countries. As a result, the total number of the BEPS Project participants exceeds one hundred. The BEPS Project aims to provide an effective global tool to ensure that profits are taxed where economic activities generating them are performed and where value is created, while increasing the predictability, transparency and flexibility of the international tax environment for businesses.

The basic document of the OECD/G20 Project is the Action Plan on BEPS adopted in September 2013. 15 actions of the Action Plan provide for implementation of a number of tools to address profit shifting. For Russia, the experience of non-OECD countries closely cooperating with the Organization in implementing the Action Plan on BEPS is of particular relevance. In the Asia-Pacific region these include China, India and Indonesia.

[1] OECD. About BEPS and the inclusive framework. *http://www.oecd.org/ctp/beps-about.htm* (accessed 17 February 2017)

BEPS ACTION PLAN IMPLEMENTATION IN CHINA, INDIA AND INDONESIA

15 BEPS actions differ in terms of the level of consensus among countries participating in the BEPS Project. They are indicated by, in descending order, the terms "minimum standards", "common approaches", and "best practices". "Minimum standards" reflect commitments to consistent implementation of specified standards, whereas "best practices" provide for measures for voluntary implementation.[2] In addition, some Actions provide for changes to the existing OECD guidelines and recommendations, while others do not contain measures at the country level, at least currently.[3]

Table 1. BEPS Actions and categories of their domestic implementation

BEPS Action	Category
1. Digital economy	Action for further work and analysis[3]
2. Hybrids	Common approach
3. Controlled foreign company (CFC) rules	Best practice
4. Interest deductions	Common approach
5. Harmful tax practices	Minimum standard
6. Treaty abuse	Minimum standard
7. Permanent establishment status	Changes to the OECD Model Tax Convention
8-10. Transfer pricing	Updates and changes to the OECD Transfer Pricing Guidelines
11. BEPS data analysis	Does not provide for country-level actions
12. Disclosure of aggressive tax planning	Best practice
13. Transfer pricing documentation	Minimum standard
14. Dispute resolution	Minimum standard
15. Multilateral instrument	Does not provide for country-level actions

Source: *https://www.dlapiper.com/en/uk/insights/publications/2015/10/putting-the-final-beps-reports-into-perspective/ (accessed 17 February 2017)*

At the same time, some experts, given the ongoing development of specific proposals for implementing these Actions, attribute them to different categories. For example, Deloitte considers levying VAT on business-to-customers digital services within Action 1 as a "common approach", although other measures within this Action have a status of "activities for further analysis". Action 13 is sometimes characterized as a combination of "minimum standards" and "common approaches".[4]

Monitoring of legislation changes and activities carried out to address BEPS is done for 13 out of 15 Actions contained in the Action Plan, that imply country-level actions, i.e. all Actions except 11 and 15.

China

Several days after the release of the final BEPS reports the State Administration of Taxation (SAT) of China organized a conference to discuss the country's position

[2] Deloitte. United States Tax Alert. *http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-unitedstates-6-october-2015.pdf* (accessed 17 February 2017)

[3] OECD. BEPS Explanatory Statement. *https://www.oecd.org/ctp/beps-explanatory-statement-2015.pdf* (accessed 17 February 2017)

[4] Deloitte. BEPS Actions implementation by country. China. *https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-beps-actions-implementation-china.pdf* (accessed 17 February 2017)

regarding the BEPS Project and concrete steps for integrating measures against BEPS into the national legislation.

It should be noted that at that time China already applied some anti-avoidance measures in line with the OECD recommendations in areas such as transfer pricing and controlled foreign companies. The national tax administration focus on the problem, along with successful implementation of some tax control measures prior to the publication of the BEPS Action Plan helped China integrate other BEPS provisions into the national legislation in a relatively short time. The SAT aimed to provide a stable and transparent tax environment, but at the same time ensure that China obtains a fair share of revenue from BEPS implementation.[5]

As a result, implementation of the BEPS Action Plan is based, firstly, on taking into account the China's realities; and secondly, on balancing between the fight against tax avoidance and safeguarding business interests, especially of Chinese overseas companies. The review of existing standards and integration of BEPS provisions into the national legislation is carried out not only within the traditional tax administration framework, but also by a specially created Department of International Taxation within the SAT. It is important to note the growing public awareness of the state institutions activities to fight BEPS.[6]

Table 2. BEPS Actions implementation in China

Action	Implementation status	Expected timing
1.	No action is currently expected	N/A
2.	Feasibility studies are carried out by the SAT	Implementation in progress
3.	The existing CFC rules are considered by the SAT to be compliant with the OECD recommendations	Implemented
4.	Thin capitalization and transfer pricing rules are used to limit interest deductions, but they only cover interest paid between related parties.	N/A
5.	The government is reviewing relevant regimes to ensure they are in line with Action 5 recommendations	Implementation in progress
6.	The existing practices are considered by the SAT to be compliant with the OECD recommendations	Implemented
7.	The existing practices regarding PE issues are considered by the SAT to be compliant with the OECD recommendations	Implemented
8–10	Draft changes to the national legislation, adapted as appropriate for China, reflect OECD recommendations	Expected to be effective retroactively as from 1 January 2016
12	The SAT is considering relevant changes to the national legislation	Expected not earlier than in 2017
13	Draft changes to the national legislation, adapted as appropriate for China, reflect OECD recommendations	Expected to be effective retroactively as from 1 January 2016
14	The SAT plans actions to address at eliminating gaps in the national legislation concerning this issue, as well as develop cooperation with other countries	Implementation in progress

Source: *elaborated by the author based on https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-beps-actions-implementation-china.pdf*

[5] Deloitte. BEPS Country Scorecards. *http://www2.deloitte.com/global/en/pages/tax/articles/beps-country-scorecards.html* (accessed 17 February 2017)

[6] Ibid

India

Indian authorities fully support the changes proposed by the OECD to address BEPS. As the tax department of the finance ministry representative noted, "BEPS is a reality. The report presents a consensus among G20 nations. We will now start examining the report, and see when and how we can start bringing in the measures".[7]

In many cases, even in the current absence of relevant rules in the Indian legislation, tax authorities use the BEPS Action Plan provisions. At the same time, some Indian laws do not fully comply with the OECD recommendations on BEPS given the need to adapt them for national circumstances.[8] Similarly to many other countries, the main objective of Indian tax authorities in relation to the BEPS Actions implementation is maintaining a balance between fighting tax base erosion and stimulating business activity.[9]

Integration of some anti-BEPS provisions into the national law started in India before the adoption of the OECD Action Plan. For instance, the Finance Act 2013, a key national document regulating the financial sector, suggested the introduction of a general anti-avoidance rule (GAAR) starting from 1 April 2015, which is in line with the objectives of BEPS Action 6.[10] However, its application has been deferred by two years.[11]

The Finance Act 2016 approved and published in May 2016 provides for new rules aimed at combating BEPS. In particular, they deal with taxation of digital services (Action 1), the "patent box" regime (Action 5), as well as documentation and cross-country reporting on transfer pricing (Action 13).[12] Along with the integration of these recommendations into the national legislation tax authorities try to inform all stakeholders about the ongoing changes, resulting in a high level of business awareness of the BEPS Project in India.[13]

Table 3. BEPS Actions implementation in India

Action	Implementation status	Expected timing
1.	Some rules are introduced by the Finance Act 2016	Starting from 1 June 2016
2.	No action is currently expected	N/A
3.	No action is currently expected. India does not have any CGC regulations	N/A
4.	No action is currently expected	N/A
5.	Some rules are introduced by the Finance Act 2016	Starting from 1 April 2017
6.	The Finance Act 2016 introduced the general anti-avoidance rule (GAAR)	Starting from 1 April 2017
7.	No action is currently expected	N/A

[7] Business Standard. The BEPS effect: Is India ready? *http://www.business-standard.com/article/opinion/the-beps-effect-is-india-ready-115101800760_1.html* (accessed 17 February 2017)

[8] EY. OECD BEPS Reports: An Indian Perspective. *http://www.ey.com/IN/en/Newsroom/News-releases/EY-oecd-beps-reports-an-indian-perspective* (accessed 17 February 2017)

[9] Business Standard. The BEPS effect: Is India ready? *http://www.business-standard.com/article/opinion/the-beps-effect-is-india-ready-115101800760_1.html* (accessed 17 February 2017)

[10] Finance Act 2013. *http://www.taxindiaonline.com/RC2/union_budget/finance_act/finance_act_13/* (accessed 17 February 2017)

[11] Deloitte. BEPS Country Scorecards. *http://www2.deloitte.com/global/en/pages/tax/articles/beps-country-scorecards.html* (accessed 17 February 2017)

[12] Central Board of Excise and Customs. Finance Act 2016. *http://www.cbec.gov.in/resources//htdocs-cbec/fin-act2016.pdf* (accessed 17 February 2017)

[13] Deloitte. BEPS Country Scorecards. *http://www2.deloitte.com/global/en/pages/tax/articles/beps-country-scorecards.html* (accessed 17 February 2017)

Action	Implementation status	Expected timing
8-10.	OECD recommendations are partially accepted in practice but not incorporated into the national law	N/A
12.	No action is currently expected	N/A
13.	Some rules are introduced by the Finance Act 2016	Starting from 1 April 2016
14	Some government sources have indicated that that mandatory arbitration is unlikely to be acceptable in India	N/A

Source: *elaborated by the author based on http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-beps-actions-implementation-india.pdf*

Indonesia

The first Asia-Pacific Technical Meeting on BEPS held in November 2015 became an important incentive for enhancing Indonesian participation in the development, implementation and monitoring compliance with measures against BEPS. The meeting organized by the Ministry of Finance of Indonesia was attended by representatives of 17 countries and several international organizations. The Vice Minister of Finance reaffirmed Indonesian support to the BEPS Project as an important issue on the G20 agenda and called for strengthening cooperation between developed and developing countries in the fight against tax base erosion.[14]

Even before the BEPS Action Plan adoption the Indonesian legislation considered BEPS issues. In particular, it provided rules for controlled foreign companies, disclosing transactions with "tax havens", and information on transfer pricing. Tax authorities were stimulated to exchange information with foreign counterparts, and mechanisms were established to combat tax treaties abuse. At the same time, none of these changes in Indonesian tax legislation was officially associated with implementing the BEPS Action Plan.

The prospects for further implementation of the BEPS Action Plan provisions in Indonesia are quite favorable. The main tax authority of the country, the General Directorate of Taxes (DGT) of the Ministry of Finance, fully supports measures against BEPS. Particular attention is paid to the exchange of information with foreign tax authorities. On 1 May 2015, the Convention on Mutual Administrative Assistance in Tax Matters entered into force for Indonesia, creating additional possibilities of such cooperation for the national tax authorities.[15] According to some experts, a general anti-avoidance rule (GAAR) is likely to be adopted in Indonesia. In addition, the DGT has been working to raise business awareness of BEPS issues and proposed measures to address them.[16]

Table 4. BEPS Actions implementation in Indonesia

Action	Implementation status	Expected timing
1	No action is currently expected	N/A
2	No action is currently expected	N/A
3	Indonesia already has CFC provisions in its legislation. There is no information on possible further changes in accordance with the OECD recommendations	N/A

[14] OECD. OECD holds a regional consultation on BEPS for Asia-Pacific in Indonesia. *http://www.oecd.org/ctp/oecd-holds-first-asia-pacific-technical-meeting-on-beps-in-indonesia.htm* (accessed 17 February 2017)

[15] OECD. Jurisdictions participating in the Convention on Mutual Administrative Assistance in Tax Matters status. *http://www.oecd.org/tax/exchange-of-tax-information/Status_of_convention.pdf* (accessed 17 February 2017)

[16] Deloitte. BEPS Country Scorecards. *http://www2.deloitte.com/global/en/pages/tax/articles/beps-country-scorecards.html* (accessed 17 February 2017)

Action	Implementation status	Expected timing
4	New rules effective since 1 January 2016 partially reflect the OECD recommendations. No further action is currently expected	1 January 2016
5	No action is currently expected	N/A
6	The national legislation provides for measures to prevent treaty abuse	Implemented
7	No action is currently expected	N/A
8-10	Regulations issued in 2013 partially address transfer pricing issues specified in the BEPS Action Plan. No further action is currently expected	N/A
12	The Convention on Mutual Administrative Assistance in Tax Matters entered into force[17]	2018
13	New regulations have introduced requirements on transfer pricing documentation and country-by-country reporting in line with the OECD recommendations. Indonesia has signed the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information	Implemented
14	No action is currently expected	N/A

Source: *elaborated by the author based on http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-beps-actions-implementation-indonesia.pdf*

BEPS ACTION PLAN IMPLEMENTATION IN RUSSIA

Although Russia is not an OECD member and does not have a key partner status, its G20 membership, in particular the 2013 presidency, contributed to growing attention and progress in the BEPS Action Plan implementation at the national level.

Russia officially participates in the work of the OECD Committee on Fiscal Affairs, in particular one of its working bodies — the Forum on Tax Administration.[18] Representatives of Russian business participate[19] in public discussions concerning BEPS issues that can potentially affect them, such as controlled foreign companies[20] or the permanent establishment status,[21] on an equal footing with the OECD members, as well as the key partners of the Organization.

Thus, at the national level Russia actively uses best global tax policy practices. This resulted in the adoption of a package of new legislative initiatives aimed, inter alia, at addressing base erosion and profit shifting, in 2014.

Currently the Russian legislation on tax avoidance reflects a number of recommendations of the BEPS Action Plan, including "thin capitalization" rules, limiting interest deductions, as well as transfer pricing rules and control. Within a package of measures to address "de-offshorization» of the Russian economy the government has adopted rules concerning controlled foreign companies, introduced the "beneficial owner" concept, developed measures to prevent artificial avoidance of the permanent establishment status and proposed some other initiatives related to BEPS.

[17] OECD. Jurisdictions participating in the Convention on Mutual Administrative Assistance in Tax Matters status. http://www.oecd.org/tax/exchange-of-tax-information/Status_of_convention.pdf (accessed 17 February 2017)

[18] OECD. Forum on Tax Administration. https://www.oecd.org/tax/forum-on-tax-administratioN/About/ (accessed 17 February 2017)

[19] OECD. Previous requests for input. *http://www.oecd.org/ctp/previous-requests-for-input.htm* (accessed 17 February 2017)

[20] OECD. Comments received on Public Discussion draft BEPS Action 3: Strengthening CFC Rules. *http://www.oecd.org/tax/aggressive/public-comments-beps-action-3-strengthening-cfc-rules-part1.pdf* (accessed 17 February 2017)

[21] OECD. Comments received on Revised Discussion draft BEPS Action 7: Prevent the Artificial Avoidance of PE Status. *http://www.oecd.org/ctp/treaties/public-comments-revised-beps-action-7-prevent-artificial-avoidance-pe-status.pdf* (accessed 17 February 2017)

Short-term plans for tax legislation development (until 2018) also take into account the need for the BEPS Action Plan implementation. Work is in progress to provide for the automatic exchange of financial account information with foreign jurisdictions, improve indirect taxation in the area of electronic commerce, transfer pricing,[22] нcorporate borrowings taxation, and controlled foreign companies. Tax authorities also take measures to enhance international cooperation[23] and develop supervision mechanisms[24] in other areas related to BEPS.

Thus, the focus on "de-offshorization" of the Russian economy contributed to integrating a considerable part of the BEPS Action Plan recommendations into the national law. Public awareness of the OECD-proposed reforms and legislative changes at the national level is growing.[25] In addition, Russian judicial authorities increasingly appeal to the BEPS provisions, thus broadening the practical implementation of the new rules.[26]

Table 5. BEPS Actions implementation in Russia .

Action	Implementation status	Expected timing
1	VAT on the supply of electronic services by no-residents to Russian customers is introduced[27]	1 January 2017
2	No action is currently expected	N/A
3	Legislation on the taxation of CFCs has been adopted and is being regularly updated.[28] A list of states and territories not exchanging tax information with Russia is adopted [29]	Ongoing implementation, timing is not specified
4	Russia introduced measures in line with the OECD recommendations, such as thin capitalization rules.[30] No further action is currently expected	Implemented
5	Not applicable given that Russia is not an OECD member and does not have a partner status	Not applicable
6	The use of "limitation on benefits" provisions in tax treaties is limited. Introduction of the "beneficial owner" concept partially addresses the OECD recommendations	Partially implemented. Timing for full implementation is not specified
7	The permanent establishment concept is introduced.[31] No further action is currently expected	Implemented
8-10	New transfer pricing rules are being developed	N/A
12	The Convention on Mutual Administrative Assistance in Tax Matters has entered into force for Russia and is expected to improve disclosure of aggressive tax planning.[32]	Disclosure planned in 2018

[22] Federal Tax Service. Transfer pricing *https://www.nalog.ru/rn77/taxation/transfer_pricing/* (accessed 17 February 2017)

[23] Federal Tax Service. Federal Tax Service participated in the OECD meeting. *https://www.nalog.ru/rn77/about_fts/international_cooperation/mer/6107527/* (accessed 17 February 2017)

[24] Federal Tax Service. More than 30 countries have used the Federal Tax Service experience in electronic control.. *https://www.nalog.ru/rn77/news/smi/5638767/* (accessed 17 February 2017)

[25] Deloitte. BEPS Country Scorecards. *http://www2.deloitte.com/global/en/pages/tax/articles/beps-country-scorecards.html* (accessed 17 February 2017)

[26] Rossijskaya Gazeta. The blaming strategy. *https://rg.ru/2015/12/08/sydi.html* (accessed 17 February 2017)

[27] Federal Tax Service. VAT on electronic services can be discussed at the FTS website *https://www.nalog.ru/rn77/news/activities_fts/6103267/* (accessed 17 February 2017)

[28] Federal law of 15.02.2016 №32-FZ. *http://kremlin.ru/acts/bank/40523* (accessed 17 February 2017)

[29] Federal Tax Service. The Federal Tax Service adopted a list of states and territories not exchanging tax information with Russia. *https://www.nalog.ru/rn77/news/activities_fts/6040699/* (accessed 17 February 2017)

[30] Federal law of 08.03.2015 №32-FZ. *http://kremlin.ru/acts/bank/39499* (accessed 17 February 2017)

Action	Implementation status	Expected timing
13	The Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information is signed.[33] A draft law is published aimed at creating an appropriate legal environment for country-by-country reporting in line with the OECD recommendations	New rules are expected to enter into force in 2018
14	No action is currently expected	N/A

Source: *elaborated by the author based on http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-beps-actions-implementation-russia.pdf*

CONCLUSION

Approaches to the BEPS Action Plan implementation are different in all examined countries. In China, a special department was created for integrating the BEPS Action Plan recommendations into the national law. Chinese authorities pay special attention to the national interests as a whole and interests of local companies in particular, while implementing measures to address BEPS. However, such approach reduces the comprehensiveness of implementation. India, like China, is focused on considering the national and business interests, thus comprehensiveness and flexibility of implementation are relatively low. Indonesia made slow progress in the BEPS Action Plan implementation at the national level, however, conditions were created for its successful integration into the national law in the future.

Russia so far made the greatest progress in addressing BEPS among all countries examined. Further development of the relevant national legislation seems necessary due to substantial negative impacts of BEPS on the national tax base, as confirmed by the OECD. At the same time, it may be useful to consider the experience of other countries, similar to Russia in terms of the status of interaction with the OECD and G20 membership. One of the best practices is the creation of a special institution aimed at integrating the provisions of the BEPS Action Plan into the national law following the example of China. It is also important to note that BEPS Action Plan implementation in a short time can create additional uncertainty for companies operating in the Russian market, as well as provide foreign jurisdictions with temporary competitive advantages. In this regard, it is important to take into account, on the one hand, the countries' commitment to combat tax base erosion, and on the other hand — their experience of BEPS implementation with due account of national environment and interests of business. Finally, the tax authorities experience in informing stakeholders about relevant changes may be useful. Put together such approach would ensure a level playing field for companies operating in Russia and other BEPS adhering countries.

[31] Federal law of 24.11.2014 №376-FZ. http://kremlin.ru/acts/bank/39080 (accessed 17 February 2017)

[32] OECD. Jurisdictions participating in the Convention on Mutual Administrative Assistance in Tax Matters status. *http://www.oecd.org/tax/exchange-of-tax-information/Status_of_convention.pdf* (accessed 17 February 2017)

[33] Federal Tax Service. Russia signed the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information. *https://www.nalog.ru/rn77/news/activities_fts/6067818/* (accessed 17 February 2017)