

Tax News Bulletin

7 October, 2015

OECD publishes final BEPS reports

On Monday October 5, 2015, the OECD published its final reports on BEPS¹. In general, the draft reports have been confirmed and advise the OECD member states to combat harmful tax practices (practices which allocate profits to low tax environments without relevant substance). To achieve its goals the OECD advises to actively exchange information (rulings and transfer pricing data included), to repair double non taxation schemes (hybrid mismatches) and to close a multilateral tax agreement between member states to efficiently amend double tax treaties.

The final report on Action 5 gives further guidance on the use of patent (-like) box regimes.

Action 5 states that:

1. the modified nexus approach applies (reference is made to our tax news bulletin of 20 February 2015) and
2. the patent box can only be applied if either:
 - a. A patent is granted
 - b. A copyright has been obtained for software developed
 - c. A patent-like innovation was created, but no patent is granted. A patent-like innovation means that a Company received a declaration from a government authority (not related to tax authorities) saying that the innovation qualifies as a patent-like innovation. This third category only applies if the Company's sales, on a consolidated level, do not exceed EUR 50 million and the Company does not earn more than EUR 7.5 million with the patent-like innovation.
3. Marketing intangibles can never qualify.

From earlier reports it can be derived that the above measures should enter into effect on January 1, 2017 at the latest, with a grandfathering period for existing practices until 2021.

If you have any questions, please do not hesitate to contact Otterspeer, Haasnoot & Partners

¹ OECD (2015), *Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance, Action 5 - 2015 Final Report*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris. <http://dx.doi.org/10.1787/9789264241190-en>