



Taxation in the digitalised economy and beyond

The journey so far, and the way ahead

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Speakers



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How did we get here?



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Overview

BEPS 1.0 – 2013-15

- 15 Action Items
- Source/residence left
- Tax value creation
- Action 1 conclusion:
 - Cannot ring-fence DE
 - Other BEPS solve

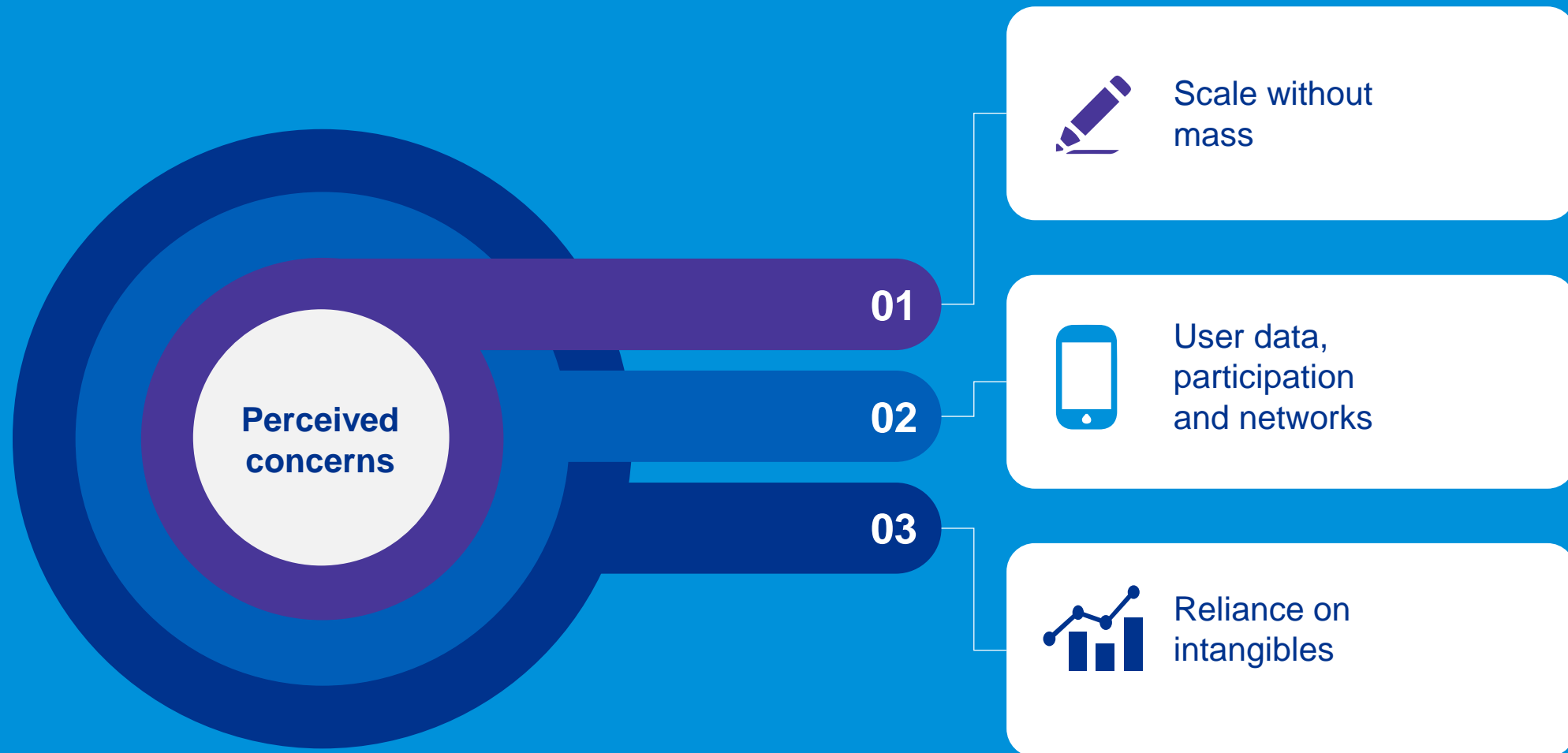
Dissatisfaction

- Digital Services Tax
- Rise of Unilateralism
- EU proposals failed
- US tech companies targeted
- US GILTI & BEAT

BEPS 2.0 - Feb 19 +

- Beyond arm's length
- Tax residual profit
- Specific proposals beyond digitalisation
- Minimum tax proposals to fill remaining gap

OECD/G20 – BEPS Action 1



BEPS Action 1 - Interim Report March 2018

The views of countries can be categorized into three groups



Group 1

- User participation is value creation
- Targeted measures needed
- Otherwise maintain existing international framework

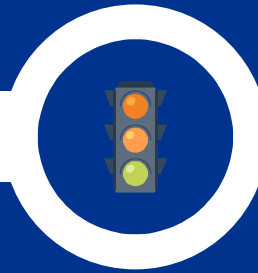
Group 2

- Digitalization challenges existing international framework
- Such challenges are not exclusive to DE

Group 3

- BEPS appears to be effective
- Full impact yet unknown
- Satisfied with existing framework
- No significant reforms

European digital services taxes: Challenges & initiatives



A DST has some characteristics of a direct tax

- Rationale: Taxation of profits where value is created
- Chargeability on a yearly basis (vs. per transaction)



Compatibility with tax treaties

- If the DST is a direct tax, within the scope of OECD Model Convention Article 2?
- Risks of double taxation and multiplication of MAPs



Compatibility with EU law

- EU based DST: could be contrary to primary EU law
- Unilateral DST:
 - Possible indirect discrimination based on nationality

	France	Austria	Italy	Spain	UK
Tax rate	Up to 5%	3%	3%	3%	2%
Effective	— 1 January 2019	— 2020 (at the latest)	— 30 June 2019	— TBC (government approved Jan 2019)	— 1 April 2020

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(Interim) measures Asia Pacific

Jurisdiction	Measure	Status	Key features
	— Equalisation levy	— Currently applicable	<ul style="list-style-type: none"> — Applies to digital services from overseas — Tax collection from service recipient; platforms acting as a withholding agent
	— Significant economic presence	— Legislative phase	— Applies to overseas providers of digital services meeting local revenue thresholds / user thresholds
	— Income tax on digital services	— Currently applicable	<ul style="list-style-type: none"> — Income tax on digital services from overseas — Net basis taxation with cost deduction, deemed profit ratio or contribution ratio — Collection on withholding basis (platforms)
	<ul style="list-style-type: none"> — Diverted profits tax and anti-PE avoidance measures — Possible introduction of a digital services tax 	<ul style="list-style-type: none"> — Currently applicable — Further consultation held in 2018 	<ul style="list-style-type: none"> — 40% penalty tax rate for profits diverted offshore — Limited to MNEs and intra-group transactions — <i>de minimis</i> threshold and economic substance test
	— Deemed permanent establishment	<ul style="list-style-type: none"> — Policy discussion, which seems not to have progressed — VAT measures progressing in their place 	— Deeming a PE for overseas providers of digital services into Indonesia (or Thailand)
	— Digital tax	— Policy discussion	— Evaluating EU style Digital Services Tax and Diverted Profits Tax regimes

Interim measures in ASPAC v OECD Consultation Document

- Will the (interim) measures adopted by individual jurisdictions be replaced by the proposed OECD measures, or will they supplement those measures?
- Will those countries contemplated digital services taxes as interim measures still proceed, pending longer-term OECD measures?
- Are the tax systems, tax administrations and dispute resolution mechanisms in Asia sufficiently able to adopt the proposed OECD measures?
- For MNCs headquartered in ASPAC, are their system data points and accounting systems able to capture the metrics necessary for implementing the proposed OECD measures?
- Is the rapid introduction of in-country measures increasing the risk of double taxation?



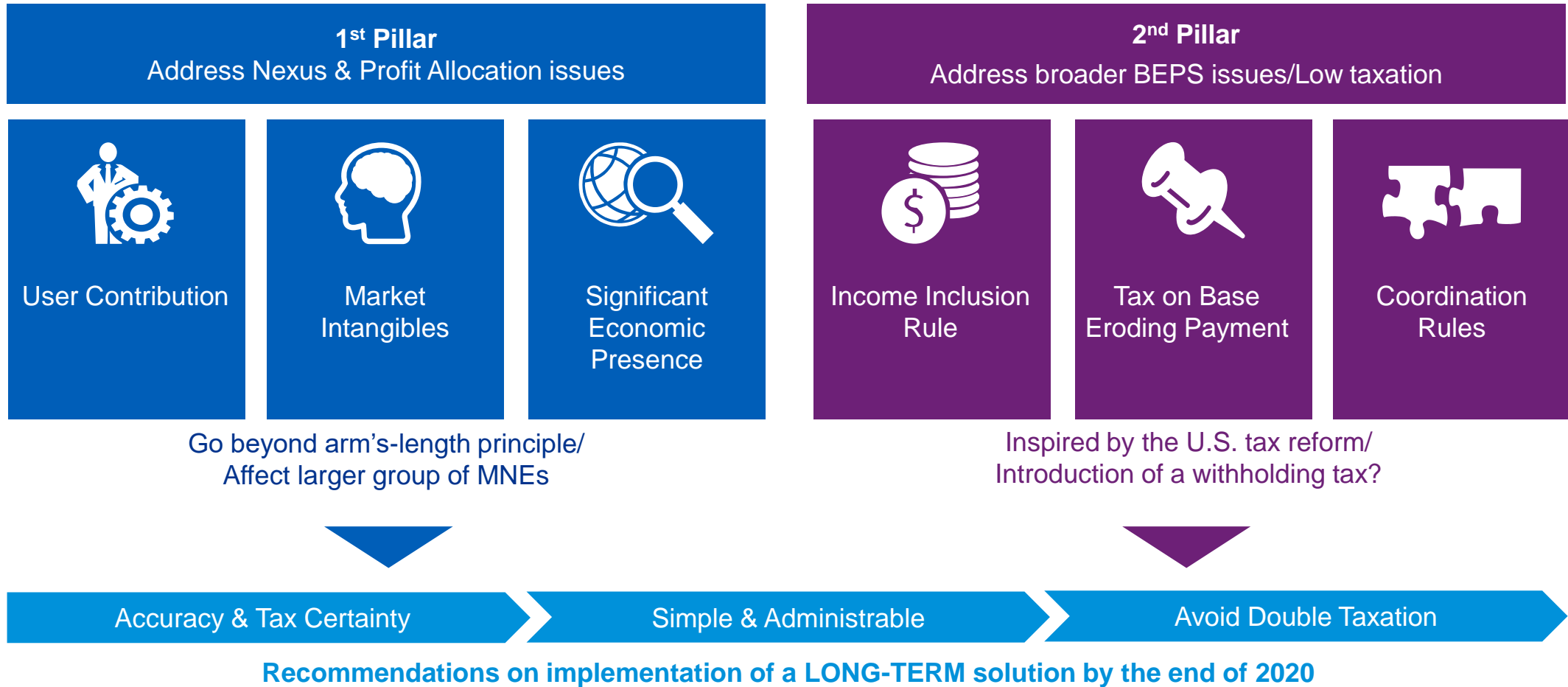
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OECD Policy Note - January 29, 2019



OECD Consultation Document

February 12, 2019 – Four Proposals

Five countries have played a leading role in putting forward four proposals

Marketing Intangibles

Market countries entitled to tax marketing profits regardless of where marketing IP is owned



Significant Economic Presence

Economic nexus with simplified profit attribution



OECD
Consultation



User Participation

Economic nexus for businesses with significant user participation and profit attribution based on user engagement



Minimum Tax

Mechanism for residence and market countries to “tax back” low-taxed profits



User Participation



Users create value that is currently not subject to tax in the user's jurisdiction



Key design features

- **Summary:** Ring-fences identified digital business models
 - Tax challenges primarily manifest by business models with mobile IP and significant user participation
 - Governments identify business models within and outside of scope
- **Nexus:** Group-wide economic nexus, but only for targeted business models
- **Profit attribution:** How to quantify user contribution to value creation?
 - Traditional arm's-length principle specifically rejected
 - Three-step approach: 1) residual profit; 2) profit split; 3) allocate profit to markets
 - Profit split – data-driven quantitative approach or formulaic?
 - Profit allocation – relative market revenue?
- **Challenges:**
 - Conformity for profit split and allocation
 - Reallocation of profits and dispute resolution mechanism
 - Could this solution withstand the “test of time”?



Marketing Intangibles

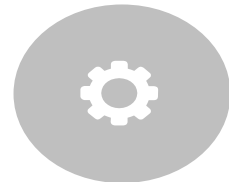


Allocate a portion of marketing profit to market countries regardless of ownership of marketing IP



Key design features

- Summary: Addresses tax challenges by allocating a share of marketing profit to market countries
 - No ring fencing – scope includes all businesses
 - Other income would be allocated based on existing transfer pricing principles
- Nexus: Economic nexus
 - E.g., Sales > \$xxM in market = taxable presence
- Profit attribution: U.S. Treasury is advocating a modest approach
 - Modest – e.g., a percentage of in-market sales (dependent upon group profitability)
 - Disruptive – e.g., “Profit split” residual profit between marketing and product intangibles using public data
- Challenges:
 - Would modest profit attribution satisfy DST advocates?
 - A departure from the arm’s-length principle?
 - “Major surgery” to implement globally?
 - Implementation issues including application of arm’s length principle to remaining income



Significant Economic Presence



Economic nexus with simplified profit attribution



Key design features

— **Summary:** Reward market jurisdictions by abandoning residency-based nexus rules in favor of economic nexus

- Not clear whether scope would “ring-fence” highly digital businesses

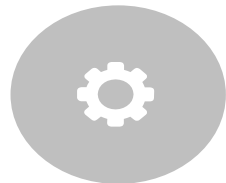


— **Nexus:** Significant economic presence (e.g., OECD 2015 AP1 Report)

- Possibly targets highly digital businesses (see 2015 Report)

— **Profit attribution:** Formulary apportionment

- Clear departure of arm’s-length principle
- Tax base computed by multiplying market sales by group profit margin percentage – allocate based on apportionment factors
- Goal is administerability and avoiding the complexities of arm’s-length profit attribution



— **Challenges:**

- Equally weights profitability in each market
- Is the world ready to abandon the arm’s-length principle?



Minimum tax supported by anti-base erosion measures



Key design features

- **Summary:** Remove incentives to avoid market nexus by shoring-up BEPS measures to address insufficiently-taxed profits of multinational enterprises
 - No ring fencing – scope includes all businesses
 - Two methods to “tax back” low-taxed profits – 1) CFC inclusion (e.g., U.S. GILTI) or 2) tax on base-eroding payments (e.g., U.S. BEAT)
- **Nexus:** Base erosion ‘tax-back’ rule requires treaty changes
 - But incentives to avoid permanent establishment may no longer be a factor
- **Tax base:** A priority rule is necessary to operate between the two ‘tax-back’ methods to avoid double taxation
 - CFC inclusion: the undertaxed CFC earnings with related FTC
 - Group-wide or country-by-country low-tax testing/inclusion?
 - Base-erosion tax: i) deny deduction or ii) deny treaty withholding tax benefits
- **Challenges:**
 - Would US GILTI constitute a “qualified” minimum tax regime?
 - Consensus on a “low-taxed” rate
 - Self-assessment vs. withholding tax and priority rules



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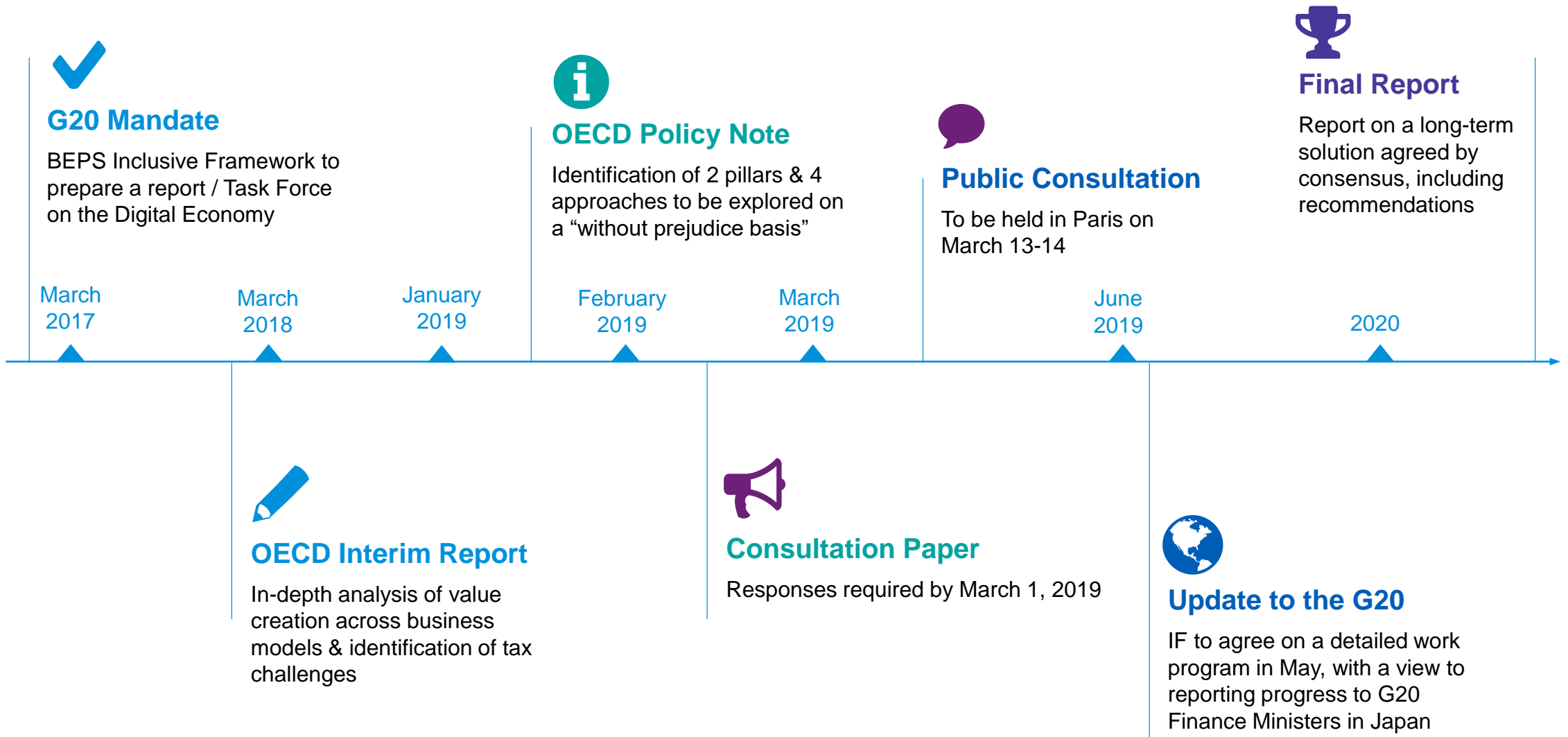
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OECD Timeline



Actions to Consider



Awareness – Educate the business and C-Suite that significant global tax change could be on the horizon again



Quantify – Look at how these changes could impact your business, and possible scenario analysis



Engage – Determine the right engagement strategy for you—from regular briefings to active engagement.



Geopolitics – Assist the business in understanding the implications of ‘failed consensus’

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Your questions





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