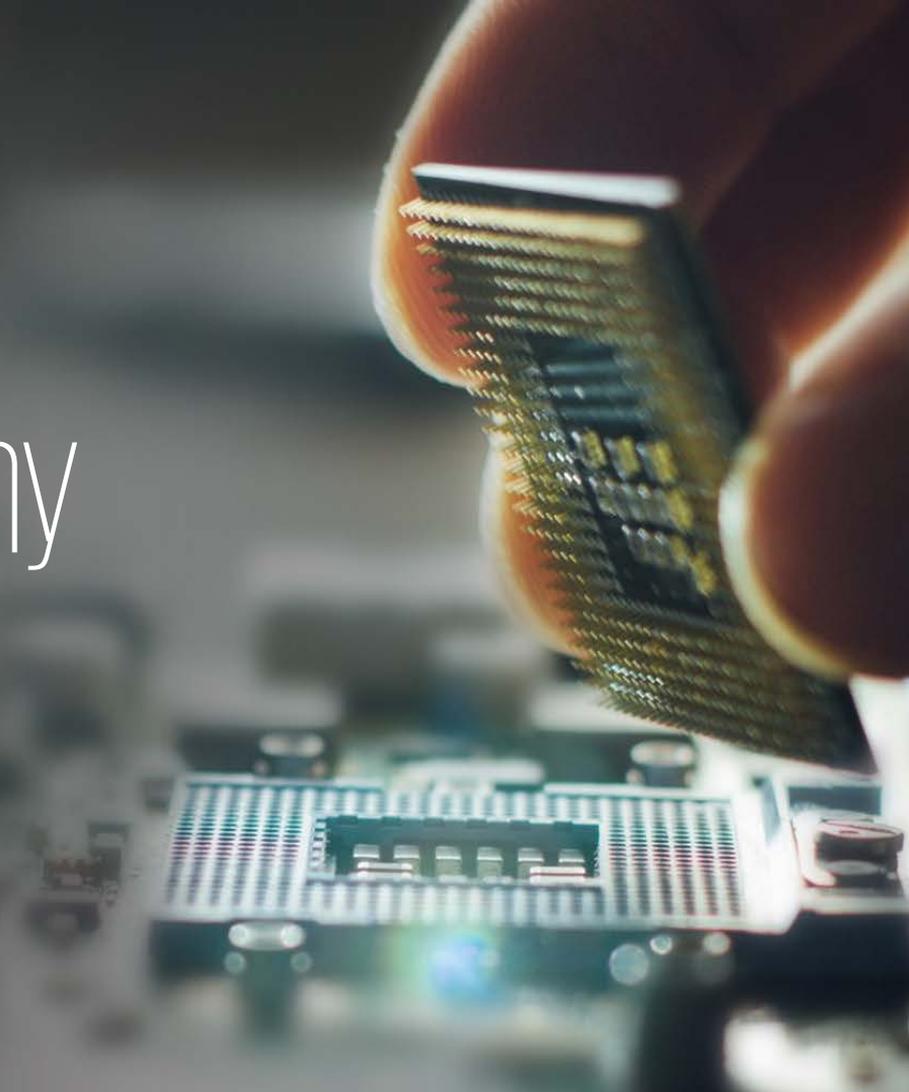




Taxation in the digitalised economy

Insights on the OECD's public consultation document

25 February 2019



Taxation in the digitalised economy

Agenda



- 1 **Introduction**
- 2 **Recap on the OECD's timeline**
- 3 **The OECD's Public Consultation Document**
- 4 **Where do we go from here?**
- 5 **Questions**

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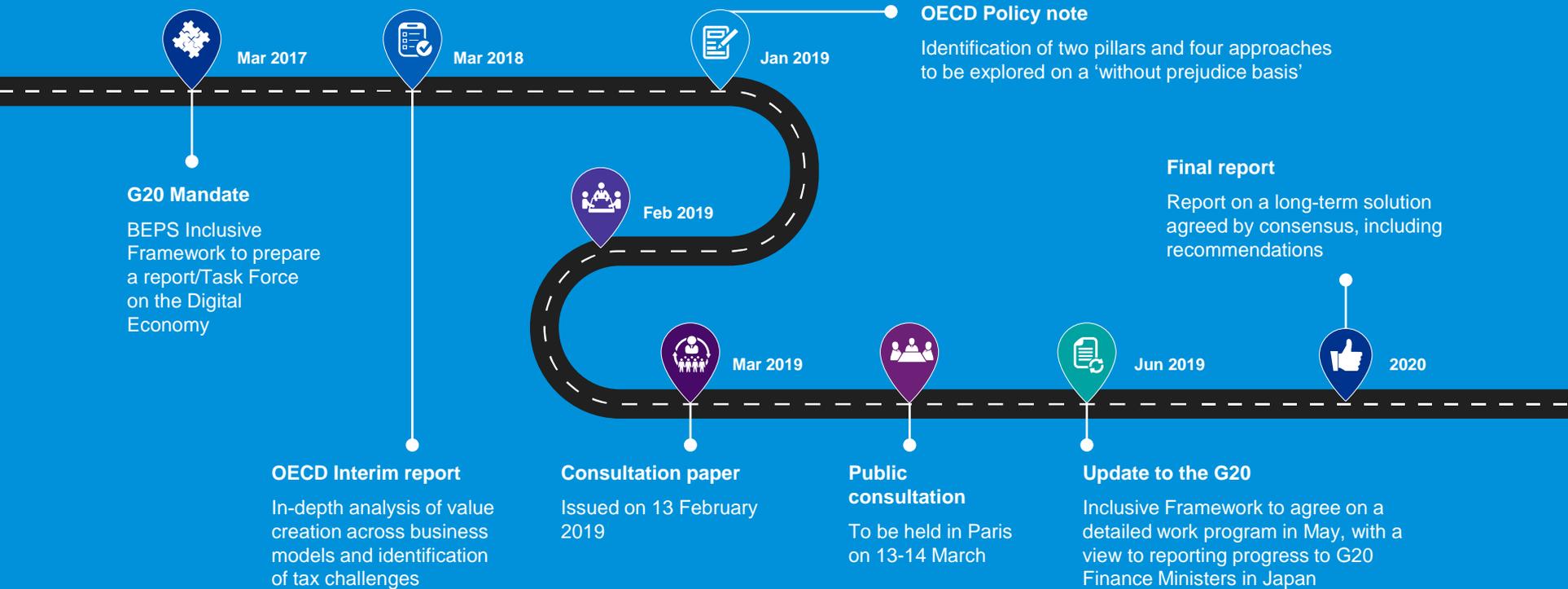


Introduction



Recap on the OECD's timeline

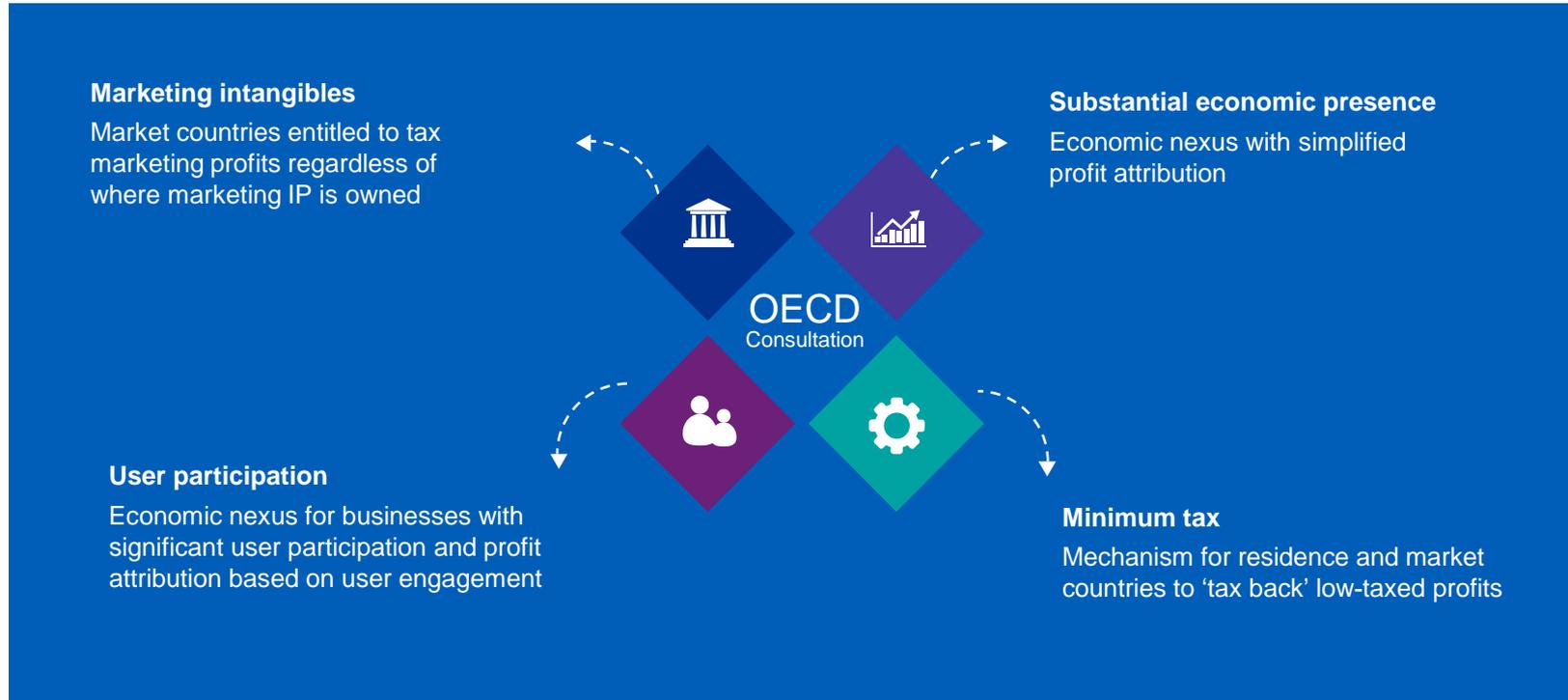
OECD timeline





The OECD's Public consultation document

OECD Public consultation document – four proposals





Pillar 1: User participation

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



Sees sustained engagement and active user participation as critical components for some highly digitalised businesses



Deviation from arm's length principle in respect of allocation of non-routine profits from business models reliant upon active user participation



Business models consistent with UK DST consultation paper



A 'ring-fenced' solution that partially accepts formulary apportionment principles

Pillar 1: Marketing intangibles

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



Sees marketing-based intangibles as critical components in modern business models



Major change from existing transfer pricing principles is linking marketing intangibles with market jurisdictions



Primarily targeted at resolving the issue of economic scale with limited local mass, a long-standing issue with both traditional and modern distribution models



Unlike User Participation proposal, not 'ring-fenced' to digital business models



Pillar 1: Substantial economic presence

Economic nexus with simplified profit attribution



Taxable presence arises where non-resident enterprise has a 'significant economic presence' in a jurisdiction



Key factors can include:

- existence of a user base and associated data input
- volume of digital content derived from the jurisdiction
- maintenance of a website in a local language



Pillar 2: Minimum tax

Income Inclusion Rules



Supplement existing CFC rules



Operate as a minimum tax



Would apply in the context of overseas subsidiaries and overseas permanent establishments



Draws on aspects of new US tax regime for taxing 'Global Intangible Low-Taxed Income' ("GILTI")



Pillar 2: Minimum tax

Tax on base eroding payments



Tackles so-called 'undertaxed payments'



Denies deductions for certain payments (to be determined), where the recipient is not subject to a minimum effective tax rate in its jurisdiction.



Disallows treaty benefits where undertaxed payments would otherwise be eligible for double tax treaty relief.





Where do we go from here?

US Government perspective

“

I highlight again our ***strong concern with countries' consideration of a unilateral and unfair gross sales tax that targets our technology and internet companies.***

A tax should be based on income, not sales, and should not single out a specific industry for taxation under a different standard. We urge our partners to finish the OECD process with us rather than taking unilateral action in this area.

Treasury Secretary, Steven Mnuchin

”

Unanimity in tax matters: Looking ahead

“Moving to qualified majority voting would allow us to make progress on important proposals in the field of tax policy in Europe.”

Pierre Moscovici

01

European Commission intention to move to qualified majority voting for tax initiatives

02

However, strong negative opinions from for example the Netherlands and Ireland

Next steps

- 
- An illustration of two hands in a maroon suit sleeve holding a large green rectangular board. One hand is at the top left corner, and the other is on the left side, pointing towards the text on the board.
- Are we any closer to achieving multilateral consensus?
 - Is multilateral consensus the only way forward?
 - Where do businesses go from here?

KPMG's involvement

- KPMG International, on behalf of its member firms, to submit a response to the OECD on the Consultation Document
- KPMG representatives attending the OECD Public Consultation on 13-14 March 2019 in Paris





Any questions?





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