



Council of the European Union
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Brussels, 11 November 2020

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WK 11873/2019 REV 1

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WORKING PAPER

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MEETING DOCUMENT

From:	General Secretariat of the Council
To:	High Level Working Party
Subject:	OECD Presentation

Delegations will find attached a powerpoint presentation given by the OECD at the High Level Working Party on 28 October 2019.

The difference between document WK 11873/2019 and the current revised document is that the latter contains a disclaimer on page 2 of the annexed presentation



HIGH LEVEL WORKING PARTY (TAXATION)

Council of the European Union
28 October 2019

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Disclaimer

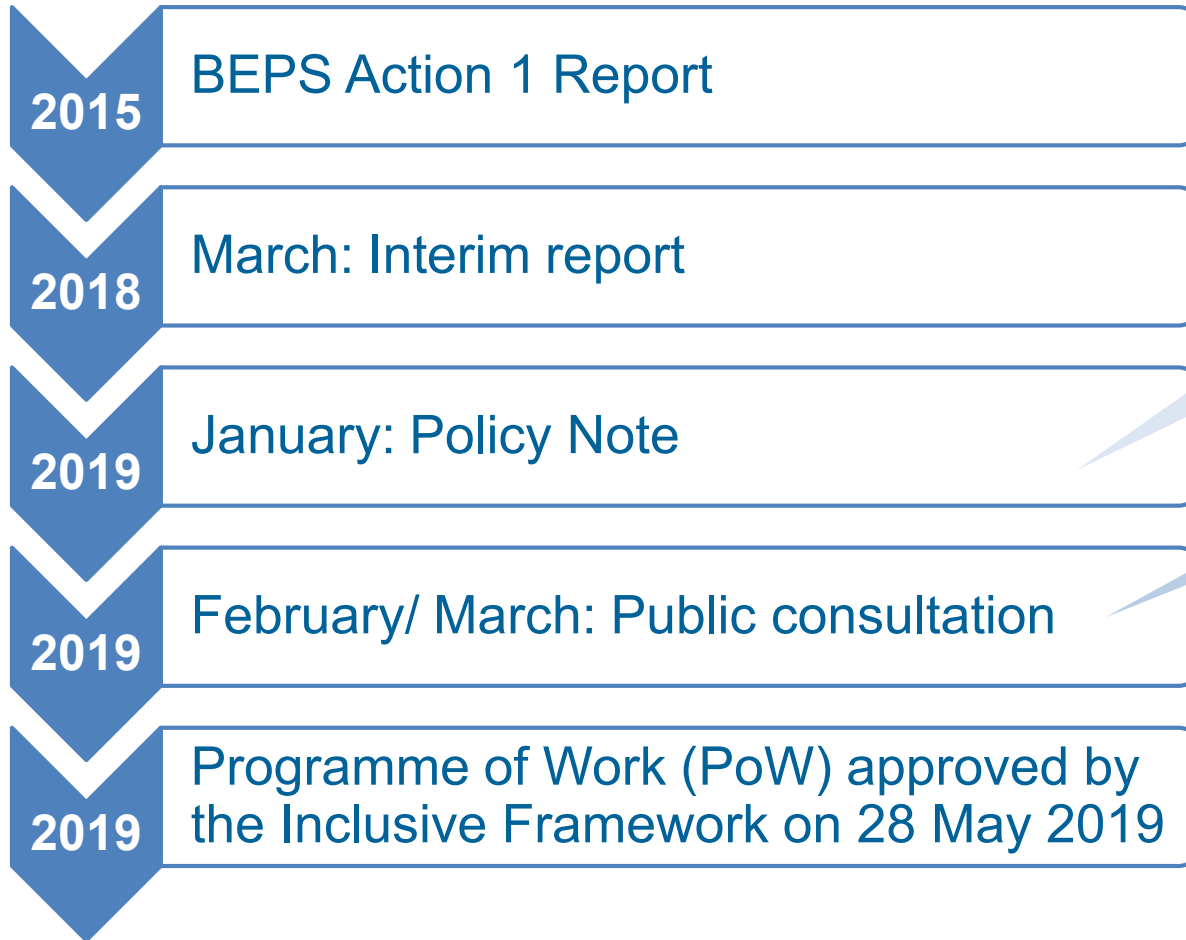
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- Introduction
- Pillar 1: Proposal for a unified approach
- Pillar 2: GloBE Proposal
- Economic Analysis & Impact Assessment
- Next steps/Conclusion

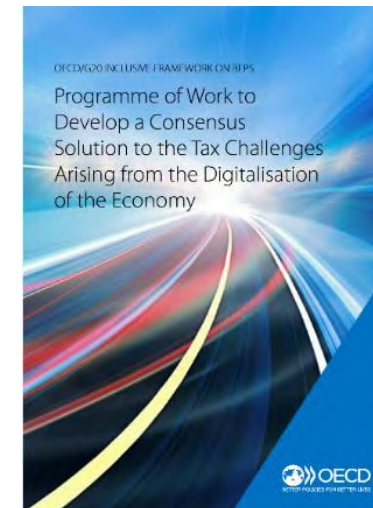


Background



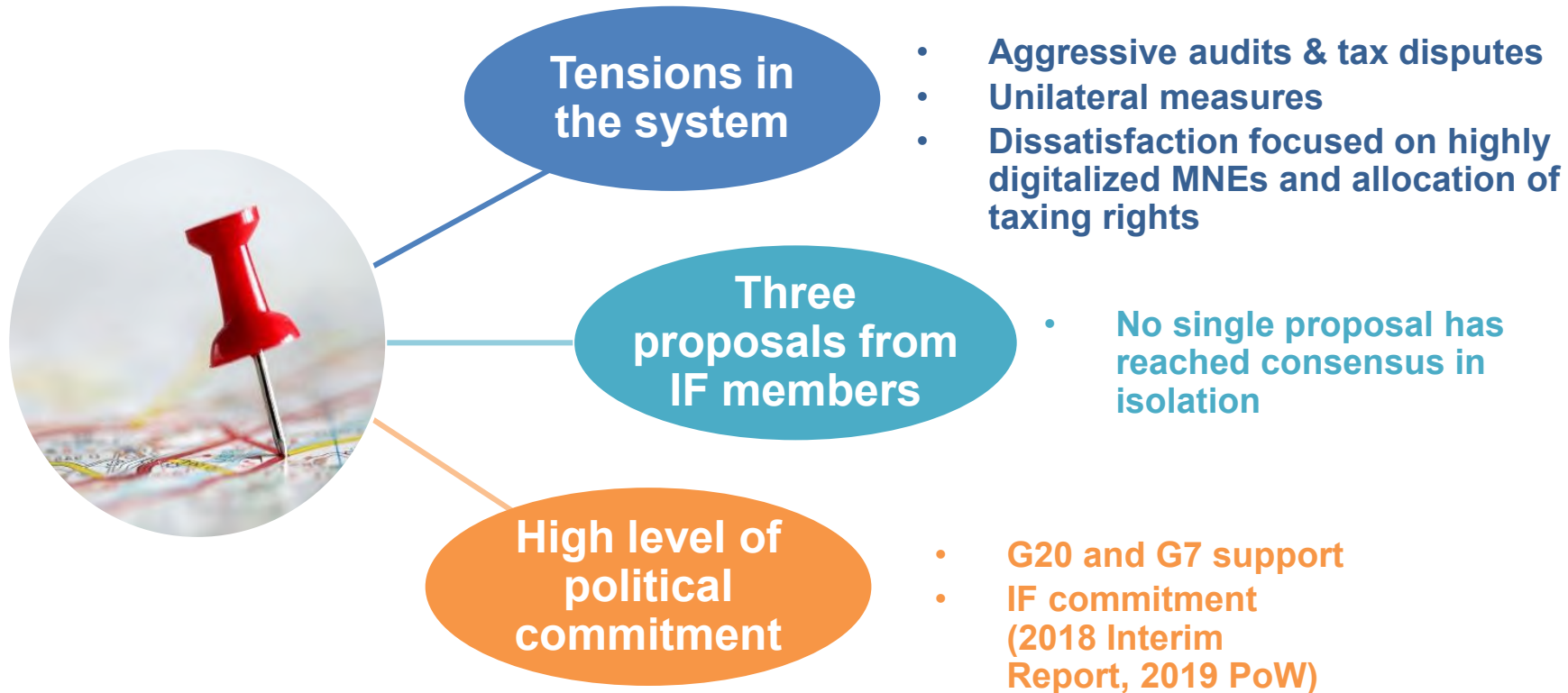
“Consistent with the analytical framework of both the Action 1 Report and the Interim Report, there is agreement to examine proposals involving two pillars which could form the basis for consensus”

Over 2,000 pages of comments and 400 participants





Where are we today?





PILLAR 1: PROPOSAL FOR A UNIFIED APPROACH



What are we trying to achieve?

Task ahead of us

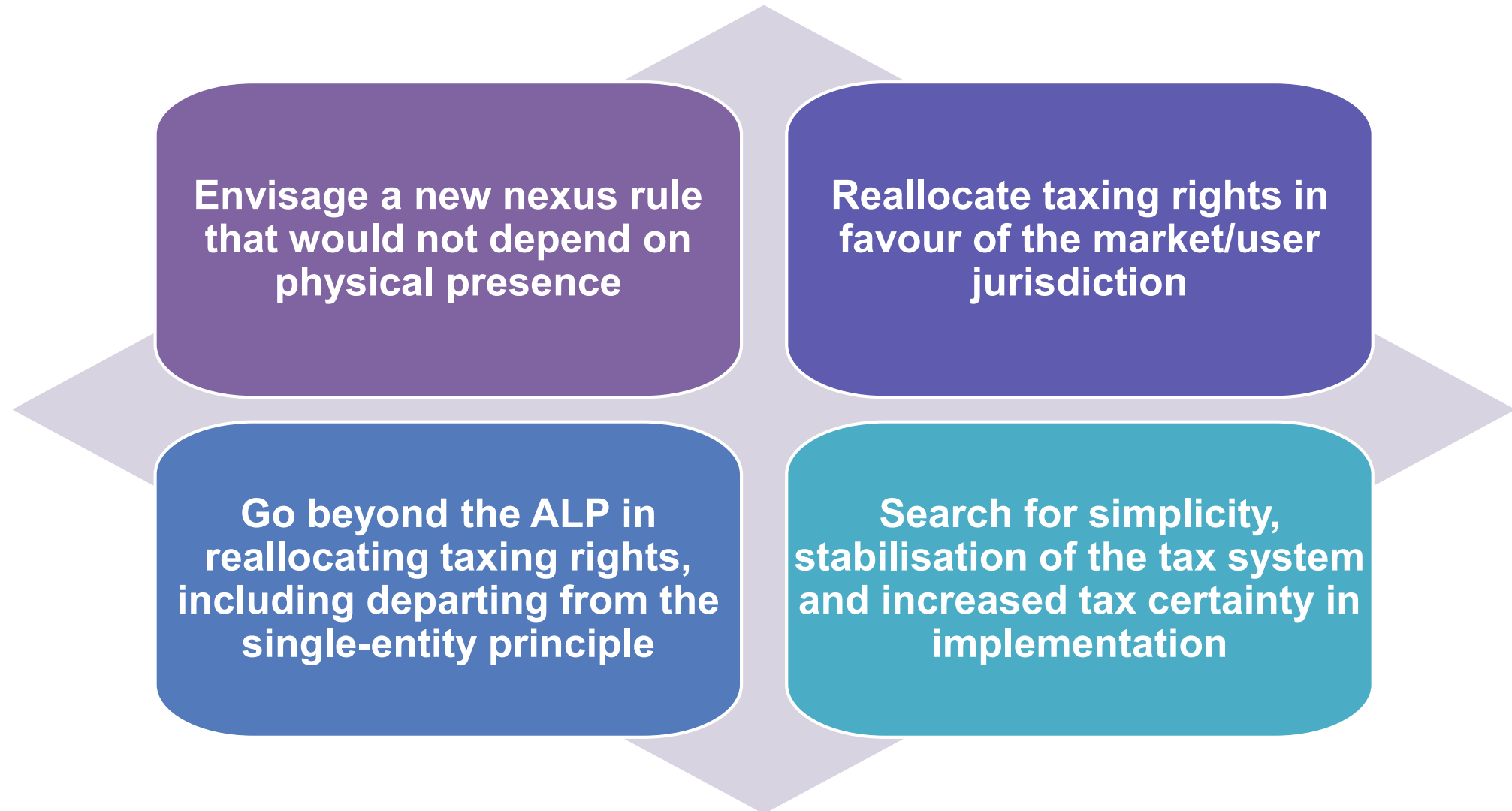
- Develop unified approach bringing together the 3 proposals before end of 2019 most likely to reach consensus.
- Start with the strong commonalities identified in the PoW.
- Meet strong demand for simplicity (e.g. public consultation).

Timeline – 2019 and early 2020

- Public consultation on 20-21 November.
- IF meeting in January 2020.

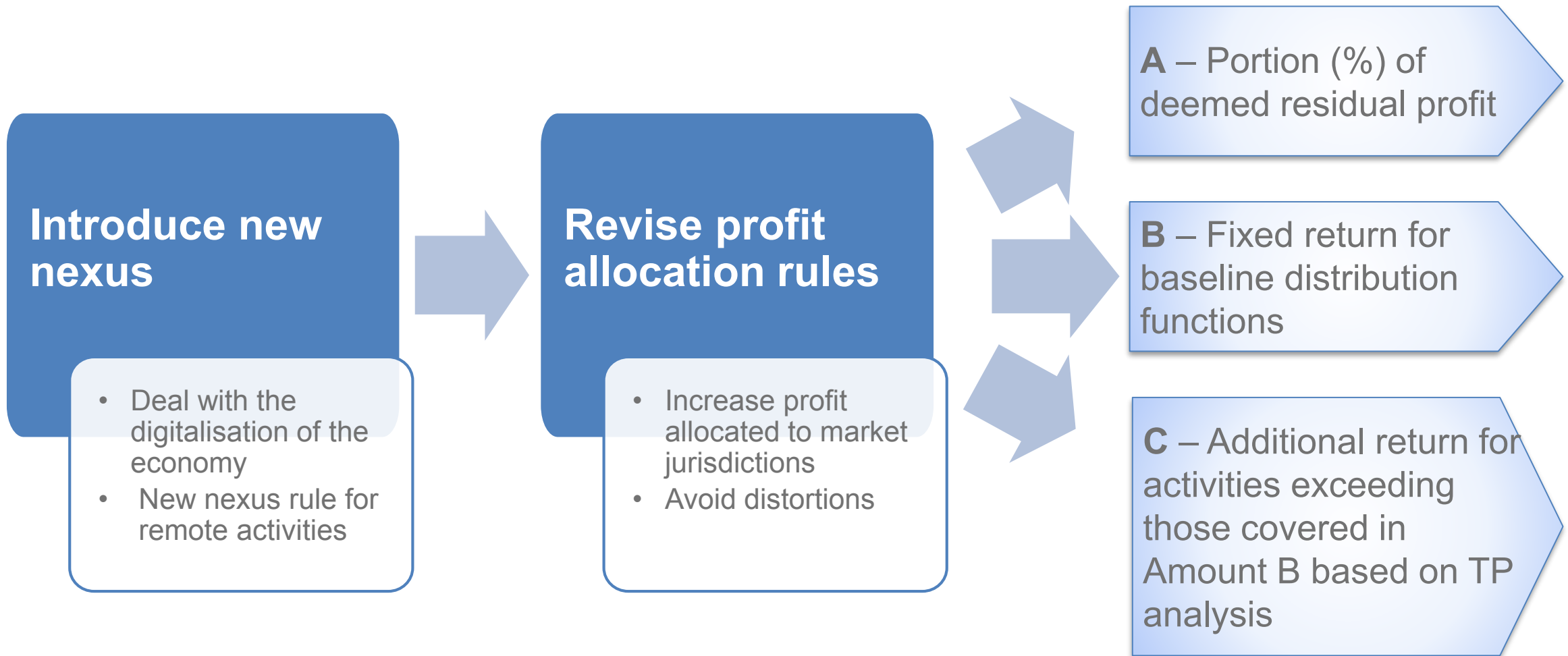


Start with the commonalities...





... as the basis of a unified approach





Scope

Limitations based on size (e.g. global revenue)

Limitations based on nature of business activity

- Broad scope (beyond pure digital activities). Focused on consumer-facing businesses – i.e. enterprises that are likely to derive meaningful value from interactions with customers/users in a market.
- Consumer facing businesses typically include B2C and potentially some B2B (e.g. sales to third-party distributors of products designed and marketed for consumers, sales of intermediary inputs designed and marketed for consumers).
- Further work needed to delineate/identify scope, incl. through business line segmentation.

Further exclusions and carve-outs (e.g. extractive industries, commodities)



New nexus rule unconstrained by physical presence

- In an increasingly digitalised economy, large businesses conduct consumer and/or user facing activities remotely
- New nexus rule would measure an MNE group sustained and significant involvement in the economy of a market
- In a standalone provision to avoid spill over effects



Profit Allocation – Overview

Model Based on three separate returns to the market/user jurisdiction

Amount A

- New taxing right to eligible market/user jurisdictions (based on new nexus)
- Independent of physical presence
- Formulaic approach based on group/business line profits
- **No links to ALP**

Amounts B & C

- No new taxing right – merely a modified operation of the ALP
- Follows separate entity approach
- Not applicable to new nexus



Amount A – New Taxing Right

Calculation based on simplifying conventions to improve administrability and certainty

1. Determination of total profit

MNE group or business-line calculations

2. Exclude deemed routine profit

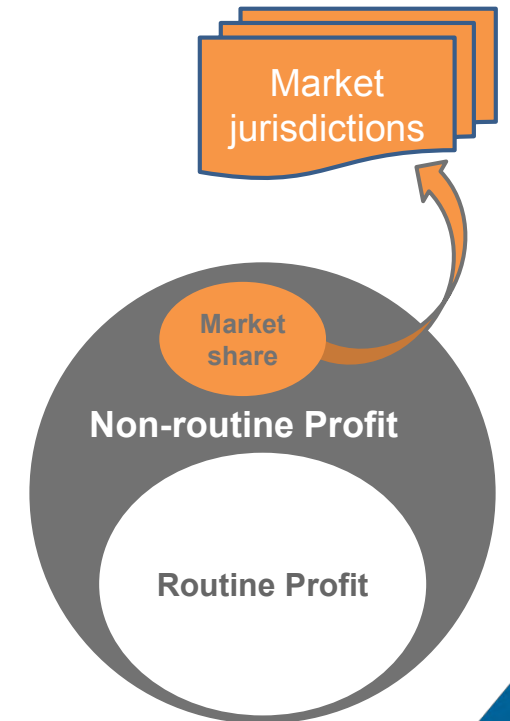
Profitability threshold (i.e. fixed percentage(s))

3. Allocate a portion of deemed non-routine profit

Formulary split (e.g. fixed percentage(s))

4. Distribute to relevant jurisdictions

Agreed allocation key (e.g. sales)





Amount B & C – Improve Current System

Objective

Amount B

- Reduce disputes
- Achieve greater certainty.

Amounts C

- Retain market jurisdiction right to tax profit above baseline activity in *Amount B*
- Prevent double counting of *Amount A*

Method

- Establishing fixed return for “baseline” or routine marketing/distribution in market jurisdiction
- Transfer pricing adjustments to eliminate double taxation.
- Apply current ALP rules to activities beyond baseline covered in *Amount B*
- Introduce binding and effective measures to prevent and resolve tax disputes, and eliminate double taxation



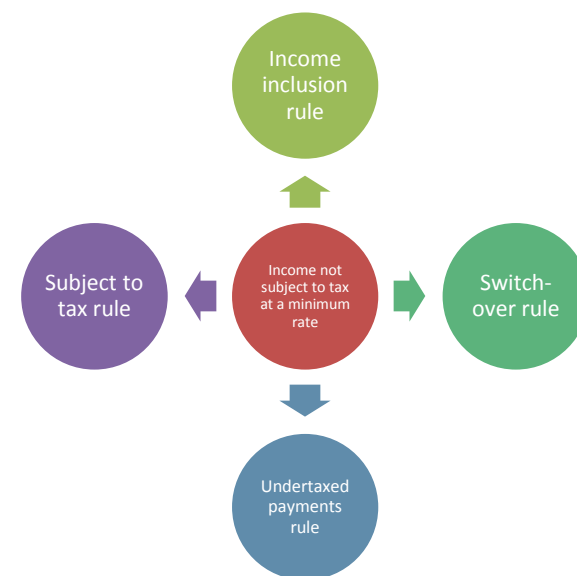
PILLAR 2: GLOBAL ANTI-BASE EROSION (GLOBE) PROPOSAL



Rationale of the GloBE proposal

Rationale Given for Pillar Two

- Ensuring that all internationally operating businesses pay a minimum level of tax
- Address remaining BEPS issues
- Multilateral solution to avoid uncoordinated rules, increased complexity and risk of over-taxation
- Reduce pressure on developing countries to grant tax incentives
- Address profit shifting risk from intangibles but not ring-fenced to digital economy
- Recent tax policy developments (e.g. GILTI)

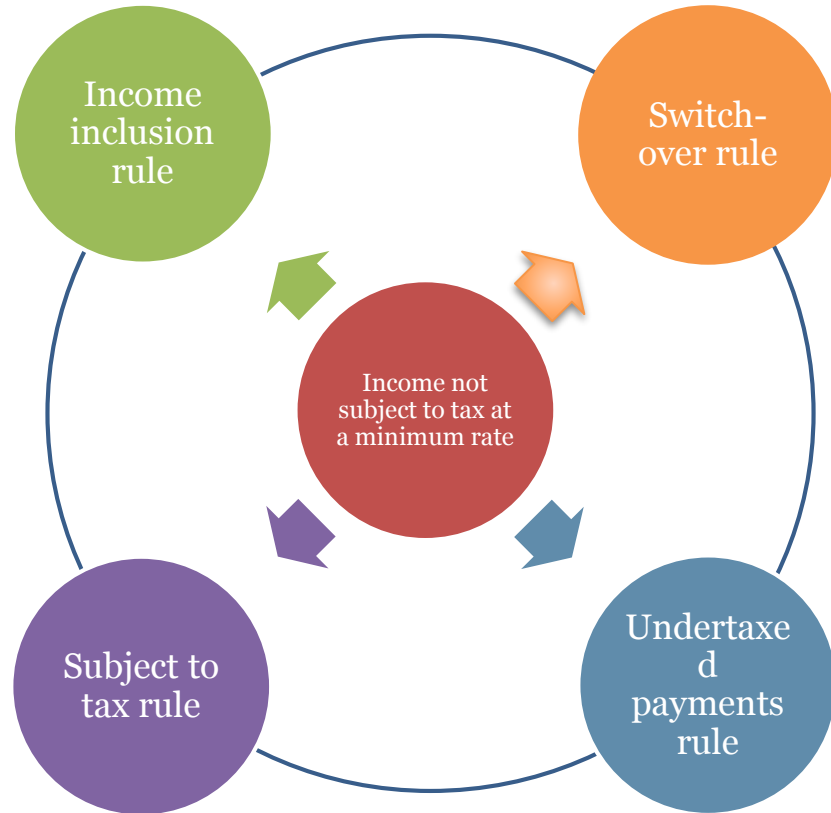


Timeline – 2019 and early 2020

- Public consultation on 13 December 2019
- IF meeting in January 2020.



Overview of the GloBE proposal



Income inclusion rule

Switch-over rule

Undertaxed payments rule

Subject to tax rule



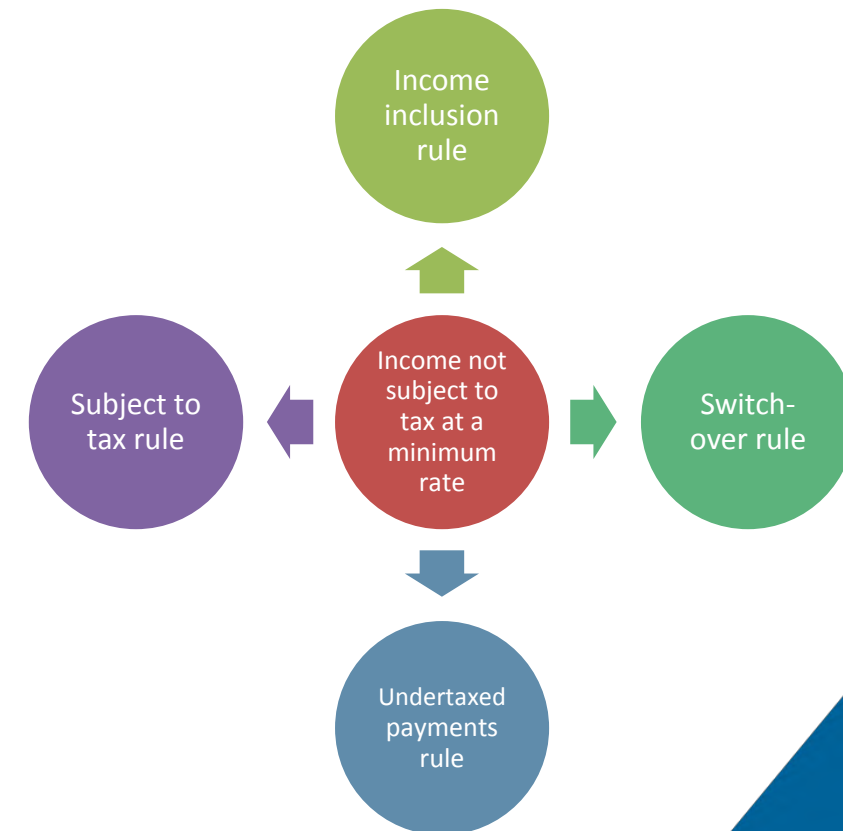
Overview of the GloBE proposal from the parent's perspective

Income inclusion rule

- Top-up to a minimum rate and use of a fixed percentage
- Effective tax rate test (including simplifications)
- Blending
- Substance and other carve-outs
- Other technical and design issues

Switch-over rule

- Allow the state of residence to apply the credit method instead of the exemption method for profits of a PE or for income derived from immovable property
- Where such profits are not subject to an effective rate of tax above a minimum rate





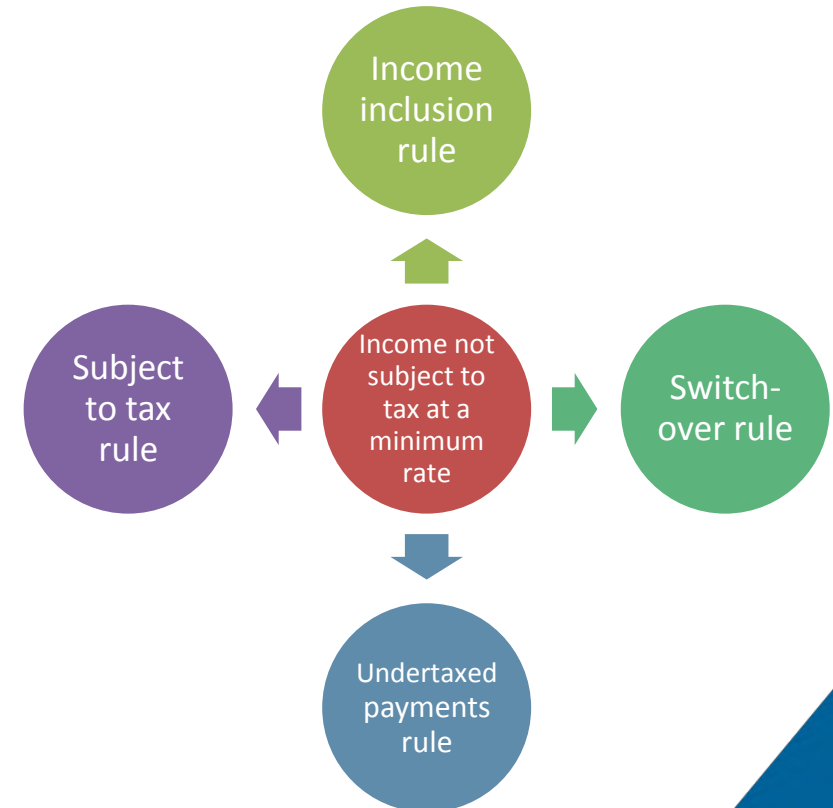
Overview of the GloBE proposal from the parent's perspective

Undertaxed payments rule

- Adjustment for payments made to related parties if the payment was not subject to tax at a minimum rate
 - Scope of payment covered
 - Mechanism to address conduit structures
 - Effective tax rate test
 - Measures to address over taxation

Subject to tax rule

- Treaty changes that allow for imposition of source country taxation when the income is not subject to a tax at a minimum rate
 - Consider broader policy questions
 - Focus on interest and royalties

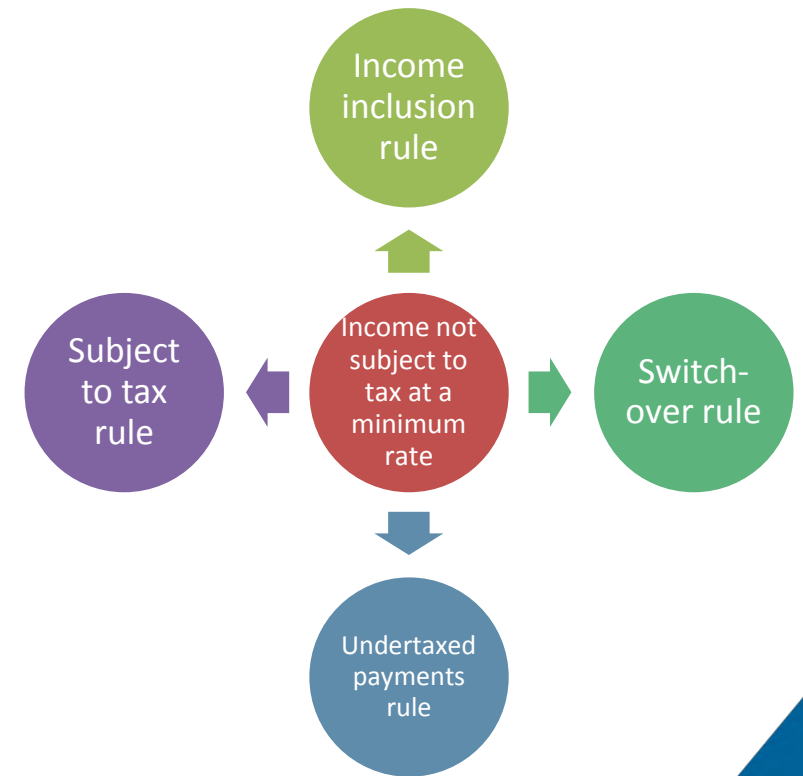




Overview of the GloBE proposal Co-ordination

Co-ordination, thresholds and compatibility

- Co-ordination between the four different rules
- Co-ordination with other international rules, including pillar one
- Possible use of thresholds and carve-outs
- Compatibility with international obligations and EU fundamental freedoms
- Emphasis on simplification, avoidance of double taxation and minimising compliance and administration costs





Revenue Implications

The combined effect of Pillars 1 and 2 would lead to a significant increase in global tax revenues

Pillar 1 involves a significant change to the way taxing rights are allocated among jurisdictions and it would also lead to a modest increase in tax revenues

- Most countries tend to gain tax base and tax revenues from Pillar 1
- Low and middle income economies tend to gain relatively more revenue than advanced economies from Pillar 1
- Investment hubs tend to experience significant losses in tax base

MNEs in digital-oriented and intangible-intensive sectors would be significantly impacted by both pillars

Both Pillars would reduce the dispersion of tax rates across jurisdictions and reduce incentives for MNEs to engage in profit shifting



Next Steps & Key Dates

OCT/19

- UA Presented to G20 FMs

NOV-DEC/19

- Public Consultations

JAN/20

- IF Meeting

JUL/20

- G20 FM Meeting

NOV/20

- G20 Leaders' Summit



Additional information

www.oecd.org/tax/

Questions and comments:
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