Taxation of the Digital Economy

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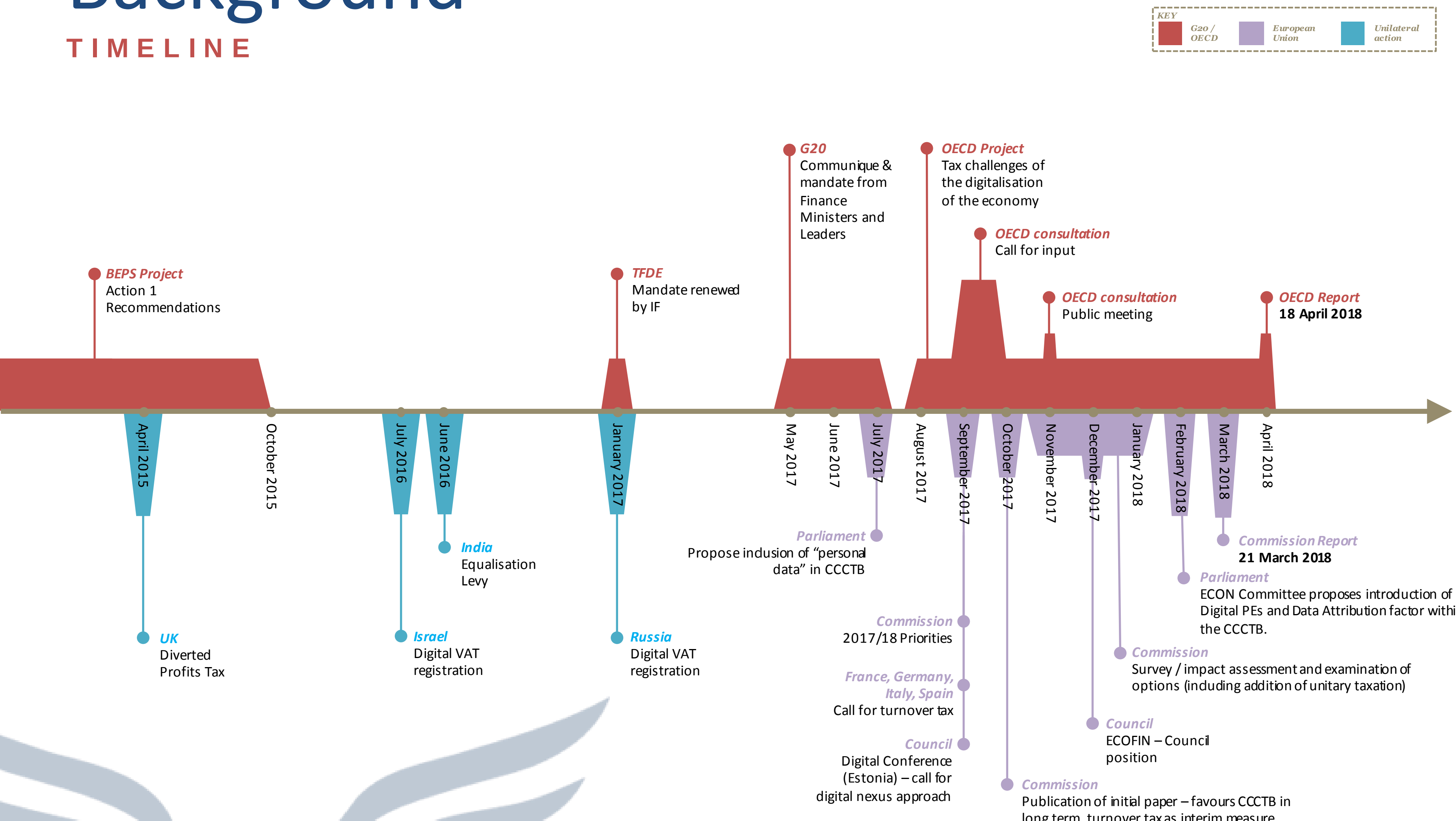
Background

TIMELINE



Digital Taxation

AMCHAM EU POSITION

- AmCham EU fully acknowledges that taxation of the digital sector is an important issue for EU Member States and raises complex issues. AmCham EU will constructively and consistently engage.

- AmCham EU is concerned by proposals from the European Commission and some Member States to introduce new measures to tax digital activities, particularly without detailed impact assessments.

- AmCham believes that unilateral measures could harm the competitiveness of the EU and jeopardise international efforts.

- AmCham EU considers that turnover taxes could substantially reduce the amount of company profits available for investment and reinvestment, with a negative effect on jobs and growth.

- AmCham EU notes that the European Commission's September 2017 proposals to consider digital taxation under the scope of the CCCTB may also adversely affect EU competitiveness and growth if it is not in line with internationally agreed rules on value creation.

European Commission Proposal (Draft)

EXPECTED: 21 MARCH 2018

- While not united on approach, the Council has asked the Commission to examine long term solutions to taxation of the digital economy - specifically exploring the concept of Digital PEs. Recognising the views of "many" Member States, it also noted that "temporary measures (such as … a levy based on revenues…) could … be explored."
- On 23 February 2018, the European Commission's draft report was leaked.

"Comprehensive proposal" (long term)

- Directive for establishing consistent digital PE rules.
- Encourage Member States to renegotiate Double Taxation Agreements with third countries.
- Threshold:
  - Revenues from digital services in any Member State exceeding €10m in any tax year; or
  - Number of active users in any Member State exceeding [TBC]; or
  - Number of online contracts concluded exceeds [TBC]
- Attribution based on the principle of value creation, for which updated guidance should be developed to take account of (for example):
  - Users' engagement and contributions
  - Data collected
  - Number of users
  - User-generated content
- To be negotiated as part of the broader Common Consolidated Corporate Tax Base negotiations
- To encourage consistent updates to the OECD Model Tax Convention

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"Targeted Solution" (interim)

• Standalone Directive for a tax "levied on the gross revenues (with no deduction of costs) of a business resulting from the exploitation of digital activities characterised by user value creation"
• 1-5% rate
• Deductible (not creditable) against CIT.
• Payable annually
• Includes specifically:
  • Advertising using "user data"
  • Sale of "user data"
  • Digital platforms/marketplaces
• Excludes specifically:
  • Media streaming
  • Online gaming
  • IT Solutions
  • Cloud services
  • Fintech activities
• Global revenue €750m, threshold (annual digital EU threshold €10m to €20m)
• Could be eliminated where DTAs updated to comprehensive solution

- Also of note, on 21 February 2018, the ECON Committee proposed similar PE amendments to the Common Corporate Tax Base proposal being considered by the EU.
- The ECON Committee also suggested inclusion of "data" as an attribution factor
- The proposals were to include a new digital PE threshold, and also to add in a "data factor" to the second stage (consolidation / attribution) element of the proposals.