



# OECD TAX TALKS

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CENTRE FOR TAX POLICY  
AND ADMINISTRATION

31 January 2020  
14:00 – 15:00 (CET)



# Join the discussion

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Ask questions and comment throughout the webcast via e-mail or Twitter:



[CTP.Contact@oecd.org](mailto:CTP.Contact@oecd.org)



[#OECDTaxTalks](https://twitter.com/OECDTaxTalks)

# INTRODUCTION

# Speakers

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- **Pascal Saint-Amans**  
Director, OECD Centre for Tax Policy and Administration
- **Grace Perez-Navarro**  
Deputy Director, OECD Centre for Tax Policy and Administration
- **Matt Andrew**  
Head of Tax Treaty, Transfer Pricing & Financial Transactions Division
- **Sophie Chatel**  
Head of Tax Treaty Unit
- **Achim Pross**  
Head of International Co-operation and Tax Administration Division



# Agenda

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- Introduction
- Package agreed by the G20/OECD Inclusive Framework on BEPS (IF)
- Next steps





## Plenary meeting of the Inclusive Framework on 29-30 January 2020

- **122 jurisdictions**
- **360 delegates**

# State of Play

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**Tensions in the system**

**Political support for a consensus-based global solution**

Increased tax audits & disputes

Proliferation of unilateral measures

Strong digitalisation of the economy

137 jurisdictions working together

G20/ G7 repeated support

**G20 mandate to arrive at a consensus-based solution by 2020**



# Two Pillars

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## Pillar One

Allocation of profits  
and  
new nexus rule

## Pillar Two

GloBE

Economic analysis and impact assessment

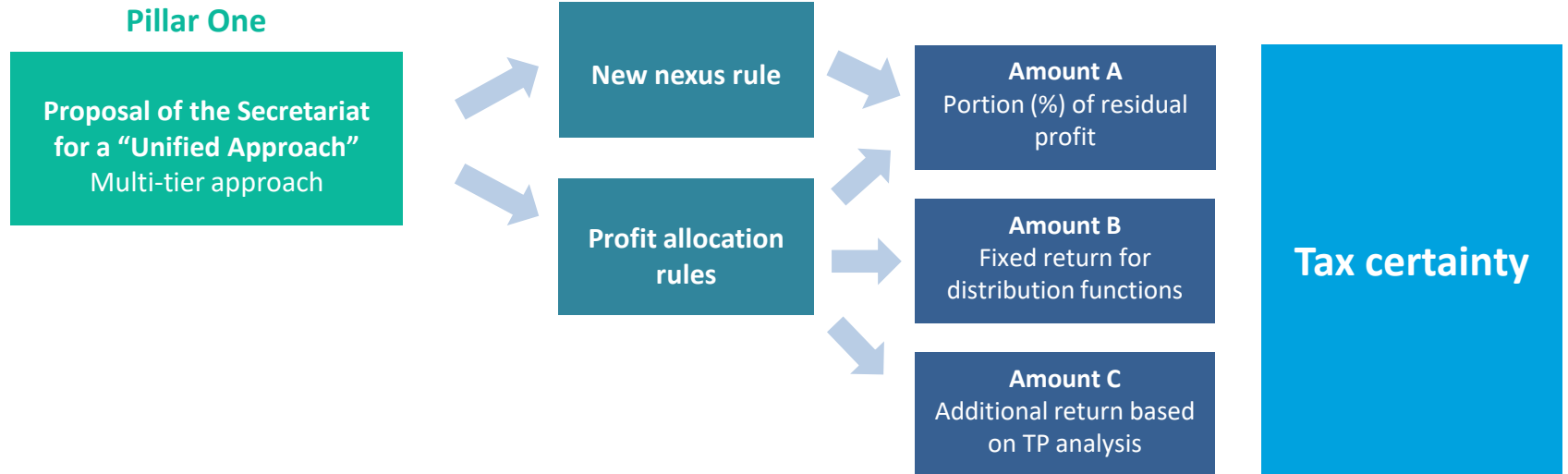
Need for political  
endorsement &  
spirit of  
compromise

**Consensus-based long-term solution by  
the end of 2020**





# Proposed “Unified Approach” under Pillar One – October 2019



# Consultations

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## Public Consultation Pillar 1 – November 2019

- **300 submissions** of comments
- **3 000 pages** of comments
- **500 participants** attended the public consultation meeting

## Public Consultation Pillar 2 – December 2019

- **180 submissions** of comments
- **1 300 pages** of comments
- **200 participants** attended the public consultation meeting

8 Regional outreach events since October 2019



**PACKAGE AGREED BY THE  
INCLUSIVE FRAMEWORK**

# Outcomes IF Plenary

29-30 January 2020

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## Members approved

- **Statement from the IF**
- **Outline of the architecture of the “Unified Approach” under Pillar One**
  - **Annex: Revised Programme of Work on Pillar One**
- **Progress Note on Pillar Two**

# Statement – paragraph 1

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- Strong support from IF members for reaching a multilateral agreement with respect to Pillar One and Pillar Two
- Recognising the concurrent work on a without prejudice basis on the two pillars, [they] affirm their commitment to reach an agreement on a consensus-based solution by the end of 2020
- Agreed upon an outline of the architecture of a Unified Approach on Pillar One as the basis for negotiations
- Welcomed the progress made on Pillar Two (which follows the outline of Pillar Two in the PoW)



# Statement – paragraph 2

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- Pillar One: IF endorses the Unified Approach as the basis for the negotiations of a consensus-based solution to be agreed in 2020
- Proposed reallocation of taxing rights under Pillar One would require improved tax certainty, including effective and binding dispute prevention and resolution mechanisms
- In the design and implementation of the solution, IF acknowledges the need to minimise complexity



# Statement – paragraph 3

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- IF members note
  - technical challenges to develop a workable solution
  - areas where critical policy differences remain to be resolved to reach an agreement
  - a December 3 letter from the US Treasury Secretary to OECD Secretary-General Gurría
    - reiterating the US political support for a multilateral solution and
    - including a proposal to implement Pillar One on a ‘safe harbour’ basis



## Statement – paragraph 3 (continued)

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- Many IF Members express concerns ‘safe harbour’ basis could
  - raise major difficulties, increase uncertainty and fail to meet all of the policy objectives of the overall process
- Note
  - although the final decision on the matter will be taken only after the other elements of the consensus-based solution have been agreed upon
  - resolution of this issue is crucial to reaching consensus





# Statement – paragraph 4

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- Recognise number of other issues where significant divergences will have to be resolved; including:
  1. binding nature of dispute prevention and resolution mechanisms and scope of the dispute resolution mechanisms under Amount C
  2. Digital differentiation
  3. Regional segmentation
- Note concerns expressed by some jurisdictions and businesses about the continued application of Digital Service Taxes (DSTs)



# Statement – paragraph 5

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## Pillar Two

- IF welcomes the significant progress on the technical design of the Pillar
- Notes that more work needs to be done (as described in the progress report)

# Statement – paragraph 6

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- The IF notes
  - the good progress on the economic analysis and impact assessment of Pillars One and Two
- The IF calls
  - for continued efforts to strengthen the analysis with caution due to data limitations and
  - for more detailed analysis on the investment and growth impacts of the proposals before the end of March 2020



# Statement – paragraph 7

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- Reaffirm
  - commitment to bridge the remaining differences and
  - reach agreement on a consensus-based solution by the end of 2020
- Noting agreement will depend on the further concurrent work which will be carried out on the two pillars
- Important step: next meeting in early July
  - intended to reach agreement on key policy features of solution which would form the basis for a political agreement



# OUTLINE OF THE ARCHITECTURE OF A UNIFIED APPROACH ON PILLAR ONE

# Outline of the Architecture of a Unified Approach on Pillar One

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Section 1: Introduction

Section 2: Overview

Section 3: The New Taxing Right (Amount A)

- 3.1. Scope and nexus
- 3.2. Quantum of Amount A
- 3.3. Elimination of double taxation
- 3.4. Interactions and potential for double counting

Section 4: The fixed Return for Defined Baseline Distribution and Marketing Activities (Amount B)



# Outline of the Architecture of a Unified Approach on Pillar One

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## Section 5: Tax Certainty: Dispute Prevention and Resolution:

- 5.1. A new framework for dispute prevention and resolution for Amount A
- 5.2. Tax certainty and dispute prevention and resolution for Amounts B and C

## Section 6: Implementation and Administration:

- 6.1. General
- 6.2. Further consideration of alternative global safe harbour system

## Annex A. Programme of Work to Develop a Consensus Solution to Pillar One Issues

## Annex B. MNE Groups Impacted by Amount A



# The New Taxing Right (Amount A): Scope (section 3.1)

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## Automated digital services

- Provision of automated digital services that are provided on a standardised basis to a large population of customers or users (online search engines, social media platforms, cloud computing services, etc.)

## Consumer facing business

- Businesses that generate revenue from the sale of goods and services of a type commonly sold to consumers (e.g. personal computing products, clothes, branded foods, franchise models, automobiles)
- Intermediate products and components - out of scope (with possible exception)

## Specific considerations

- Extractive industries, commodities, financial services sector, and international traffic





# The New Taxing Right (Amount A): Scope (section 3.1)

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## Thresholds

- Limited to MNE Groups that meet a certain gross revenue threshold. This threshold could, for instance, be the same as for CbC reporting (i.e. MNE groups with gross revenue exceeding EUR750M)
- Consideration will be given to:
  - aggregate in-scope revenue threshold
  - *de minimis* threshold



# The New Taxing Right (Amount A): Nexus (section 3.1)

## Significant and sustained engagement with market

- Local in-scope revenue threshold over a period of years
- Commensurate with the size of a market (but with a minimum level)
- For **automated digitalised businesses**, the revenue threshold will be the *only* test (scale without mass)
- For **consumer facing business**: *additional* factors to be considered

## Design and simplification option

**One  
shop**

- To be designed to eliminate (or limit to a bare minimum) any filing and other tax related obligations.
- Exploration of simplified reporting and registration-based mechanisms (such as a “one stop shop”)



# The New Taxing Right (Amount A): Quantum of Amount A (section 3.2)

## A formula based allocation mechanism

- Based on a formula designed to identify the portion of residual profit allocated to market jurisdictions – consolidated group financial accounts
- Amount A only applies to the portion of profit exceeding a certain level of profitability – Profit Before Tax the preferred measure to assess this
- Allocation key of sales for allocation of Amount A to market jurisdictions

## Further technical work

- Business line and regional segmentation to be explored
- The quantum of Amount A could be weighted for different degrees of digitalisation
- Specific revenue sourcing rules to be consider for different business models



## The New Taxing Right (Amount A): Elimination of Double Taxation (section 3.3)

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### Identify the entity/entities liable

- Entities earning the relevant deemed residual profits

### Apply the most effective double tax relief method

- Exemption / credit / corresponding adjustment

### Further work required

- Determining the relieving entity(ies)
- Methods for allocating Amount A liabilities



## The New Taxing Right (Amount A): Interactions and potential for double counting (section 3.4)

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### Interactions between A and B

- No significant interaction between Amounts A and B

### Interactions between Amounts A and C

- Identifies potential interactions between Amounts A and C
- Notes that no double counting should give rise to double taxation given the application of the mechanism to eliminate double taxation



# Amount B: Fixed Return (section 4)

## Fixed Return under the Arm's Length Principle

- Fixed return based on the ALP for “baseline” or routine marketing or distribution activities performed in a market jurisdiction
- The fixed return would consider differences in region and industry
- Treaty changes will not be required to implement Amount B

## Further technical work

- Definition of baseline activities / profit level indicator / fixed % at an agreed profit / benchmarking studies / industry or region differentiation



# Tax certainty (section 5)

## Dispute prevention and resolution

- Tax certainty is an essential element of the unified approach and is a fundamental part of the design of Pillar One

## Dispute prevention and resolution under Amount A

- Disputes will likely affect the taxation of Amount A in multiple jurisdictions
- Agreement that a new effective and binding dispute prevention and resolution mechanisms is required for amount A



# Tax certainty (section 5)

## Dispute prevention and resolution under Amounts B and C

- Core of the work on tax certainty and dispute prevention and resolution for **Amounts B** will be to limit disputes by using fixed rates of return on baseline distribution and marketing activities
- **Amount C** will involve:
  - exploring innovative approaches to dispute resolution
  - reaching agreement on the breadth of the application of new enhanced dispute resolution is critical and IF members agree to return to the matter as part of arriving at a consensus-based solution in 2020
  - also enhancing MAP and domestic measures





# Implementation and administration (section 6)

## General implementation aspects

- New multilateral convention for coordinated, consistent and effective implementation
- Compliance and administrative costs, novel compliance requirements, transition rules
- Commitment by members of the Inclusive Framework to implement this agreement and at the same time to withdraw relevant unilateral actions

## Alternative Global Safe Harbour Approach

- Electing MNE group would agree, on a global basis, to be subject to Pillar One



# Annex A: Revised Programme of Work

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1. Scope of Amount A

2. New nexus and related treaty considerations for Amount A

3. Tax base determinations

4. Quantum of Amount A

5. Revenue sourcing rules under Amount A

6. Elimination of double tax under Amount A

7. Interactions between Amounts A, B and C and potential risks of double counting

8. Features of Amount B

9. Dispute prevention and resolution for Amount A

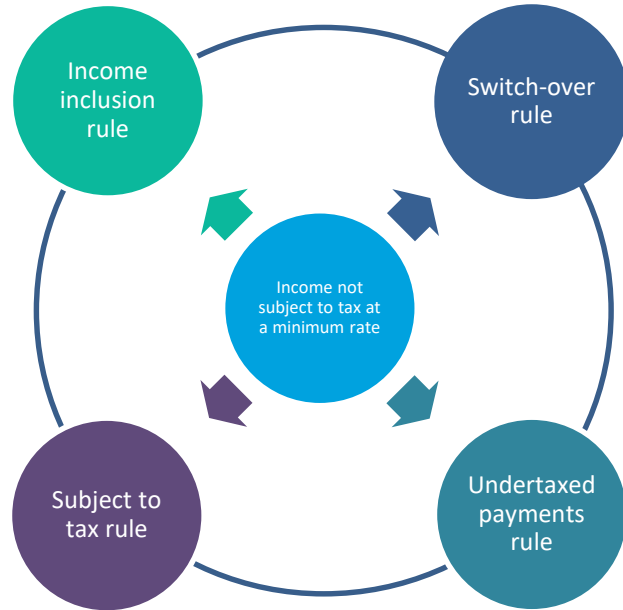
10. Dispute prevention and resolution for Amounts B and C

11. Implementation and administration



# PROGRESS REPORT ON PILLAR TWO

# Pillar 2 - GloBE proposal



Income inclusion rule (IIR)

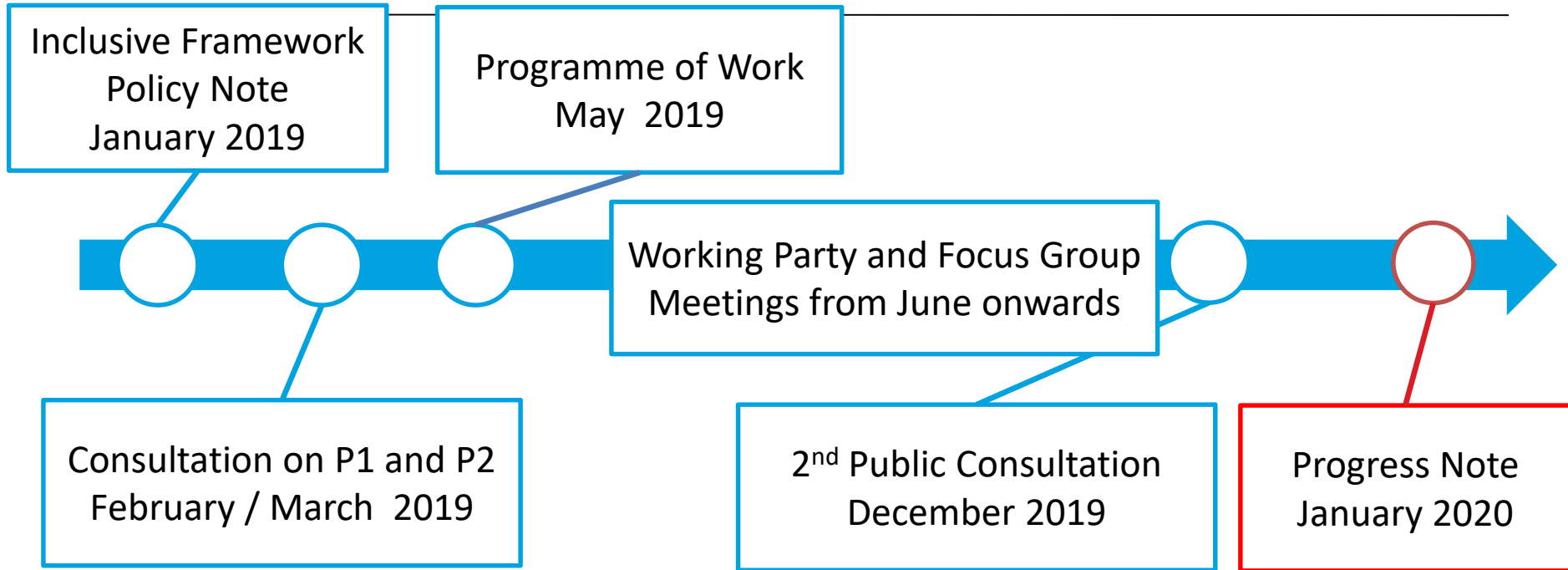
Switch-over rule

Undertaxed payments rule (UTP)

Subject to tax rule



# Timeline



# Status of work

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**Good technical progress on many aspects of Pillar Two but significant work remains**

- Ongoing constructive discussions on various policy and design options
- Close coordination between the relevant working parties drawing on:
  - Input from stakeholders in March and December Public consultation
  - Work of expert group on financial accounting on the determination of the GloBE tax base
- IF acknowledges the valuable input from stakeholders and the implications of the short time-line



# IIR and UTP Rules

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## IIR draws on the design of CFC rules

- Top-up to an agreed minimum rate calculated as fixed percentage
- Protecting both the tax base of the parent jurisdiction as well as other jurisdictions where the group operates by reducing the incentive to allocate income for tax reasons to low taxed entities

## UTP Rule

- Denial of deduction or equivalent adjustment in relation to intragroup payments
- Complements the IIR



# Key design issues IIR & UTP

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## Tax base

- Use of financial accounts as a starting point
- Mechanisms to address temporary differences
- Adjustments for permanent differences

## Blending

- Options still being considered

## Carve-outs

- FHTP
- Substance carve-outs

## UTP Rule

A number of design options under consideration also designed to limit complexity, compliance and administration costs and the risk of over-taxation





# Subject to Tax & Switch- Over Rules

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## Subject to tax rule (STT rule)

- Subjects a payment to withholding or other taxes at source and denies treaty benefits
- Options and issues being explored to design a simple and targeted rule
- Further consideration on scope of payments covered, the design of the minimum tax rate test and other key aspects
- Exploration of the application of the STT rule to unrelated parties on interest and royalties

## Switch-over rule

- Design of a rule to ensure that the IIR applies to foreign branches that are exempt under tax treaties, turning-off the benefit of such exemption where that income is subject to a low ETR



# Rule coordination, simplification, thresholds, international obligations

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Co-ordination with other rules (including existing BEPS measures)

Simplifications to reduce compliance costs

Thresholds

- possible thresholds (such as the EUR 750 million revenue threshold used for CbC reporting)

Compatibility with international obligations



**OTHER NEWS**

# Other news

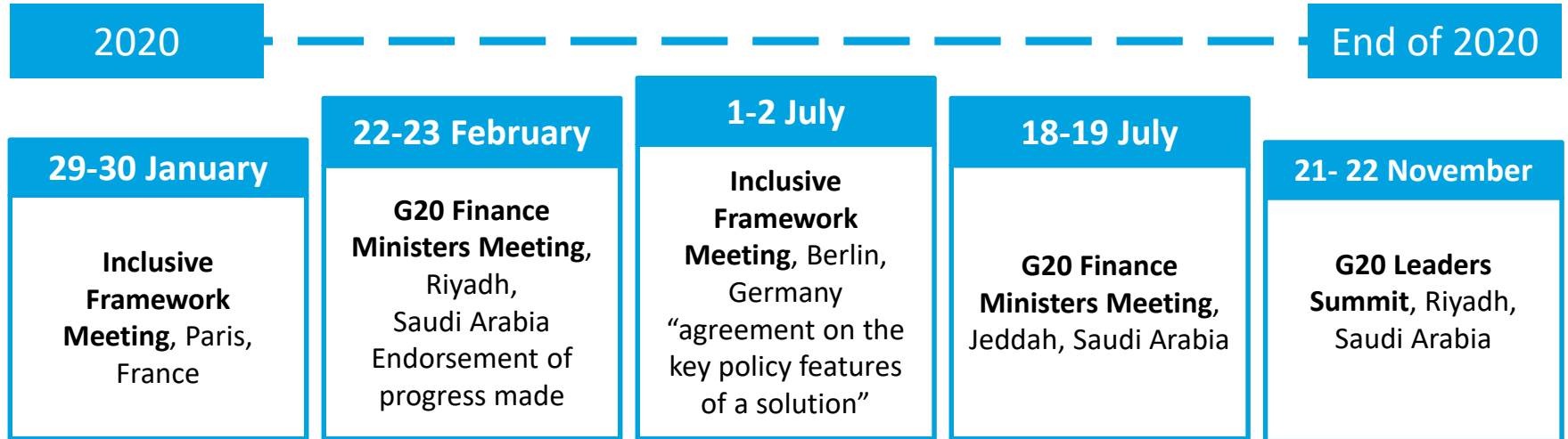
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- **11 February**: New Chapter Transfer Pricing Guidelines on Financial Transactions
- **13 February**: Webcast on Economic Analysis and Impact Assessment
- **17 March**: Public consultation meeting on Action 13 CBCR
- **Forthcoming**: Actions 6 and 14 peer reviews



**NEXT STEPS**

# Ambitious schedule



**THANK YOU**