

**Baker
McKenzie.**

**Regional Webinar Series:
Recovery & Renewal: EMEA Tax Issues**

An abstract graphic consisting of multiple overlapping, glowing blue lines that form a wave-like pattern across the center of the slide. The lines are composed of small dots and connect to form a continuous, shimmering surface.

EMEA Tax Webinars

Digital Services Taxes | 23 June 2020



1

Introduction

An abstract graphic consisting of multiple overlapping, wavy lines of blue dots and thin lines, creating a sense of motion and digital energy. The lines are centered horizontally and extend across the width of the slide, with a slight dip in the middle where the text is located.

Speakers



Kate Alexander
Partner
London



**Maria Antonia
Azpeitia**
Partner
Madrid



Ariane Calloud
Partner
Paris



Erdal Ekinci
Partner
Istanbul



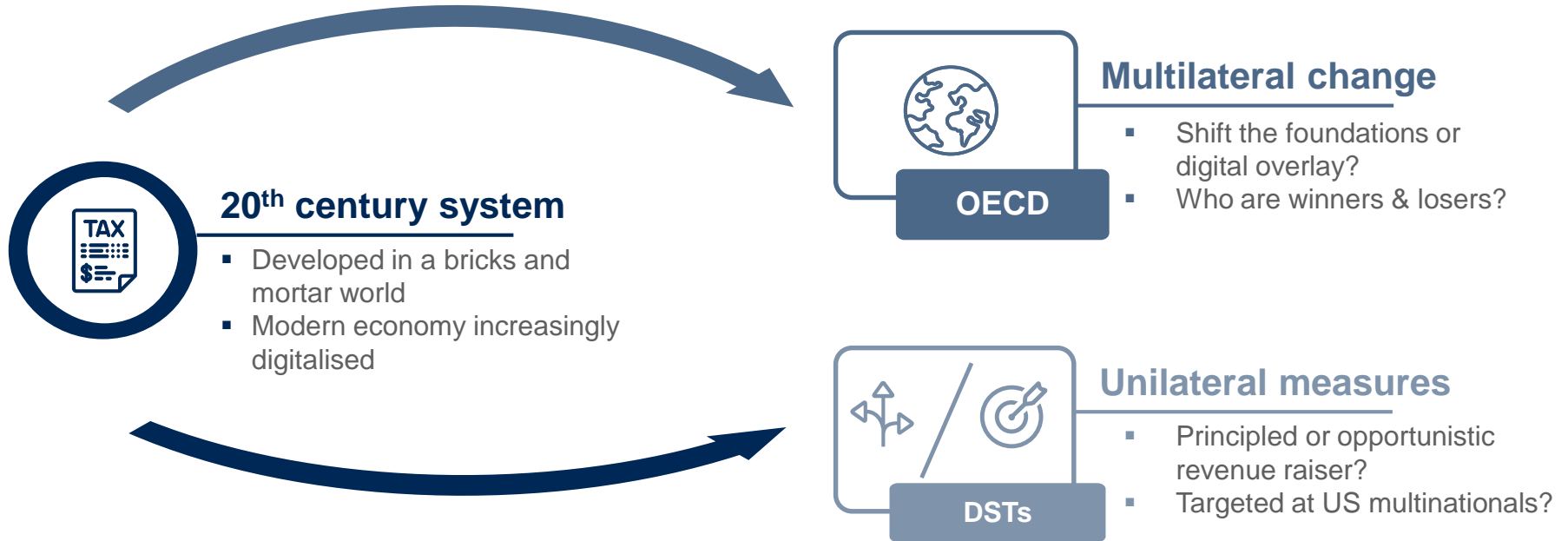
Imke Gerdes
Partner
New York



**Massimo
Giaconia**
Partner
Milan

Taxation of the digital economy

Setting the scene



The importance of politics



2

Multilateral Change

An abstract graphic consisting of multiple overlapping, wavy lines of blue dots and thin lines, creating a sense of motion and digital connectivity. The lines are most prominent in the center and fade out towards the edges. The background is a dark blue gradient.

OECD – unified approach



“

Great progress on Amount B so there is substance for a deal on Pillar 1, although there are questions on scope and the focus may be on digital companies right now for many countries

Pascal Saint-Amans | Director for Tax Policy and Administration OECD | 4 May 2020

The Mnuchin letter – 12 June



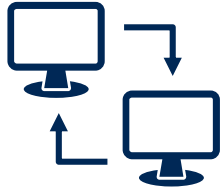
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Attempting to rush such difficult negotiations is a distraction from far more important matters

This is a time when governments around the world should focus their attention on dealing with the economic issues resulting from Covid-19.

Steve Mnuchin | US Treasury Secretary

Reemergence of an EU DST?



Digital tax on companies with a global annual turnover of above €750 million to generate up to €1.3 billion per year



A digital tax would build on OECD work on corporate taxation of a significant digital presence; the Commission actively supports the discussions led by the OECD and the G20 and stands ready to act if no global agreement is reached. A digital tax applied on companies with a turnover above EUR 750 million could generate up to EUR 1.3 billion per year for the EU budget.

EU Commission | The EU budget powering the recovery plan for Europe | 27 May 2020

3

Unilateral Measures

An abstract graphic consisting of multiple overlapping, wavy lines of blue dots and thin lines, creating a sense of motion and digital data. The lines are most concentrated in the center and fade out towards the edges. The overall effect is a futuristic, high-tech aesthetic.

Moving forward in the context of Covid-19



Political bandwidth at a premium in dealing with response to crisis – increases pressure on already ambitious timeline.



Practical challenges in physical distancing between key stakeholders - summits often key component of building consensus and reaching breakthroughs.

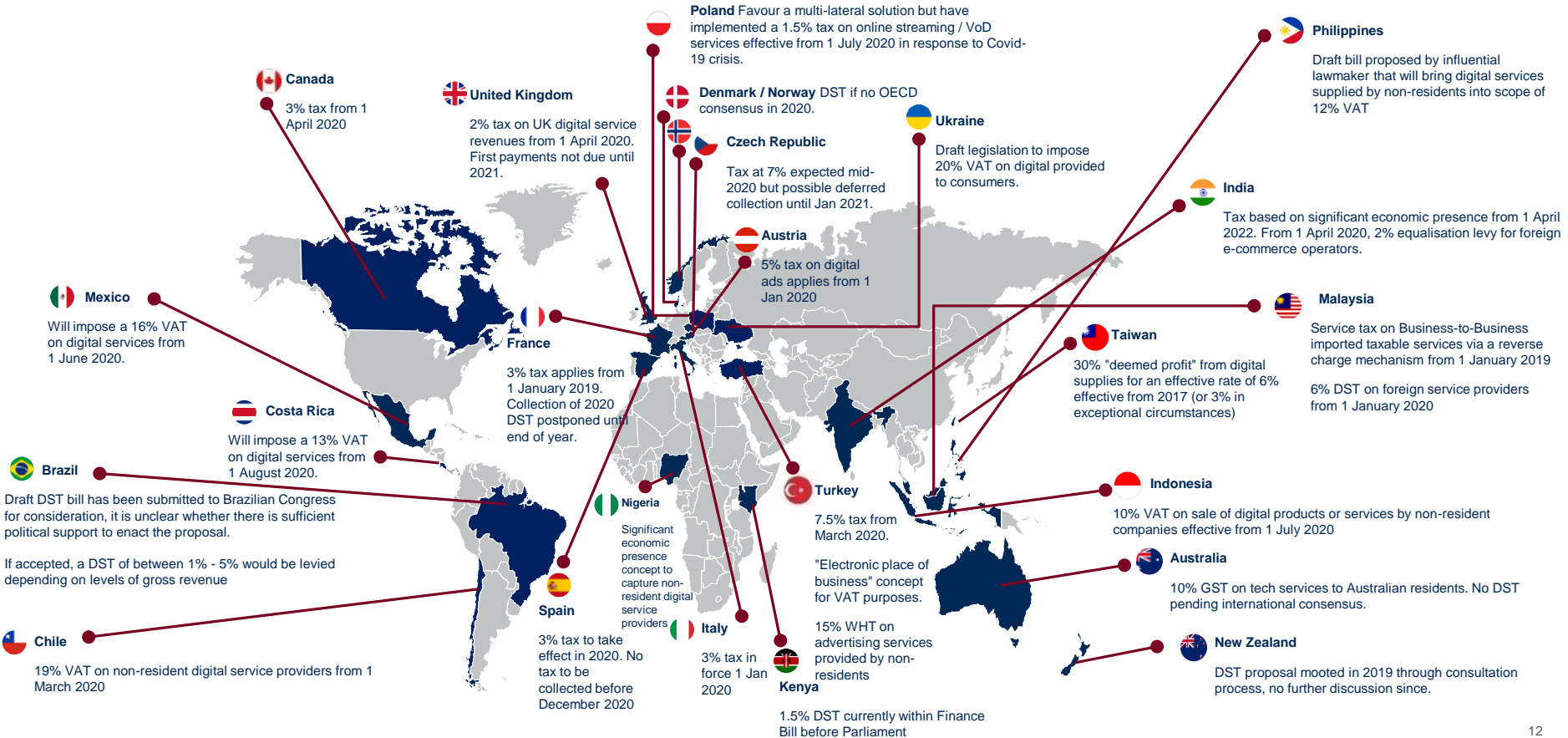


Increased political sensitivities on ceding control over tax revenue when fiscal deficits are surging.



Growing pressure to raise revenues and target those businesses perceived to be immune to economic downturn

Digital Services Taxes: Increasingly full map



Today's focus



France



Italy



Spain



Turkey



United Kingdom



Austria



Policy aims?



Legal status?



Interaction with
OECD's work?



Scope and
exemptions?



Rate?

Please see Appendix for more detail

Where to focus, how to respond

Understand the impact, shape the discussion

User data

- Functionality to identify user location
- Audit trail v privacy constraints
- Consistency with other regulators



Quantify

- Calculate incremental costs
- Identify double tax relief



Local interpretations

- Country by country
- Identify areas of divergence
- Continue lobbying?



Commercial impact

- Impact on margins and market messages
- Contractual positions
- Future business models



The US response

Section 301 of the Trade Act gives broad authority to investigate and respond to a foreign country's trade practices perceived to be unfair to US interests.



Initiate dispute settlement proceedings at WTO or under FTA



Impose unilateral trade sanctions

\$2.4bn

The value of French imports which the US threatened to impose 100% tariffs following its s301 investigation



Donald J. Trump
@realDonaldTrump

France just put a digital tax on our great American technology companies. If anybody taxes them, it should be their home Country, the USA. We will announce a substantial reciprocal action on Macron's foolishness shortly. I've always said American wine is better than French wine!

12:32 PM · Jul 26, 2019 · Twitter for iPhone



Emmanuel Macron
@EmmanuelMacron

Great discussion with @realDonaldTrump on digital tax. We will work together on a good agreement to avoid tariff escalation.

6:43 PM · Jan 20, 2020 · Twitter for iPhone

Expansion of regimes under scrutiny - 3 June 2020



...The United States remains opposed to digital services taxes and similar unilateral measures...

...As we have repeatedly said, if countries choose to collect or adopt such taxes, the United States will respond with appropriate commensurate measures.

Steve Mnuchin | in a letter to the finance ministers of France, Italy, Spain, and the UK on 12 June 2020

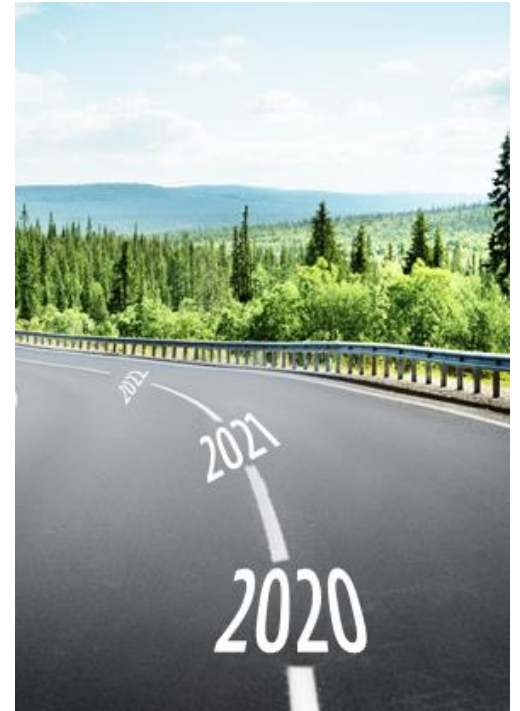
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Where are We Heading?

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Predictions...

Change is coming, but what form will it take?





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BEPS 2.0

Latest from the OECD

Two Pillar approach



Pillar 1

Nexus / profit attribution

- Automated digital services and consumer-facing businesses
- Amount A – share of residual profit
- Amount B – fixed remuneration
- Amount C - Additional return



Pillar 2

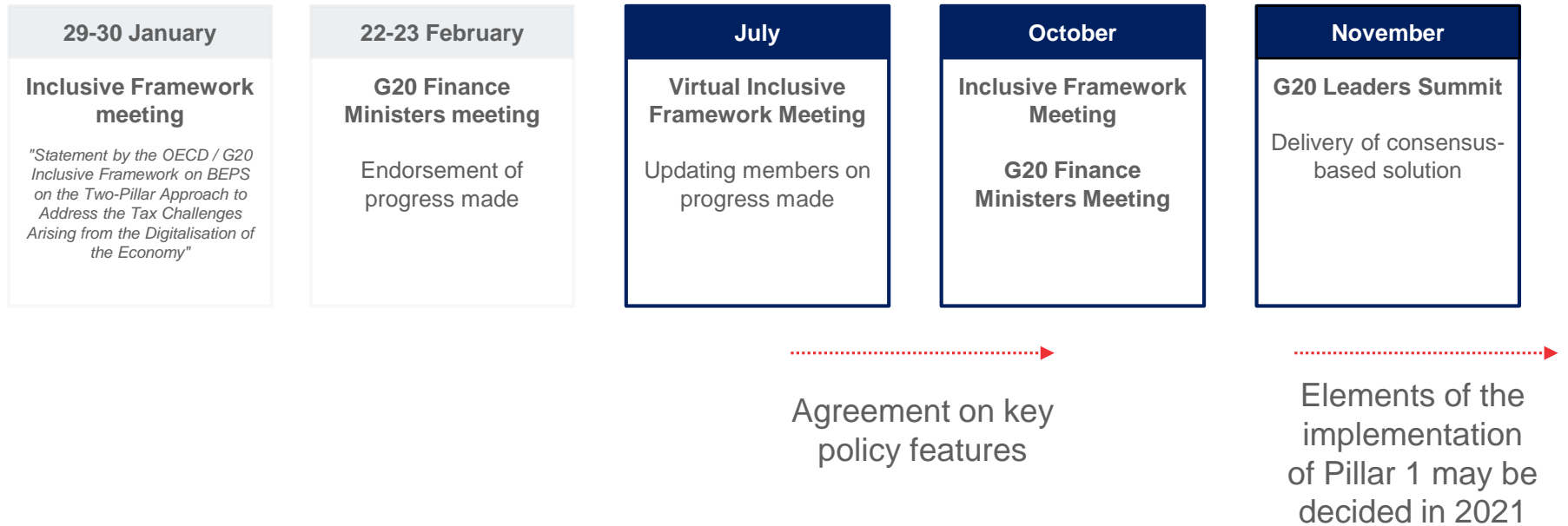
Global anti-base erosion

- All businesses
- Minimum effective rate of tax
- Tax on "undertaxed" base eroding payments



Do the pillars actually address the Tax Challenges arising from the digitalisation of the economy?




Timetable for delivery



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Digital Service Taxes Country Comparison




DSTs – Country Comparison

	 Austria	 France	 Italy
Entry into force / Status	Entered into force on January 1, 2020 Issuance of guidelines has been announced, but no draft circulated so far.	Entered into force on 26 July 2019 (for revenues generated as from 1 Jan 2019) Draft guidelines released on 23 March 2020	Entered into force on January 1, 2020 Draft guidelines should be released in June/July
In-scope revenue	<ul style="list-style-type: none"> Online targeted advertising and intermediary services for online advertising 	<ul style="list-style-type: none"> Online targeted advertising Transfer of users' data for consideration Intermediation services (marketplace and matchmaking services) [and ancillary services] 	<ul style="list-style-type: none"> Online targeted advertising Transfer of user's data for consideration Intermediation /multilateral digital interface services (like marketplace, matchmaking service or social media)
Revenue threshold	<ul style="list-style-type: none"> At a group level, for the prior calendar year: > 750 m€ global revenue and > 25 m€ from online advertisement services in Austria 	<ul style="list-style-type: none"> At a group level, for the prior calendar year: > 750 m€ globally and > 25 m€ in France 	<ul style="list-style-type: none"> At a group level, for the prior calendar year: > 750 m€ globally and > 5.5 m€ in Italy
Main exemptions	<ul style="list-style-type: none"> Services already subject to the existing advertisement tax applicable to print, TV and radio advertisements; No other exemptions. 	<ul style="list-style-type: none"> Digital content Payment services Telecom services Intragroup transactions 	<ul style="list-style-type: none"> Digital content E-commerce Payment services Telecom services Online financial activities Intra-group transactions
Taxable basis	<ul style="list-style-type: none"> Fee received for the online advertisement services; Payments to unrelated parties rendering services that flow into the advertisement services can be deducted from the assessment base. 	<ul style="list-style-type: none"> Amounts collected/cash-in [no reference to GAAP] * ratio of local presence based on user location 	<ul style="list-style-type: none"> Total worldwide revenues from digital services (gross of costs and net of VAT and other indirect taxes.) * ratio of local presence based on user location (IP as presumption) Not clear the financial measure to be considered for identifying relevant revenues (collected/booked)
Rate	5%	3%	3%




DSTs – Country Comparison

	 Austria	 France	 Italy
Sunset clause (i.e. withdrawal in case of global consensus)	Obligation of the Ministry of Finance to periodically re-evaluate the law based on whether a consensus on the level of the EU or the OECD has been reached. No clear sunset clause though.	No.	Yes. Effective upon implementation in Italy of relevant legislation
Safe harbour clause? e.g. low-margin / tax loss	No.	No.	No.
Elimination of double taxation?	No.	No.	No.
Payment date	15th of the second month following the month in which the tax liability arose (the month the advertisement service was rendered).	2019 DST: Single advance payment paid in Nov 2019 (and final balance payment due in April 2020) 2020 DST: Option to defer advance payment to December 2020	February 16 of the following year (e.g. 2020 due February 16, 2021)
Creditable against local corporate tax?	No, but it is considered a deductible business expense.	No.	Yes, based on the assumption the DST does not qualify as an income tax. The deduction is available in the in the fiscal year of actual payment (i.e. for 2020, in FY 2021).
DST group option?	No. However, guidelines are expected to include some relief.	Yes.	Obligation of naming a single entity for tax return and payment obligations

DSTs – Country Comparison

	 Spain	 Turkey	 UK
Entry into force / Status	Draft bill under discussion in Parliament envisaged for 2020, with payment due in 2021 (questions on whether this will be possible)	Entered into force on March 1, 2020 DST Communiqué published on March 20, 2020, effective March 1, 2020.	Entered into force 1 April 2020 Final legislation and initial guidance published 19 March 2020
In-scope revenue	<ul style="list-style-type: none"> Online targeted ads Transfer of user's data for consideration Intermediation services (marketplace and matchmaking) 	<ul style="list-style-type: none"> Online advertising services; Sale of digital content and digital services related to those contents; Services related to the provision and operation services of digital platforms where users can interact with each other; and Intermediation services regarding in-scope services. 	Revenues derived from UK users in relation to (including associated online advertising revenues): <ul style="list-style-type: none"> the provision of a social media service, an internet search engine, or An online marketplace
Revenue threshold	<ul style="list-style-type: none"> At a group level, for the prior calendar year: > 750 m€ globally and > 3 m€ in Spain 	<ul style="list-style-type: none"> At a group level, for the prior calendar year: > 750 m€ globally and > 20 mTRY in Turkey 	<ul style="list-style-type: none"> Annual revenue thresholds: >£500m of worldwide revenue from digital services activities >£25m UK revenue Exemption for first £25m
Main exemptions	<ul style="list-style-type: none"> Digital content (including intermediation) Payment services Telecom services Intragroup transactions (100% threshold) 	<ul style="list-style-type: none"> Services subject to the treasury share payment; Services subject to the special communication tax; Services delivered within the scope of banking activities; and Services within the scope of R&D activities. 	<ul style="list-style-type: none"> Online financial marketplaces (e.g. facilitating trading of financial instruments, commodities or foreign exchange). Intra-group activities.
Taxable basis	Revenues obtained (net of VAT) * ratio of local presence based on user location (IP as presumption)	<ul style="list-style-type: none"> Gross revenue obtained from in-scope services (gross of costs and net of VAT and other indirect taxes.) provided in Turkey Not clear the financial measure to be considered for identifying relevant revenues (collected/booked) Not clear the identification of user location 	<ul style="list-style-type: none"> Revenue recognised in the income statement (or in profit and loss) of the consolidated group accounts prepared using acceptable accounting framework
Rate	3%	7.5%	2%

DSTs – Country Comparison

	 Spain	 Turkey	 UK
Sunset clause (i.e. withdrawal in case of global consensus)	Yes.	No.	No (just an obligation on HM Treasury to review before end of 2025 and prepare report)
Safe harbour clause? e.g. low-margin / tax loss	No.	No.	Yes.
Elimination of double taxation?	No.	No.	50% relief for online marketplace transaction which is subject to an equivalent DST outside the UK
Payment date	TBC	By the end of the month following the relevant taxation period (the taxation period is a one-month period)	9 months and one day after end of company's first accounting period e.g. for group with calendar year end, first payment due 1 October 2021.
Creditable against local corporate tax?	Deductible expense as non-recoverable indirect tax (no express provision)	Yes, it can be treated as deductible expense for resident taxpayers.	No.
DST group option?	No.	No.	2%

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