

INTERNATIONAL COLLABORATION IN THE DIGITAL ECONOMY



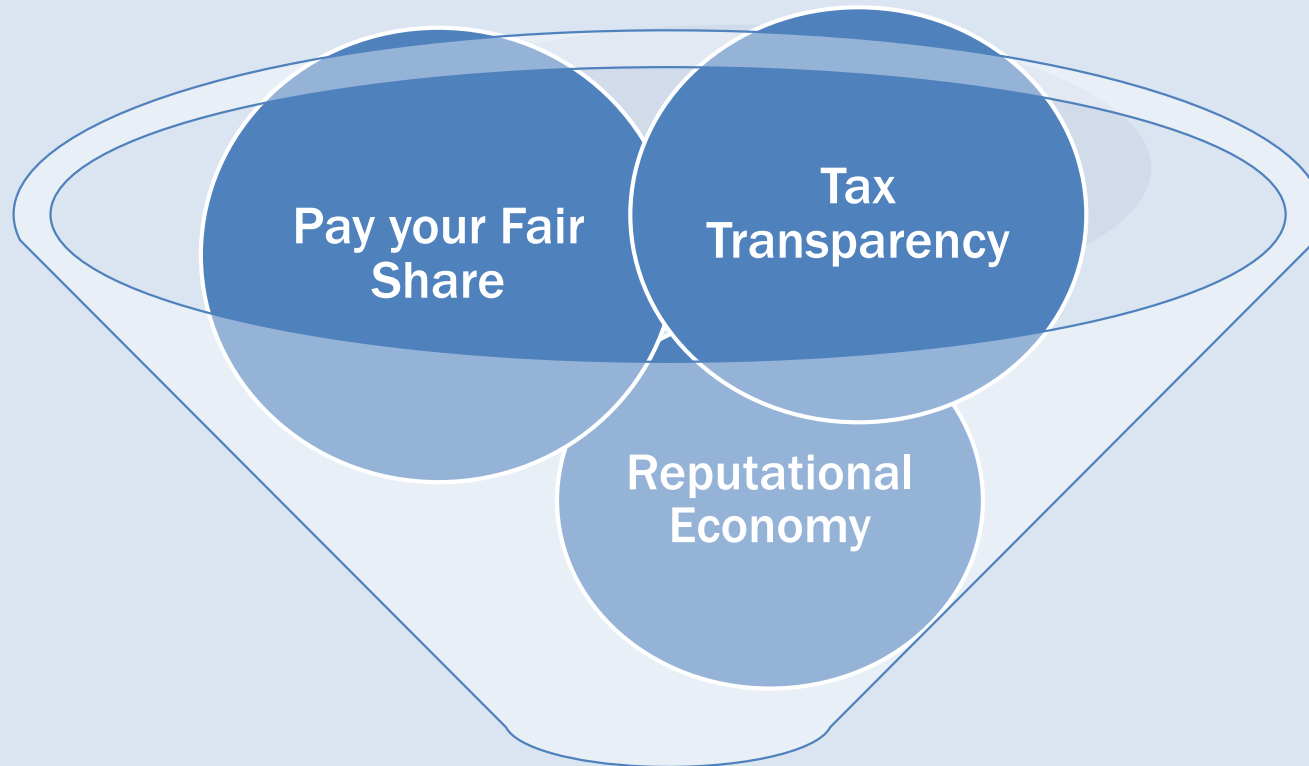
INTERNATIONAL COLLABORATION IN THE DIGITAL ECONOMY

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INTERNATIONAL COLLABORATION IN THE DIGITAL ECONOMY

Introduction

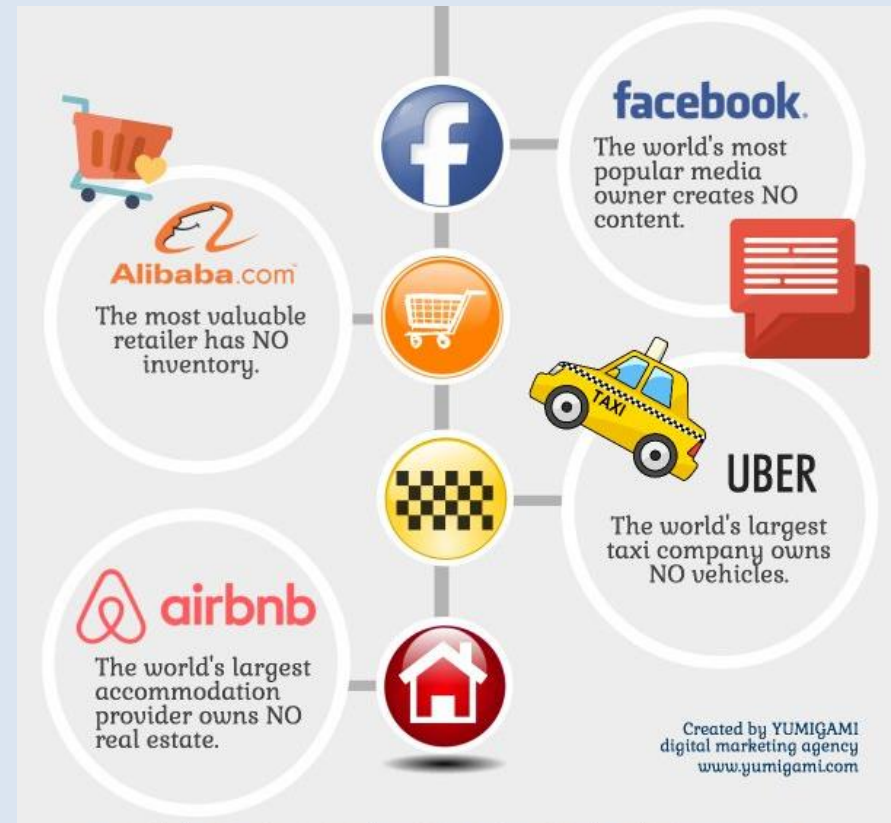


New standard of International tax cooperation

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Digital Economy - a definition

«[t]he **digital economy** is the result of a transformative process brought by information and communication technology (ICT) which has made technologies cheaper, more powerful, and widely standardized, improving business processes and bolstering innovation across all sectors of the economy» (OCDE, 2015)

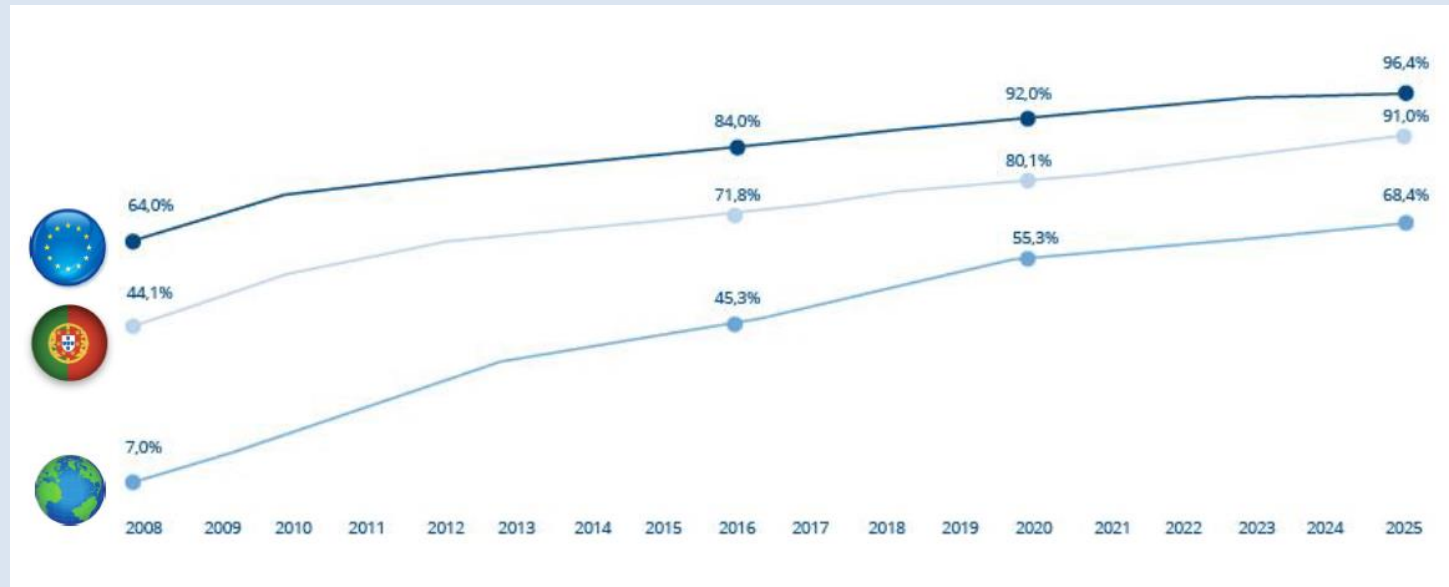


Source: GOODWIN, Tom - **The Battle Is For The Customer Interface** | TechCrunch [On line], atual. 2015. [Consult. 3 nov. 2016]. Available on WWW:<URL:<https://techcrunch.com/2015/03/03/in-the-age-of-disintermediation-the-battle-is-all-for-the-customer-interface/>>.

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The importance of digitalization

Evolution of the Portuguese population using the internet

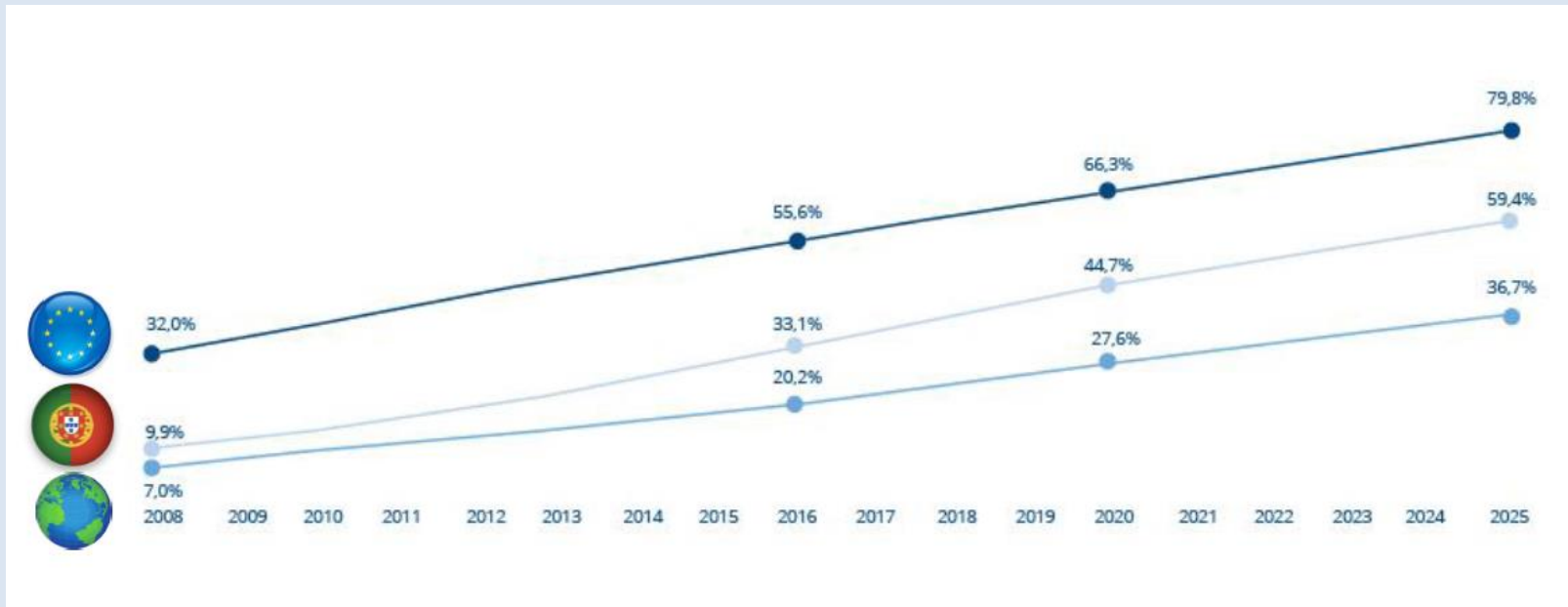


Source: ACEPI- **Estudo Economia Digital em Portugal-2017** [On line], [Consult. 13 Apr. 2018]. Available on WWW:<URL:https://http://www.acepi.pt/downloads.php?idCategoria=94/>.

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The importance of digitalization

Evolution of the Portuguese population buying online



Source: ACEPI- **Estudo Economia Digital em Portugal-2017** [On line], [Consult. 13 Apr. 2018]. Available on WWW:<URL:https://http://www.acepi.pt/downloads.php?idCategoria=94/>.

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Key Features

KEY FEATURES OF THE DIGITAL ECONOMY

- **Mobility**
 - Of intangibles
 - Of users and products
 - Of business functions or factors of production
- **Network effects**
- **Reliance on data**
- **Spread of multi-sided business models**
- **Tendency towards monopoly or oligopoly**
- **Volatility**

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BEPS opportunities in the Digital Economy

DIRECT TAXATION

- **Minimisation of taxation in the market country:**
 - Avoiding a taxable presence
 - Minimising the income allocable to functions, assets and risks in market jurisdictions
 - Maximising deductions in market jurisdictions
- **Choosing locations with low or no withholding tax at source**
- **Avoiding withholding tax**

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BEPS opportunities in the Digital Economy

DIRECT TAXATION

- Eliminating or reducing tax in the intermediate country
- Eliminating or reducing tax in the country of residence of the ultimate parent

INDIRECT TAXATION

- Structuring of affairs so that little or no VAT is paid on remotely delivered services and intangibles.

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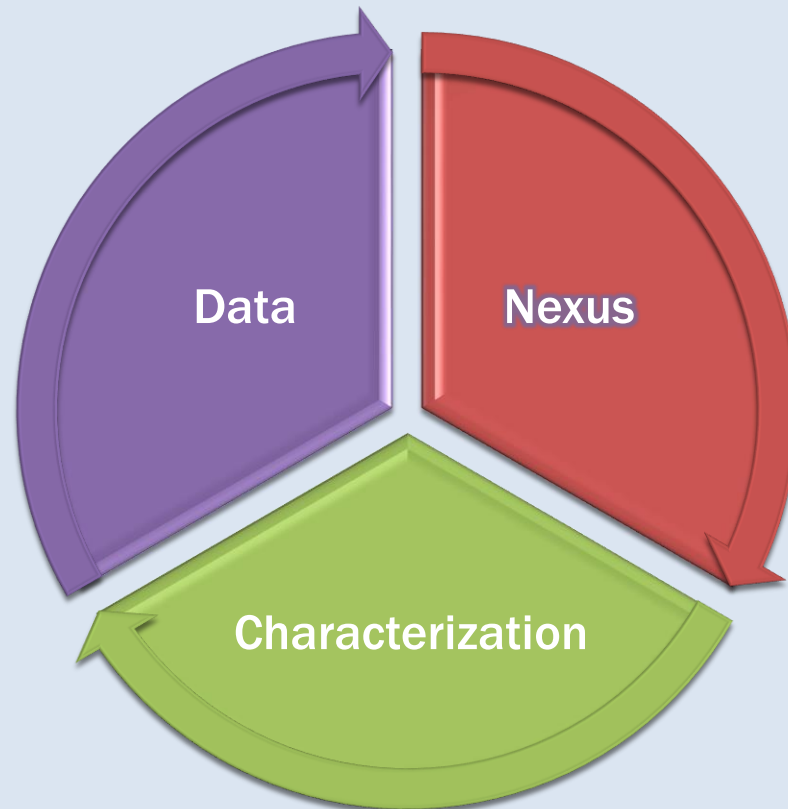
Project BEPS Actions

- **BEPS ISSUES RAISED BY DIGITAL ECONOMY CAN BE MINIMIZED BY IMPLEMENTING:**
 - **Action 1:** Addressing the Tax Challenges of the Digital Economy
 - **Action 3** - strengthening of CFC rules ;
 - **Action 5** - countering harmful tax practices more effectively;
 - **Action 6** - preventing treaty abuse;
 - **Action 7** - preventing the artificial avoidance of permanent establishment (PE) status;
 - **Actions 8-10** - ensuring that transfer pricing outcomes are in line with value creation.

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Broader Tax Challenges

BROADER DIRECT TAX CHALLENGES OF THE DIGITAL ECONOMY



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New standard of international tax co-operation

- a) Acceptance of the new global tax standard, based on the automatic exchange and mandatory information;
- b) Align taxable profits with the economic substance that gives rise to them;
- c) Articulation between tax policy objectives and other objectives with fiscal relevance (fight against money laundering, terrorism and corruption);
- d) Protection of data;
- e) Potential application of defensive measures to non-cooperating jurisdictions;
- f) Promotion of fiscal certainty, and compliance.

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BEPS Project in EU

THE BEPS PROJECT AND THE EUROPEAN UNION

- Code of Conduct on business taxation
- State Aid cases
- Directive on Administrative Cooperation (DAC) :
 - DAC 1 – 5 income categories;
 - DAC 2 – Financial accounts (CRS)
 - DAC 3 – Tax rulings
 - DAC 4 – CbC reports
 - DAC 5 – Beneficial ownership
 - DAC 6 – Cross-border tax planning schemes
- VAT on business to customers digital services (MOSS)

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BEPS Project in EU

■ Anti-Avoidance Directive

- **Controlled foreign company (CFC) rule**
 - to deter profit shifting to a low/no tax country;
- **Switchover rule**
 - to prevent double non-taxation of certain income
- **Exit taxation**
 - to prevent companies from avoiding tax when re-locating assets.

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BEPS Project in EU

■ **Anti-Avoidance Directive**

■ **Interest limitation**

- to discourage artificial debt arrangements designed to minimise taxes.

■ **General anti-abuse rule**

- to counteract aggressive tax planning when other rules don't apply.

■ **hybrid mismatches**

- to prevent companies from exploiting national mismatches to avoid taxation.

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BEPS Project in EU - Digital Economy

The Commission has made two legislative proposals:

- 1. Reform corporate tax rules** - so that profits are registered and taxed where businesses have significant interaction with users through digital channels

A digital platform will have a taxable **digital presence** in a taxable year (in a Member State) if:

- It exceeds **€7 million** revenues in a Member State
- It has more than **100,000 users** in a Member State
- Over **3000 business contracts** for digital services are created between the company and business users.

This proposal envisages the alignment between where digital profits are made and where they are taxed.

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BEPS Project in EU - Digital Economy

The Commission presented two legislative proposals:

2. Interim Tax - covers the main digital activities that currently escape tax altogether in the EU.

Revenues from:

- selling online advertising space;
- digital intermediary activities which allow users to interact with other users and which can facilitate the sale of goods and services between them;
- the sale of data generated from user-provided information.

A tax of **3%** on revenues from these services only to apply to companies with total annual revenues over:

€750 million worldwide and
€50 million EU revenues

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BEPS Project in Portugal

Before the launch of the BEPS project, the Portuguese law already had the following provisions:

- Higher taxation of investment income from entities headquartered in non-cooperative jurisdictions;
- Exit Taxes;
- CFC rules;
- Limitations on interest deduction;
- General Anti-Abuse Clause;
- Transfer pricing rules.

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BEPS Project in Portugal

VAT on B2C digital services	Action 1	EU VAT directive applies (MOSS)
Hybrids	Action 2	EU anti-avoidance directives apply
CFC	Action 3	Portugal already has CFC legislation
Interest deductions	Action 4	Portugal already has legislation on limitation of interest deductions
Harmful tax practices	Action 5	Portugal already amended its IP regime to comply with the nexus approach and implemented the automatic exchange of relevant tax rulings
Prevent treaty abuse	Action 6	Subject to implementation of the MLI and bilateral negotiations

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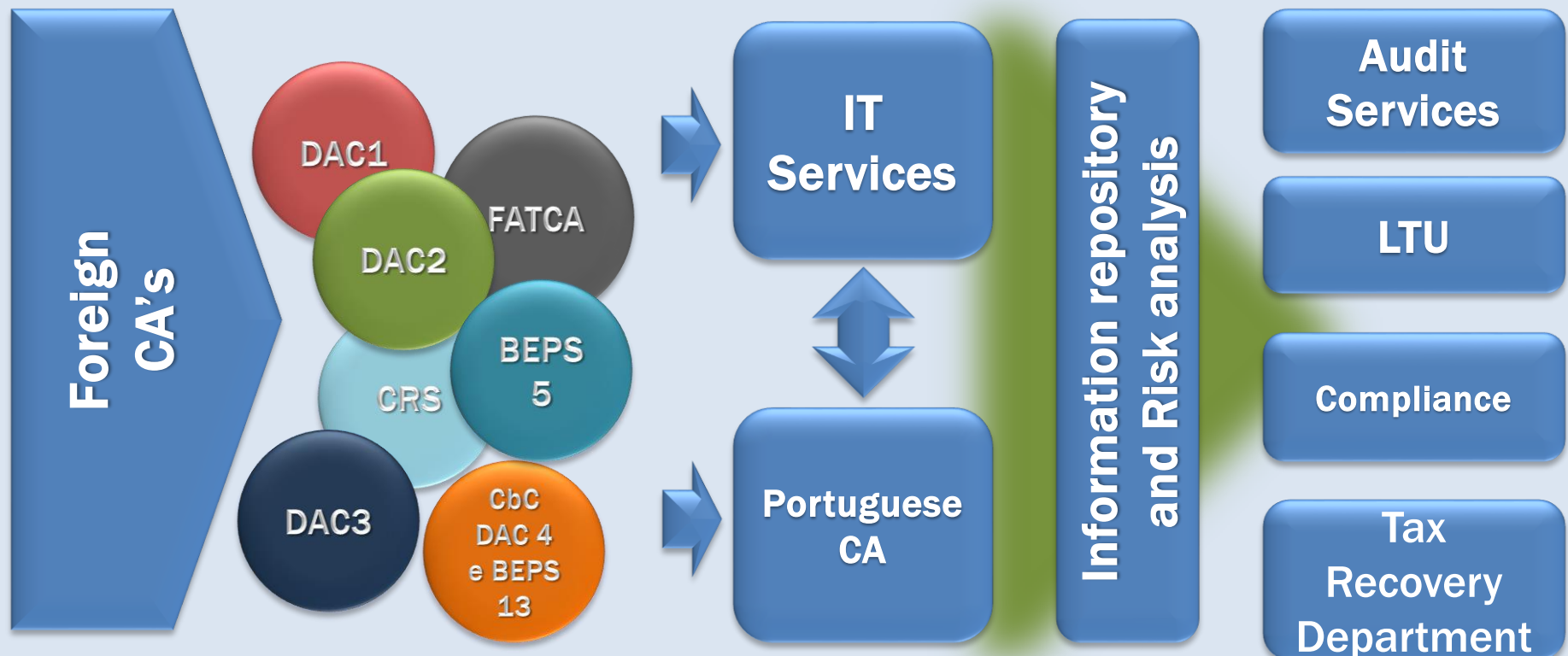
BEPS Project in Portugal

Permanent establishment	Action 7	Subject to implementation of MLI and bilateral negotiations.
Transfer Pricing	Actions 8-10	Is in study the need of review of existent provisions.
Disclosure of aggressive tax planning	Action 12	Disclosure obligations have already been implemented
CbC reporting	Action 13	Its already implemented in Portuguese legislation
Dispute resolution	Action 14	Subject to implementation of MLI and bilateral negotiations. Minimum standard under evaluation – minor recommendations expected
Multilateral Instrument	Action 15	Signed on 7 June 2017 – impending ratification expected

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Eol in Portugal

THE CHALLENGE OF INFORMATION MANAGEMENT



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Challenges

- **Aligning taxation with value creation;**
- **Developing transfer pricing guidance for digital economy;**
- **Implementing, in coordination, an innovative tax policy.**

WE THANK YOU FOR YOUR ATTENTION

