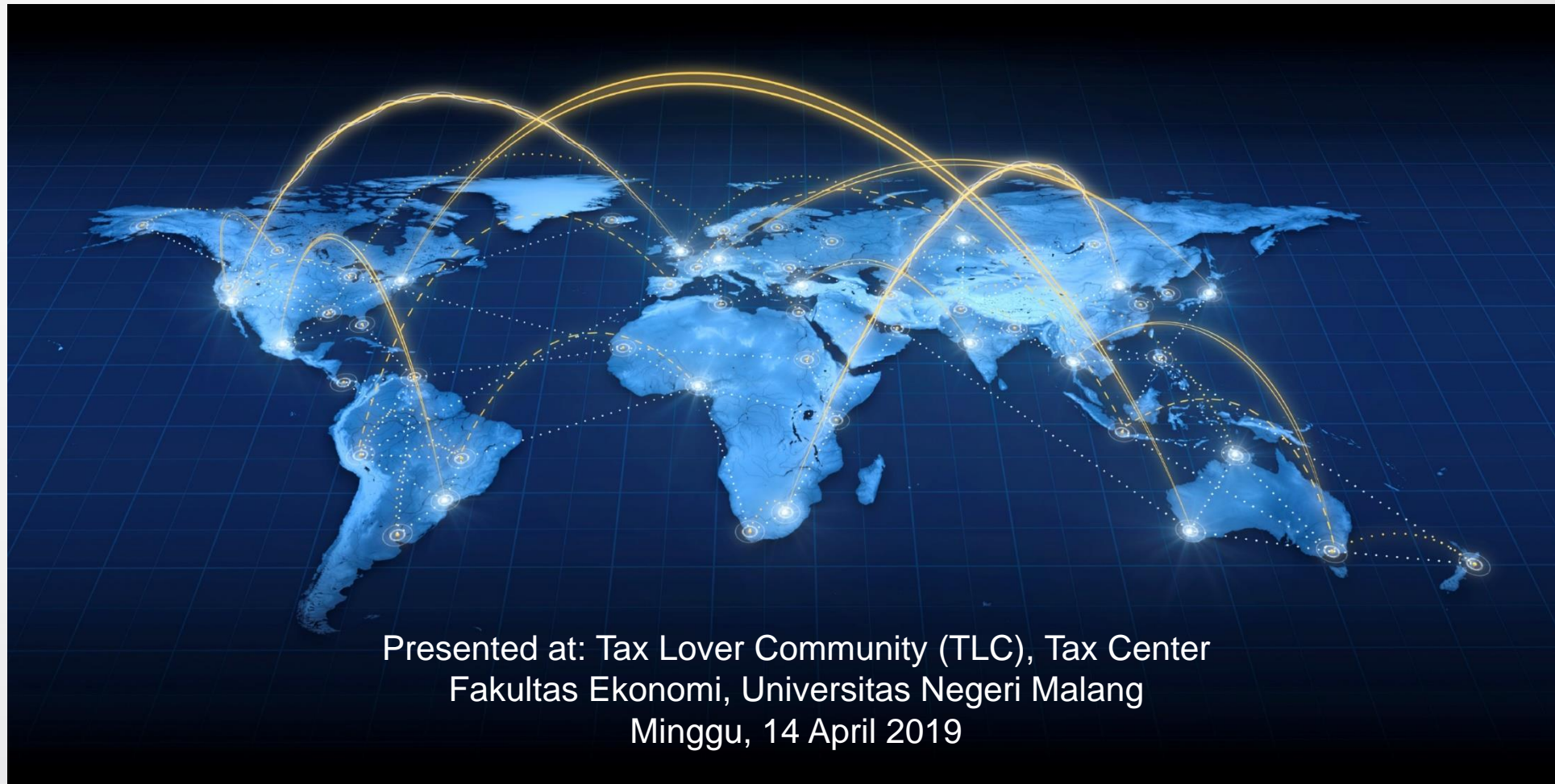




# TAXATION OF THE DIGITAL ECONOMY

**Prof. P.M. John L. Hutagaol**

**Director of International Taxation, DGT**



## CURRICULUM VITAE

Name : Prof. Dr. Poltak Maruli John Liberty  
Hutagaol, M.Acc., M.Ec.(Hons.), S.E., Ak.,  
C.A.

Position : Director of International Taxation

Place & Date of Birth : Jakarta, 27 November 1965

Office Address : Jalan Jenderal Gatot Subroto Kavling 40-42, Jakarta



### I. Education

- ❖ Bachelor of Economics (University of Brawijaya, Malang) – 1988
- ❖ Master of Economics in Accountancy (University of Macquarie, Sydney) – 1994
- ❖ Master of Economics by Research (University of Macquarie, Sydney) – 1995
- ❖ Doctor of Business Management (University of Padjadjaran, Bandung) – 2004
- ❖ Professor (ABFII Perbanas Institute, Jakarta) - 2008

### II. Professional Organization

- ❖ Head of Tax Compartment – Institute of Indonesia Chartered Accountants
- ❖ Head of Tax Department – Indonesia Economist Association (Jakarta Chapter)
- ❖ Conceptor and initiator of the establishment of university tax centers in Indonesia



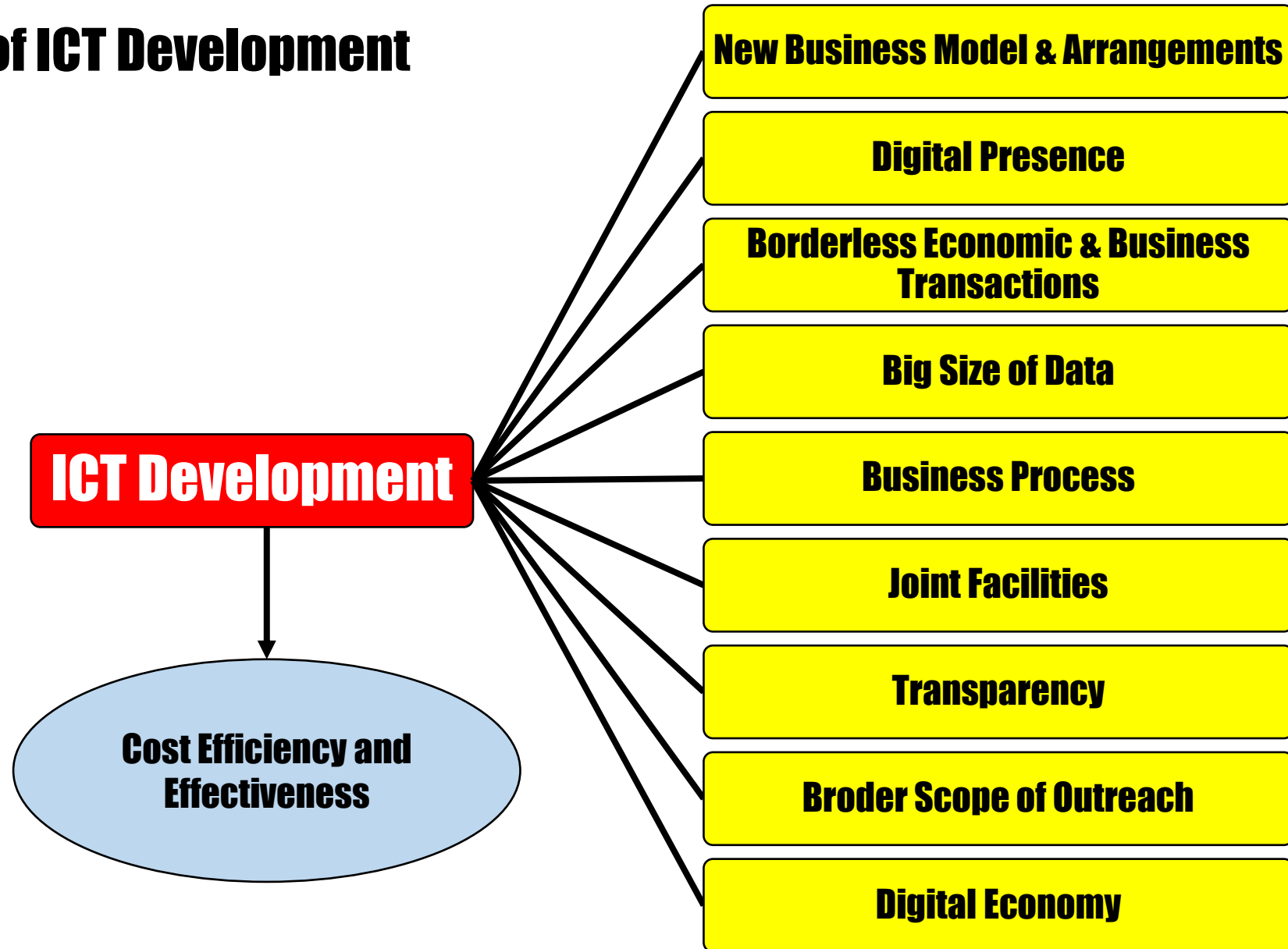
## OUTLINE

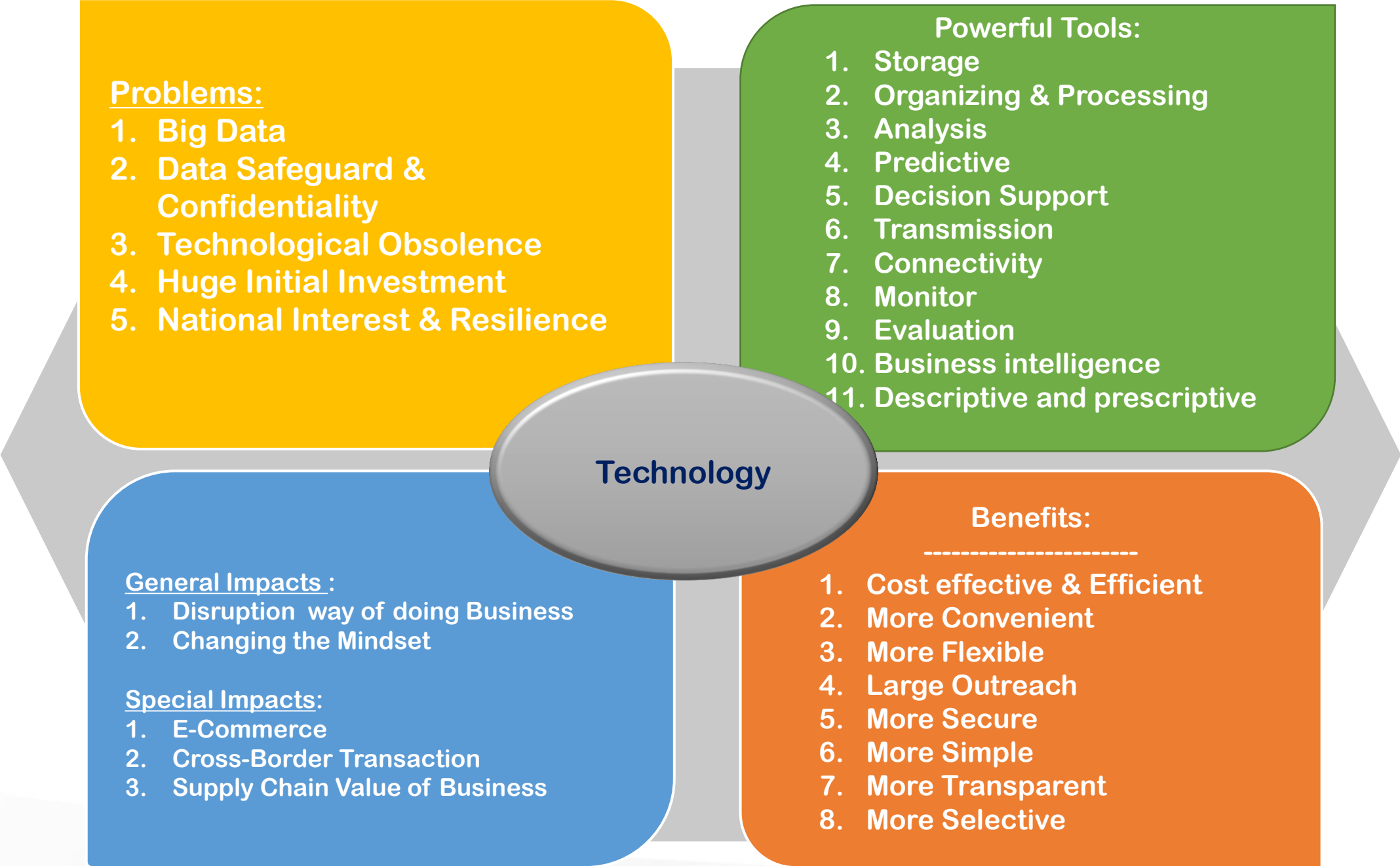
- Recent Information and Communication Technology (ICT) Development
- Impact of ICT on Tax Administration and Policy
- Recent Updates on Taxation of the Digital Economy
- Taxation of the Digital Economy in Indonesia



# Recent ICT Development

# Significance of ICT Development





# Industry Revolution

## 1.0:

- began in the 18th century through the use of steam power and mechanisation of production
- the use of steam power for industrial purposes was the greatest breakthrough for increasing human productivity
- brought about further massive changes because humans and goods could move great distances in fewer hours

## 2.0:

- began in the 19th century through the discovery of electricity and assembly line production
- Henry Ford (1863–1947) carried over the idea of mass production from a slaughterhouse in Chicago into automobile production
- now the vehicles were produced in partial steps on the conveyor belt—significantly faster and at lower cost

## 3.0:

- began in the '70s in the 20th century through partial automation using memory-programmable controls and computers
- using these technologies, we are now able to automate an entire production process—without human assistance
- known examples of this are robots that perform programmed sequences without human intervention

## 4.0:

- we are currently implementing the Fourth Industrial Revolution.
- this is characterised by the application of information and communication technologies to industry
- production systems that already have computer technology are expanded by a network connection
- the networking of all systems leads to production network is nearly autonomous

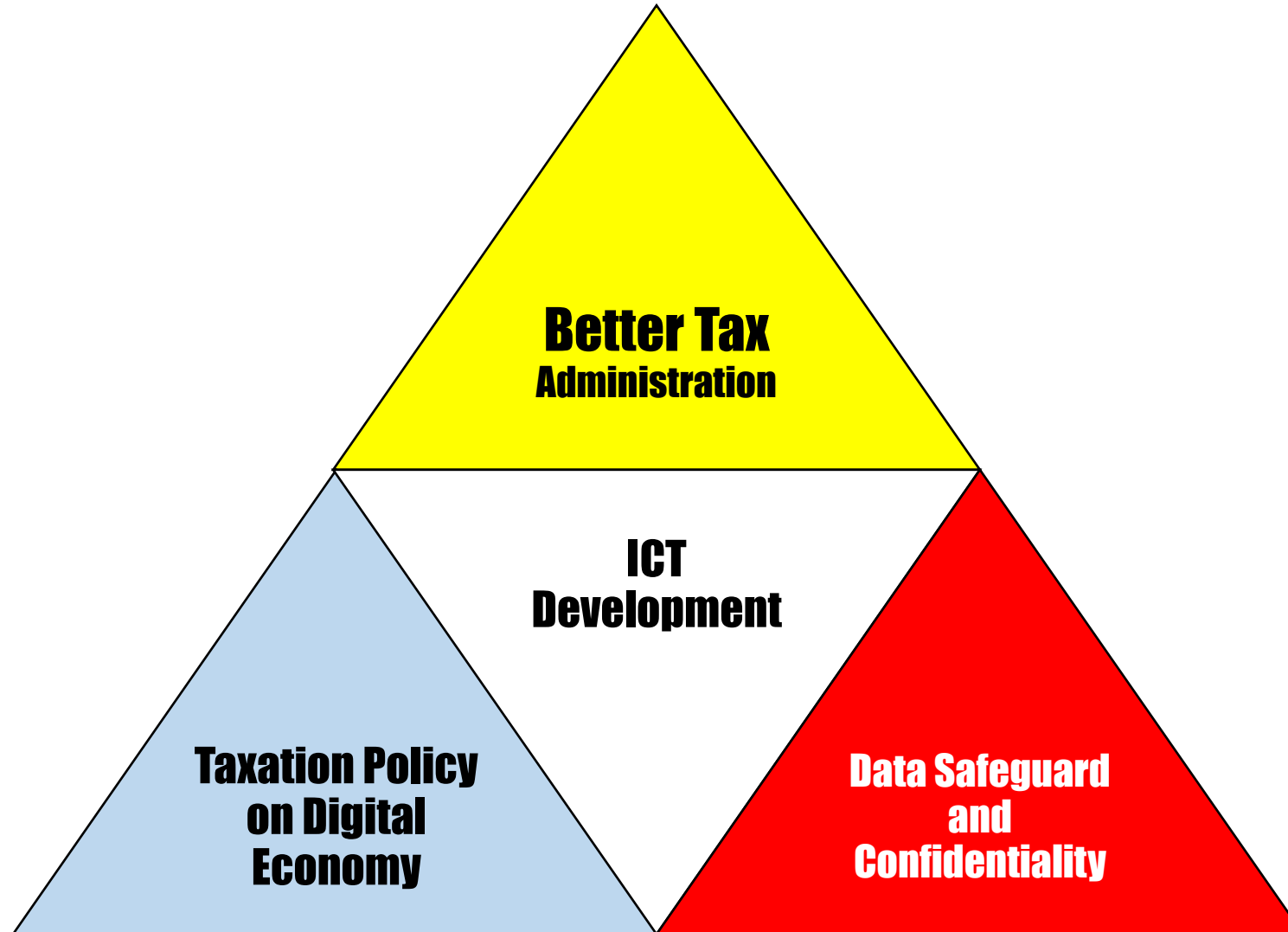
Source: <https://www.desouttertools.com/industry-4-0/news/503/industrial-revolution-from-industry-1-0-to-industry-4-0>

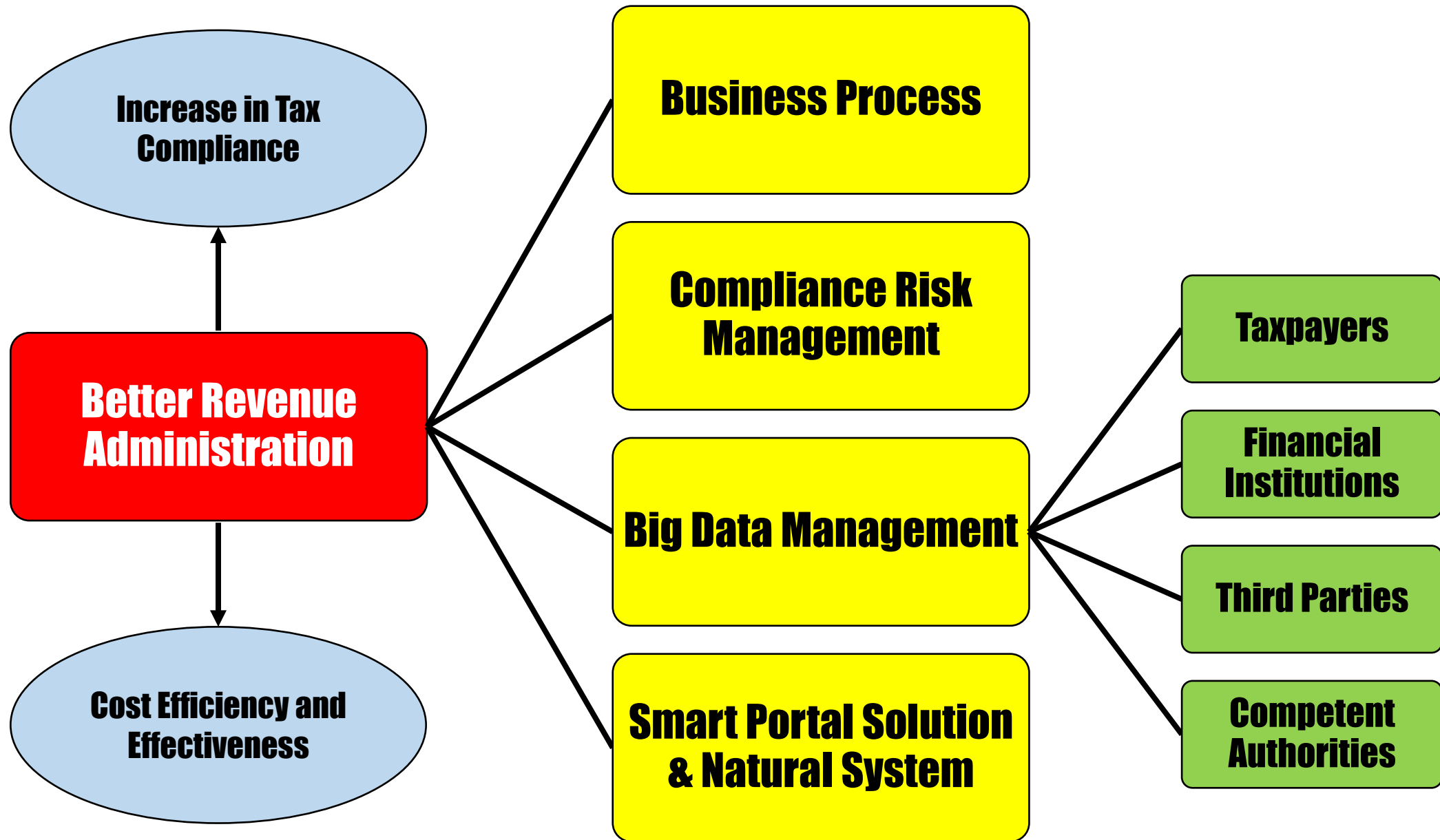


# **Impact of ICT on Tax Administration and Policy**

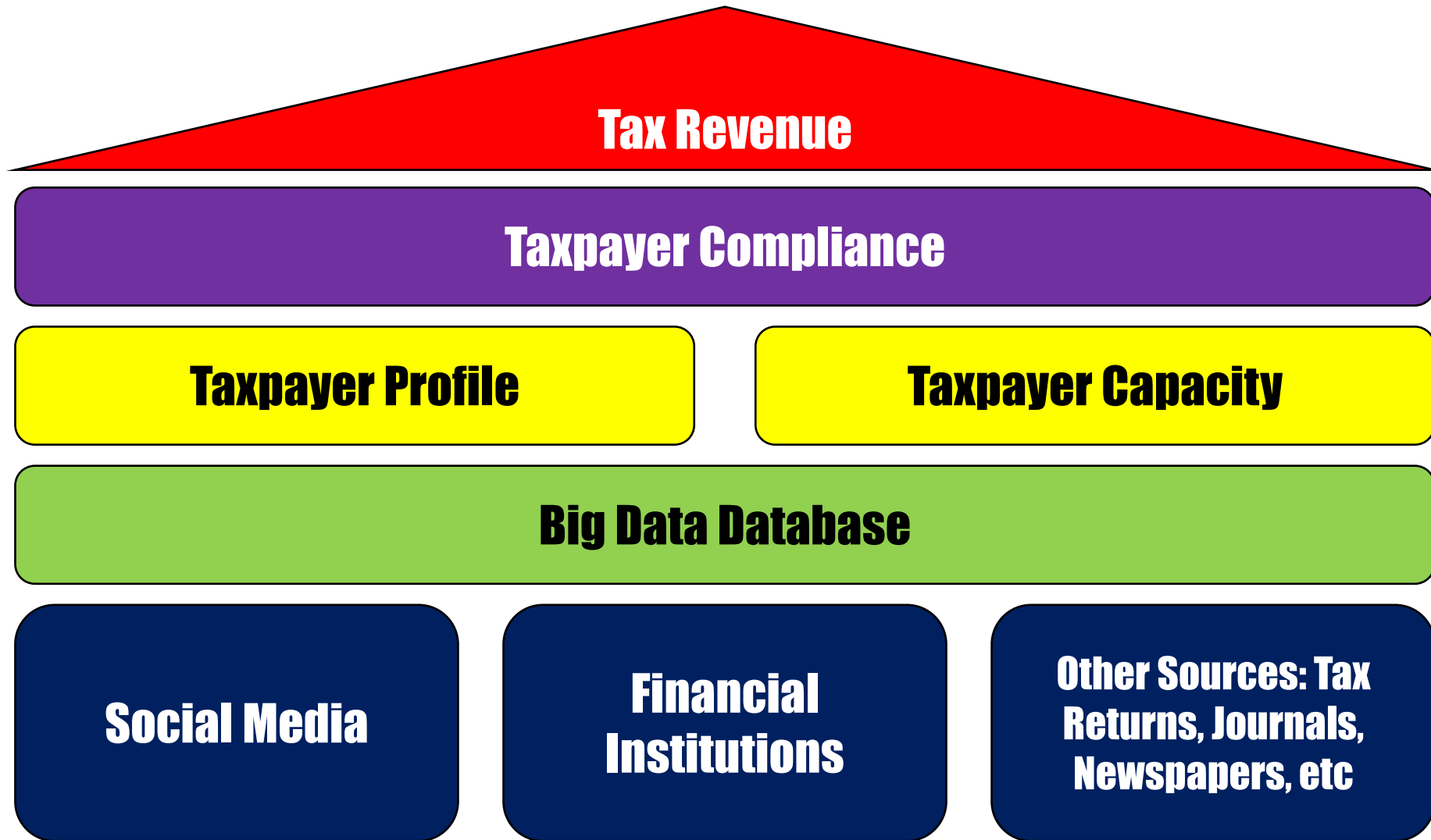


# Challenges of ICT Development for Tax Authority

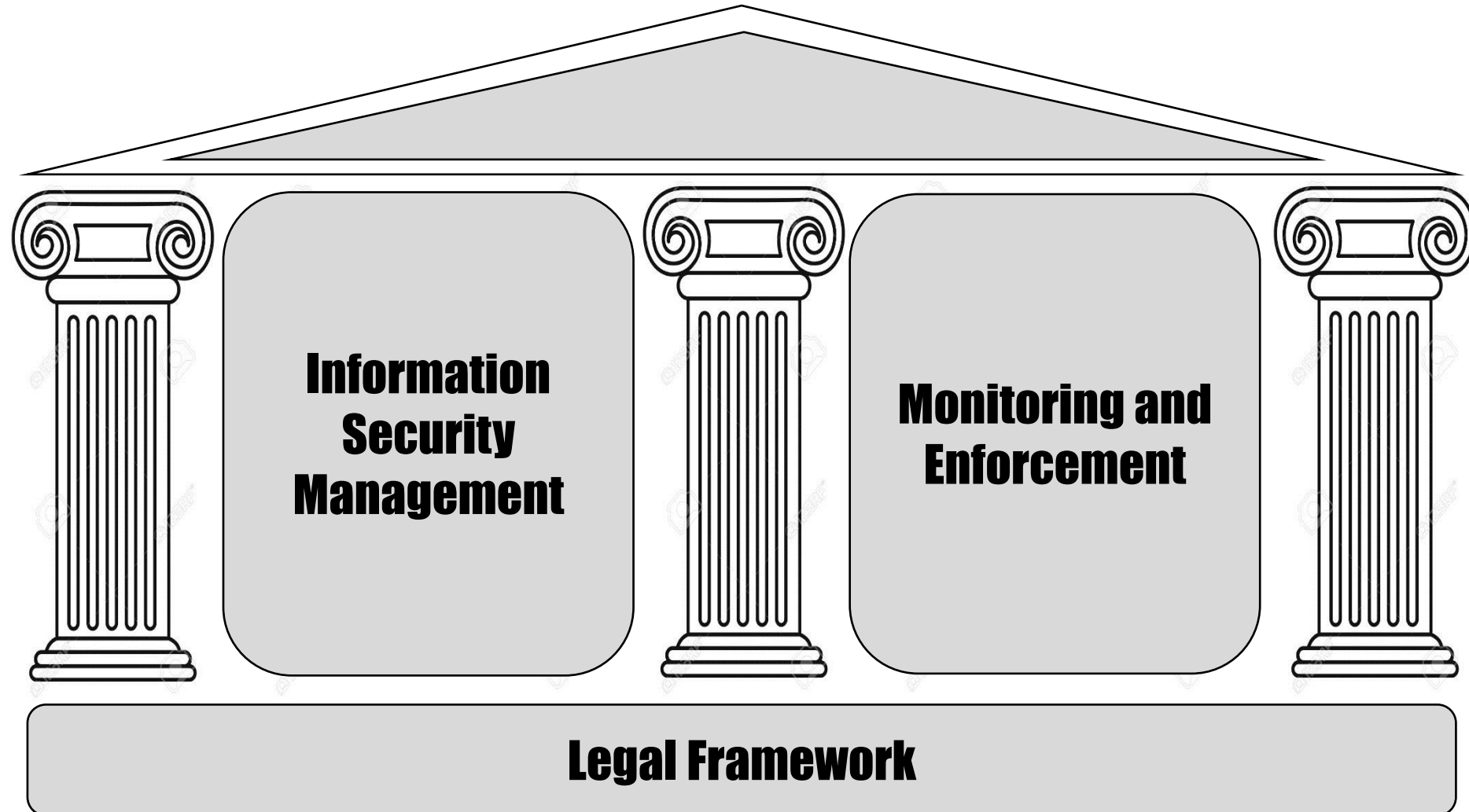


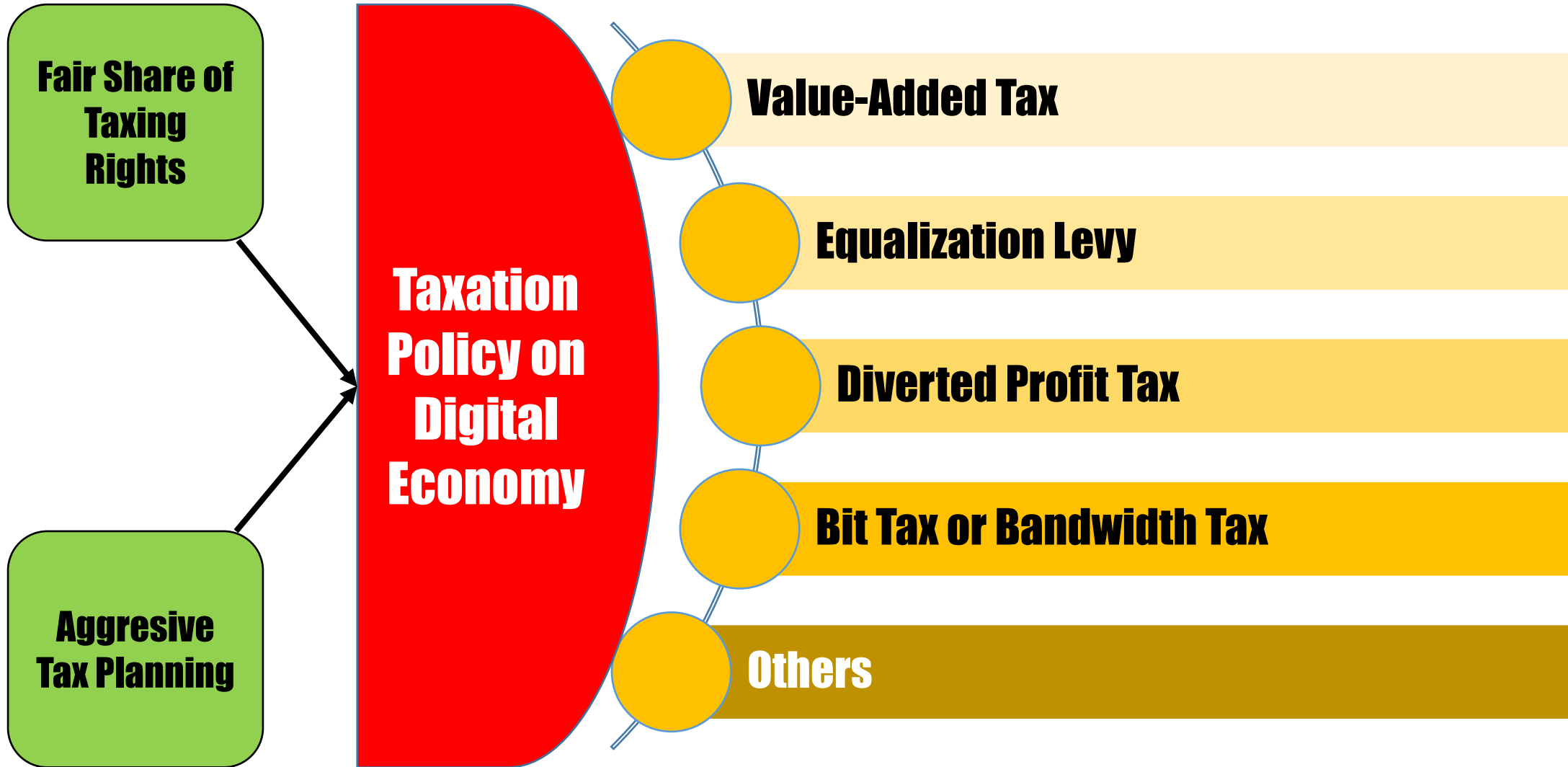


# Big Data Application in Taxation



# Data Safeguard and Confidentiality

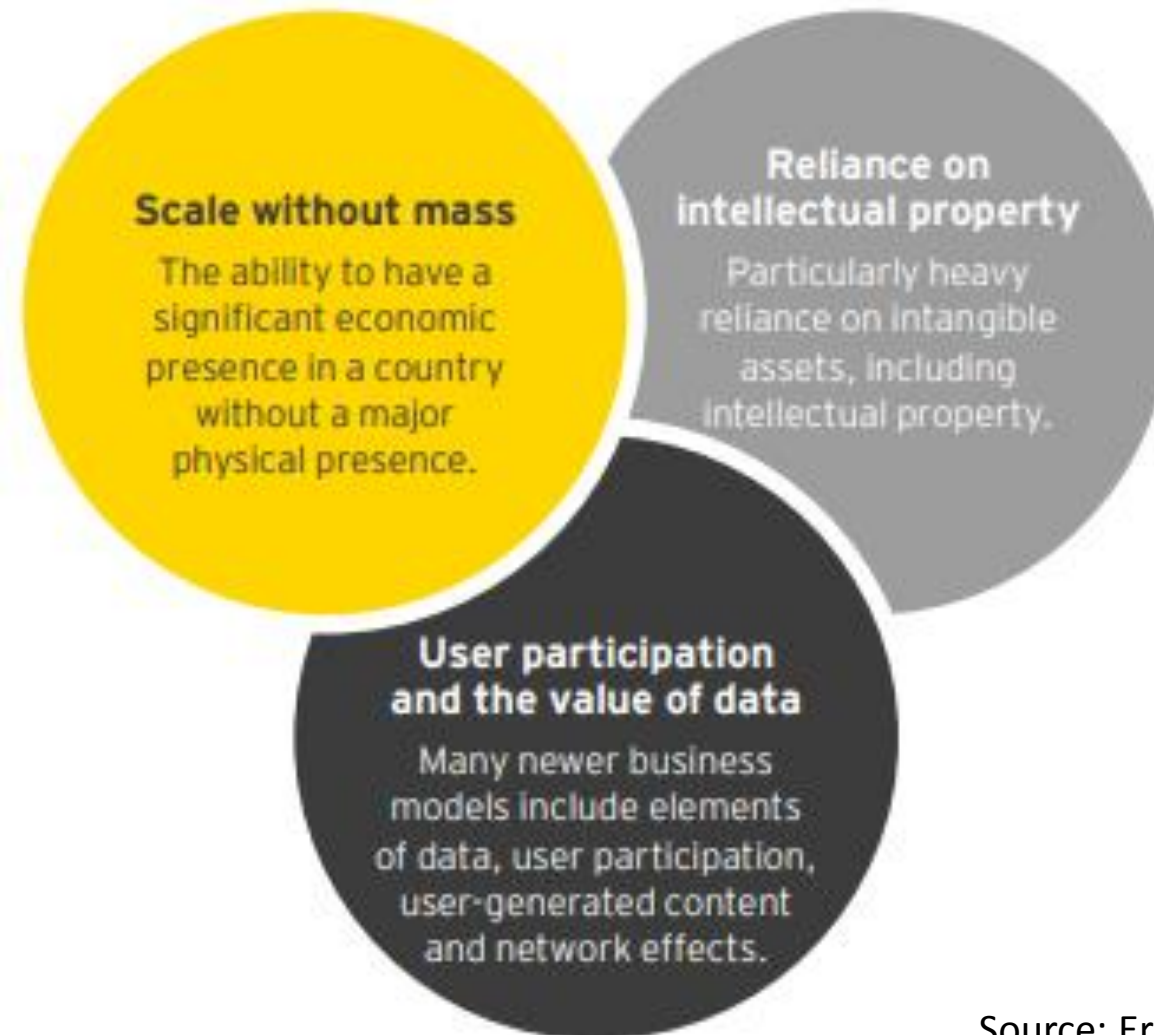






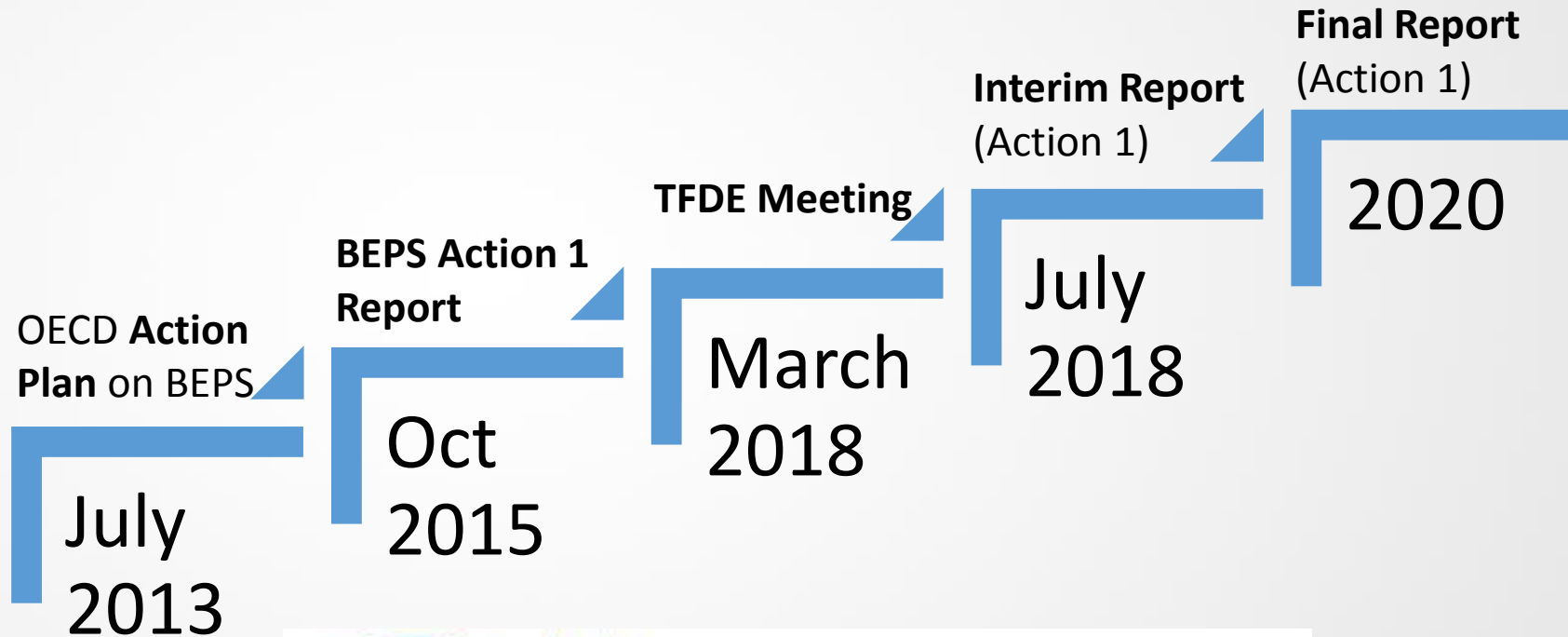
# **Recent Updates on Taxation of the Digital Economy**

# Three Characteristics of Highly Digitalised Business Models:





# TIMELINE







# ISSUES ON DIGITAL ECONOMY TAXATION

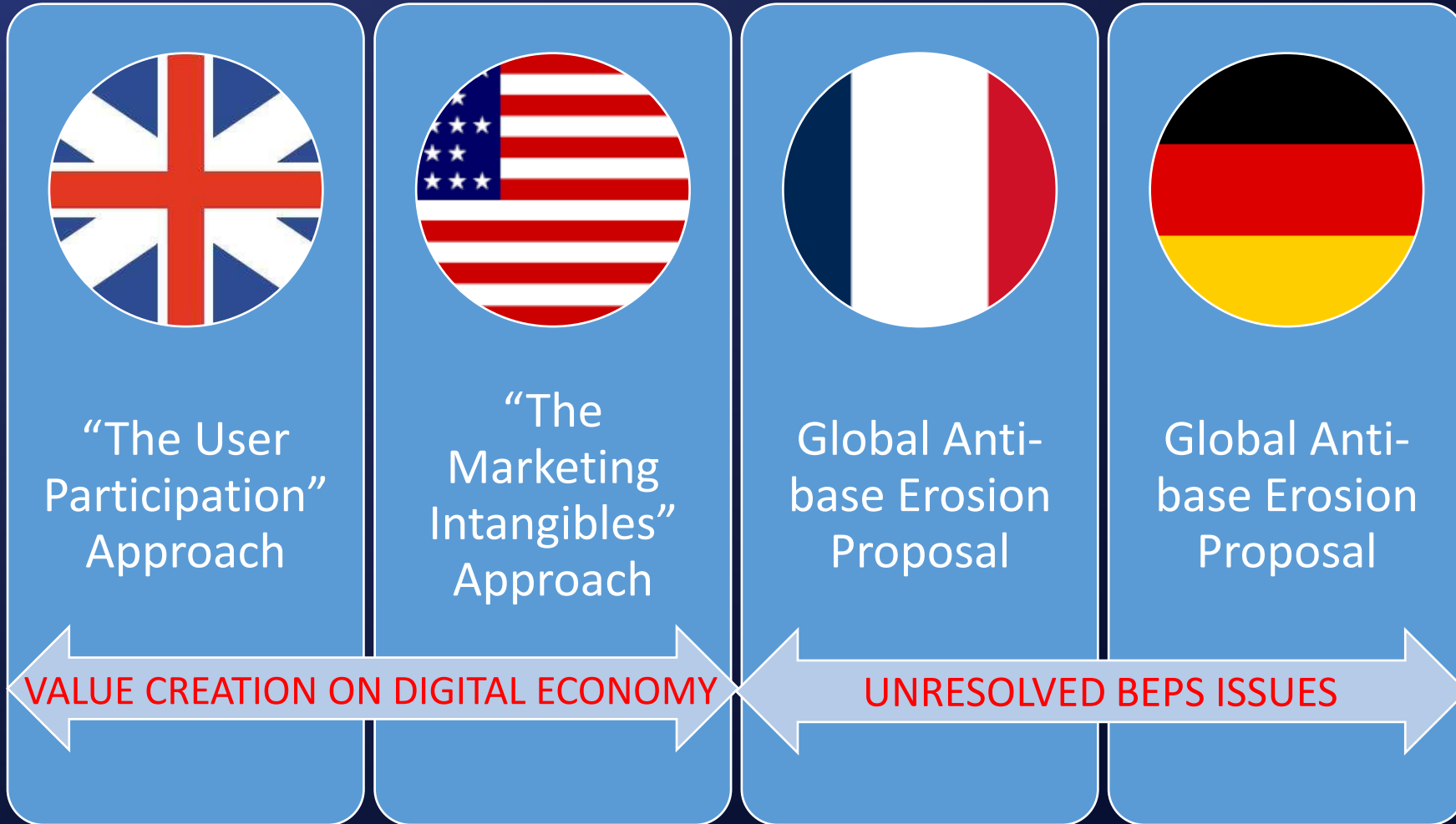
## 1. NEXUS

- **Where** tax should be paid?
- Significant digital presence, where value is created without any physical presence

## 2. PROFIT ATTRIBUTION

- **How much** does the tax liable?
- Allocation of taxing rights

# TFDE MEETING PROPOSALS



# THE UNITED KINGDOM

## “The User Participation” Approach

### Policy Rationale

the **sustained engagement** and **active participation of users** is a critical component of value creation for certain highly digitalised businesses

Social media platforms, search engines, and online marketplaces

### Mechanics

An amount of profit be allocated to jurisdictions in which those **businesses’ active** and **participatory user bases** are located

Calculated through a non-routine or **residual profit split approach**

### Other countries comments

**Conversion methodology** as another possible approach of measuring the attributable profit

Developing **clear boundaries (threshold)** that would exclude business that do not rely on user participation to make profit

# THE UNITED STATES

## “The Marketing Intangibles” Approach

### Policy Rationale

Sees an intrinsic functional link between **marketing intangibles** and the **market jurisdiction**

**Three key fact patterns:** does not have a taxable presence, **or** has a local presence but operates as an LRD, **or** consumer product business not traditionally thought of as a highly-digitalized business, operating either remotely or through an LRD structure

### Mechanics

Modify current profit allocation and nexus rules to require that the non-routine or residual income of the MNE group **attributable to marketing intangibles and their attendant risks** be allocated to the market jurisdiction

Determine marketing intangibles whether allocated under the current rules of the TPG **or** to the market jurisdiction. Then calculated under a revised **residual profit split analysis**

### Other countries comments

**New approach** should take into account the conclusions of recent work on the contribution made by **DEMPE functions** (Actions 8-10)

The existing guidance on the remuneration of distribution activities, and **should remain consistent** with the existing tax framework including the arm’s length principle

# FRANCE AND GERMANY

## Global Anti-Base Erosion Proposal

### Background

The proposal recognises that there is a **risk** of un-coordinated unilateral action, in the absence of multilateral action

Therefore, a **multilateral framework** to achieve a balanced outcome which makes business location decisions less sensitive to tax considerations, limit compliance and administration costs and avoid double taxation

### Two inter-related rules as solution

**Income inclusion rule** as a minimum tax by requiring a shareholder in a corporation to bring into account a proportionate share of the income of that corporation if that income was not subject to tax at a minimum rate (**supplement the CFC rules**)

**Tax on base eroding payments** which include an **undertaxed payments rule** that would deny a deduction for a payment to a related party if that payment was not subject to tax at a minimum rate and a **subject to tax rule** in tax treaties that would only grant certain treaty benefits if the item of income is sufficiently taxed in the other state. (Art 7, 9, 10, 11-13, and 21)

### Other countries comments

Need a **further work** to clarify the kinds of entities, arrangements and behaviours that are within the intended scope of the global anti-base erosion proposal

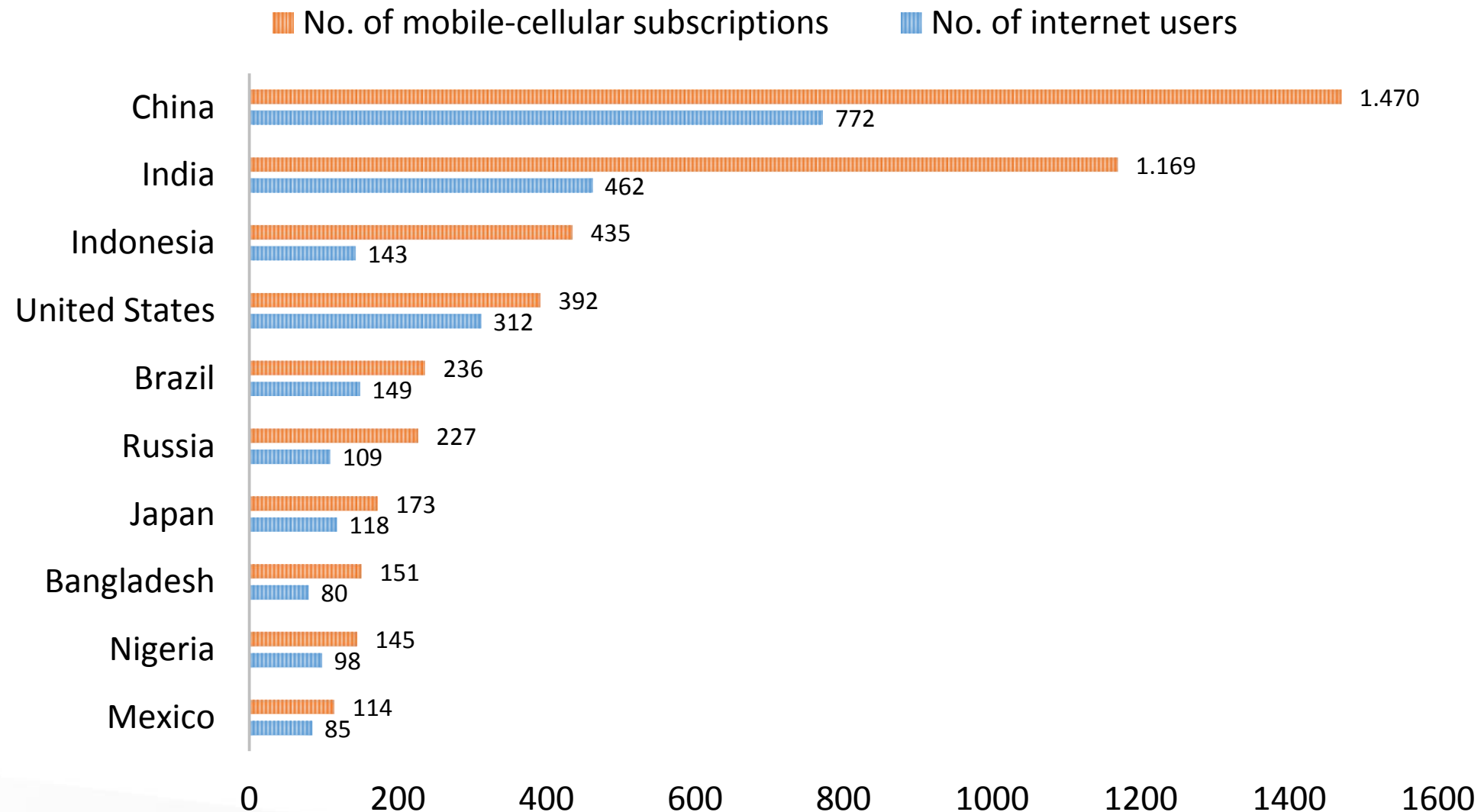
Considering **safe-harbours** and **thresholds** that would reduce complexity in the application of the rule

**Co-ordinating outcomes** and the possibility of incorporating dispute prevention and resolution components



# **Taxation of the Digital Economy in Indonesia**

# Numbers of Mobile-cellular Subscriptions and Internet Users, 2017

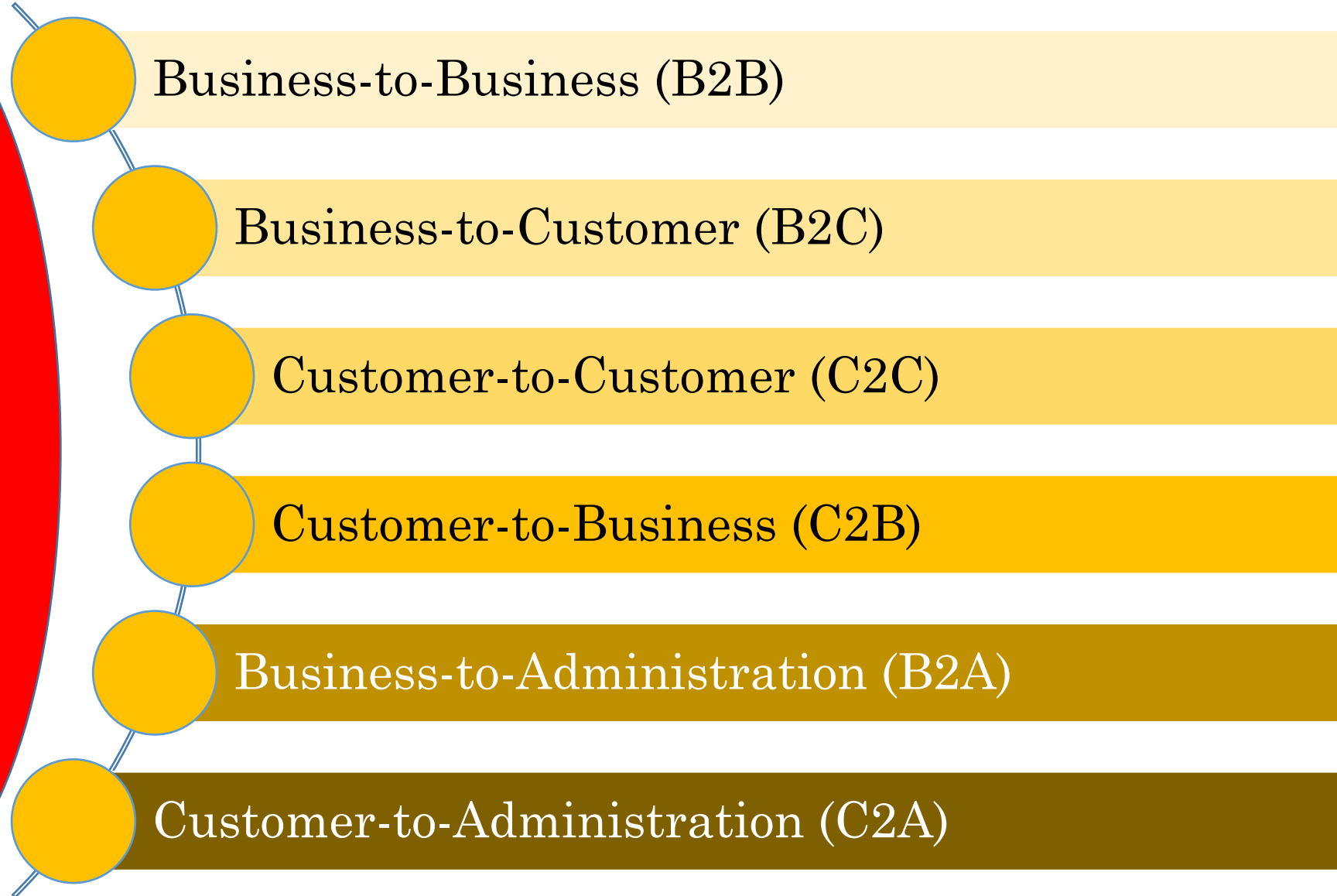


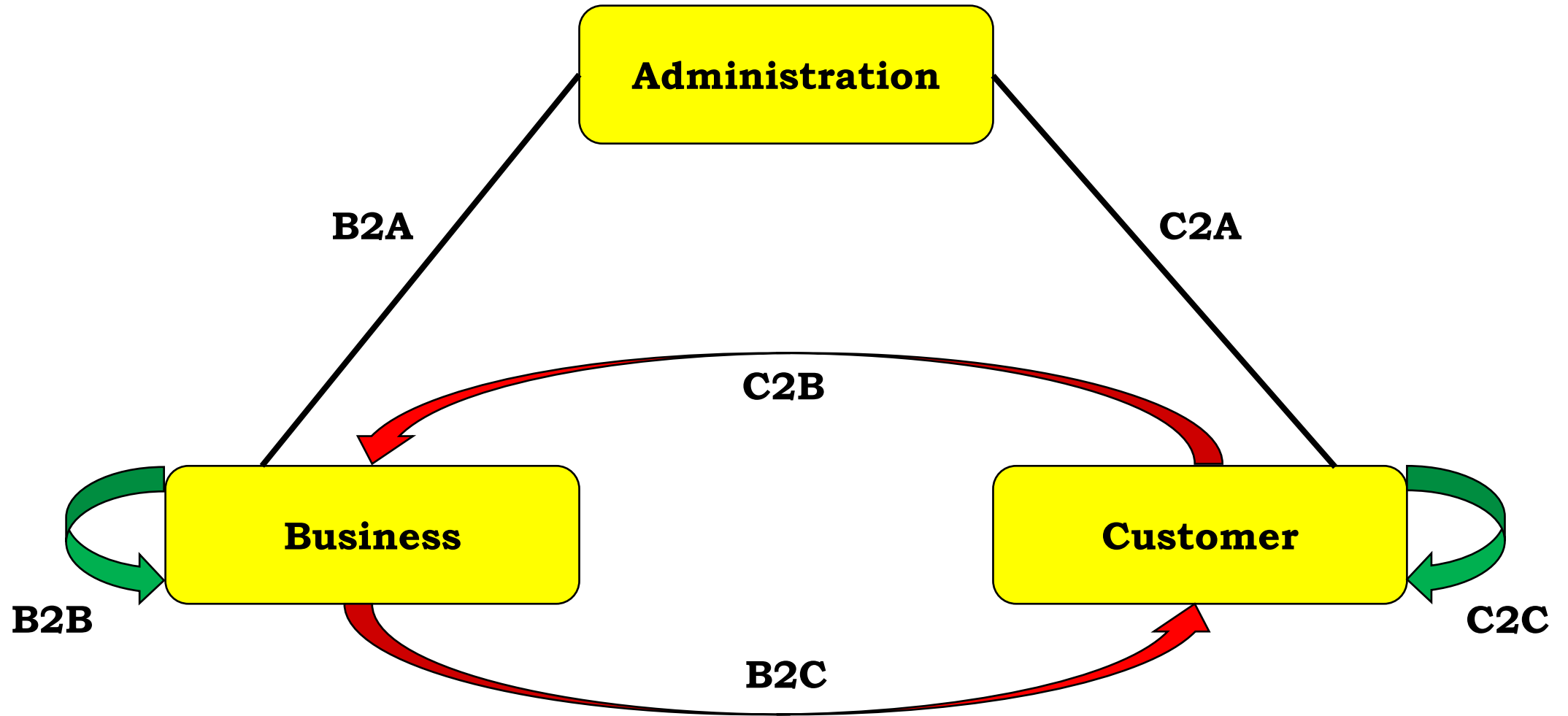


# **TYPE OF E-COMMERCE**



6  
Basic Types  
of  
e-Commerce







**LEGAL BASE**



- 1. Law No. 7 of 2014 concerning Commerce**
- 2. Circular of Minister of Communication and Information No. 3 of 2016 concerning Over-the-Top Service**
- 3. Circular of Director General of Taxes No. SE-62/PJ/2013 concerning Explanation for Tax Provisions on e-Commerce Transactions**
- 4. Ministry of Finance Regulation No. 35/PMK.03/2019 concerning Determination of Permanent Establishment**

# Circular of Director General of Taxes No. SE-62/PJ/2013

## Explanation for Tax Provisions on e-Commerce Transactions

### 4 e-Commerce Transaction Models

#### ONLINE MARKETPLACE



#### CLASSIFIED ADS



#### DAILY DEALS



#### ONLINE RETAIL



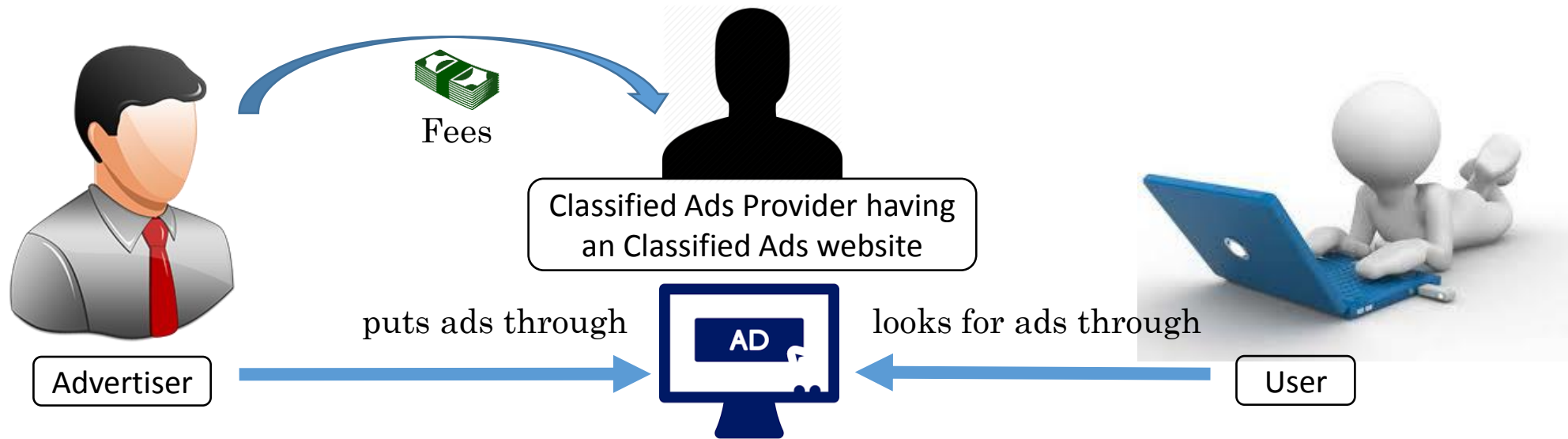
# Online Marketplace

Activity of providing business space in the form of an Online Shop in Online Mal for Online Marketplace Merchants who want to sell their goods and/or service. Some Online Marketplace also act as payment intermediary.



# Classified Ads

Activity of providing space and/or time for displaying advertisements from Advertiser to Users through a website provided by Classified Ads Provider.



# Daily Deals

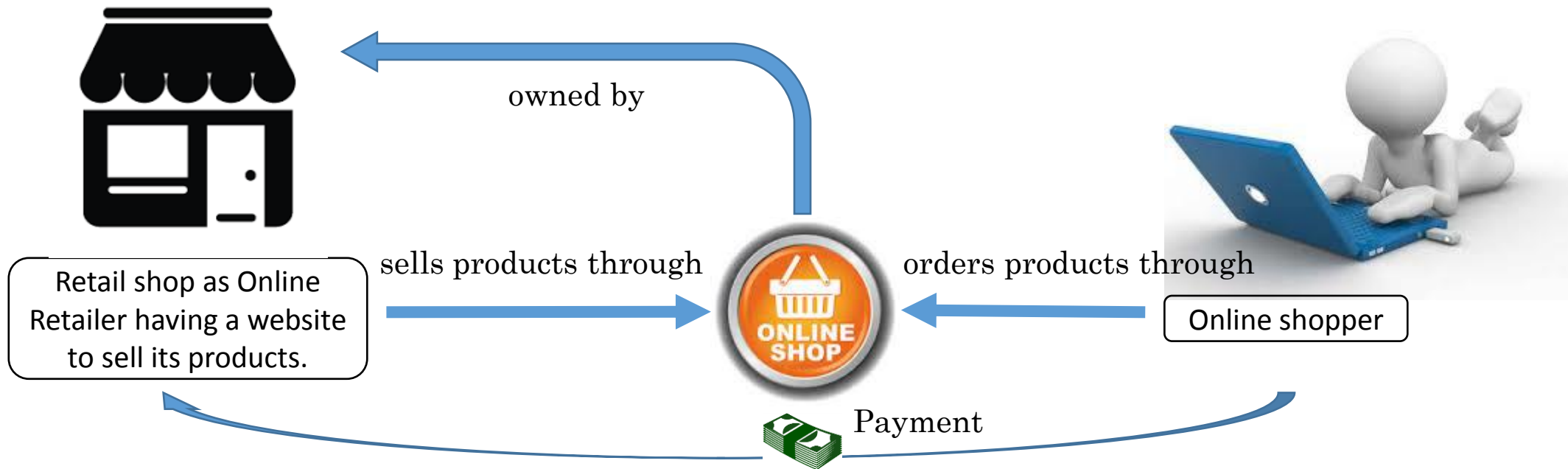
Activity of providing business space in the form of Daily Deals website for Daily Deals Merchants who want to sell their goods and/or service using voucher as payment method.





# Online Retail

Activity of selling goods and/or service by Online Retailer to Buyer using an Online Retail website.





**TAX TREATY**

# Tax Treaty



Art. 7 P3B

**Business Profit**

Resident country

market country



Is there a PE?



No PE



TAX

An icon of a storefront with a awning.

**Fixed Place**

An icon of a man in a suit and tie.

**Dependent agent**

A photograph of a tall apartment building.

**Subs as PE**

# Fixed Place

---



Office



Server



Warehouse

---



# THANK YOU

Ministry of Finance of the Republic of Indonesia  
**Directorate General of Taxes**

 [www.pajak.go.id](http://www.pajak.go.id)  [DitjenPajakRI](https://www.facebook.com/DitjenPajakRI)  [@DitjenPajakRI](https://twitter.com/DitjenPajakRI)  [DitjenPajakRI](https://www.youtube.com/DitjenPajakRI)  1500-200

