

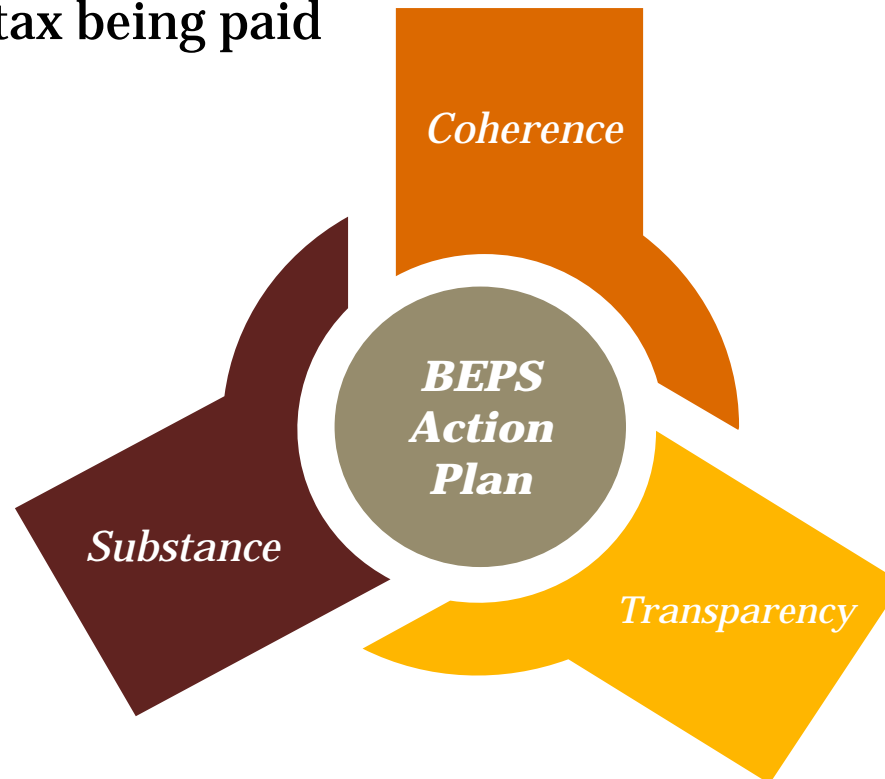
Practical Implications of BEPS

Vered Kirshner, Tax Partner, PwC Israel

Ben Blumenfeld, Tax and Transfer Pricing Senior Manager, PwC Israel

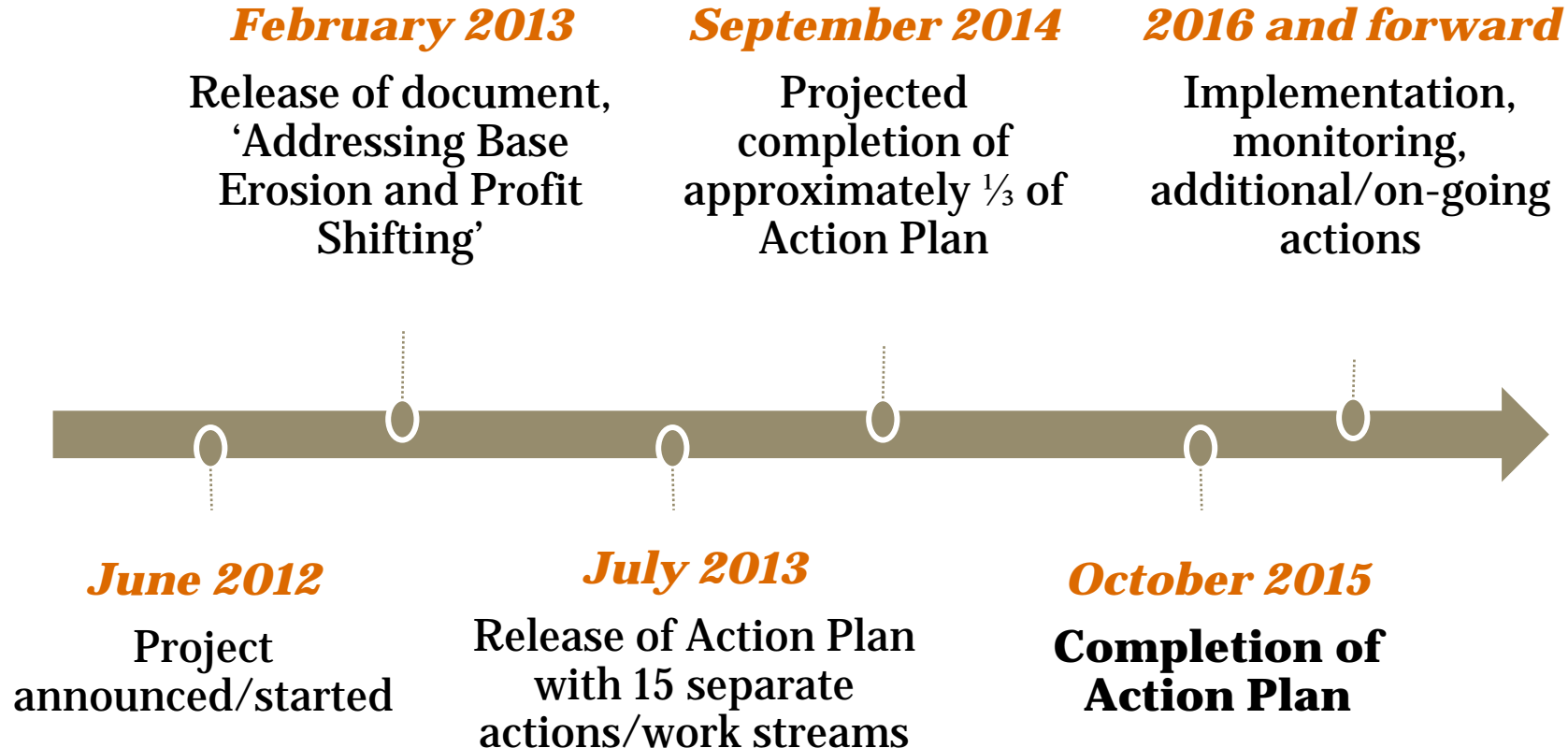
Aim of BEPS

- Action plan backed by the OECD and G20 to address **Base Erosion and Profit Shifting**
- Looks to focus on tax planning strategies that exploit **gaps and mismatches in tax rules** to artificially shift profits to low or no-tax locations where there is little or no economic activity, resulting in little or no overall corporate tax being paid



Aim of BEPS

What has been happening so far?



Action plan

Action 1

Address the challenges of the **digital economy**

Action 2

Neutralize the effect of **hybrid mismatch arrangements**

Action 3

Strengthen CFC rules

Action 4

Limit base erosion via interest deductions and other financial payments

Action 5

Counter **harmful tax practices** more effectively, taking into account transparency and substance

Action 6

Prevent **treaty abuse**

Action 7

Prevent the artificial avoidance of PE status

Action 8

Assuring that TP outcomes are in line with value creation
Intangibles

Action 9

Assuring that TP outcomes are in line with value creation (Risks and Capital)

Action 10

Assuring that TP outcomes are in line with value creation (Other high-risk transactions)

Action 11

Establish methodologies to collect and analyze data on BEPS and the actions to address it

Action 12

Require taxpayers to disclose their aggressive tax planning arrangements

Action 13

Re-examine **transfer pricing documentation**

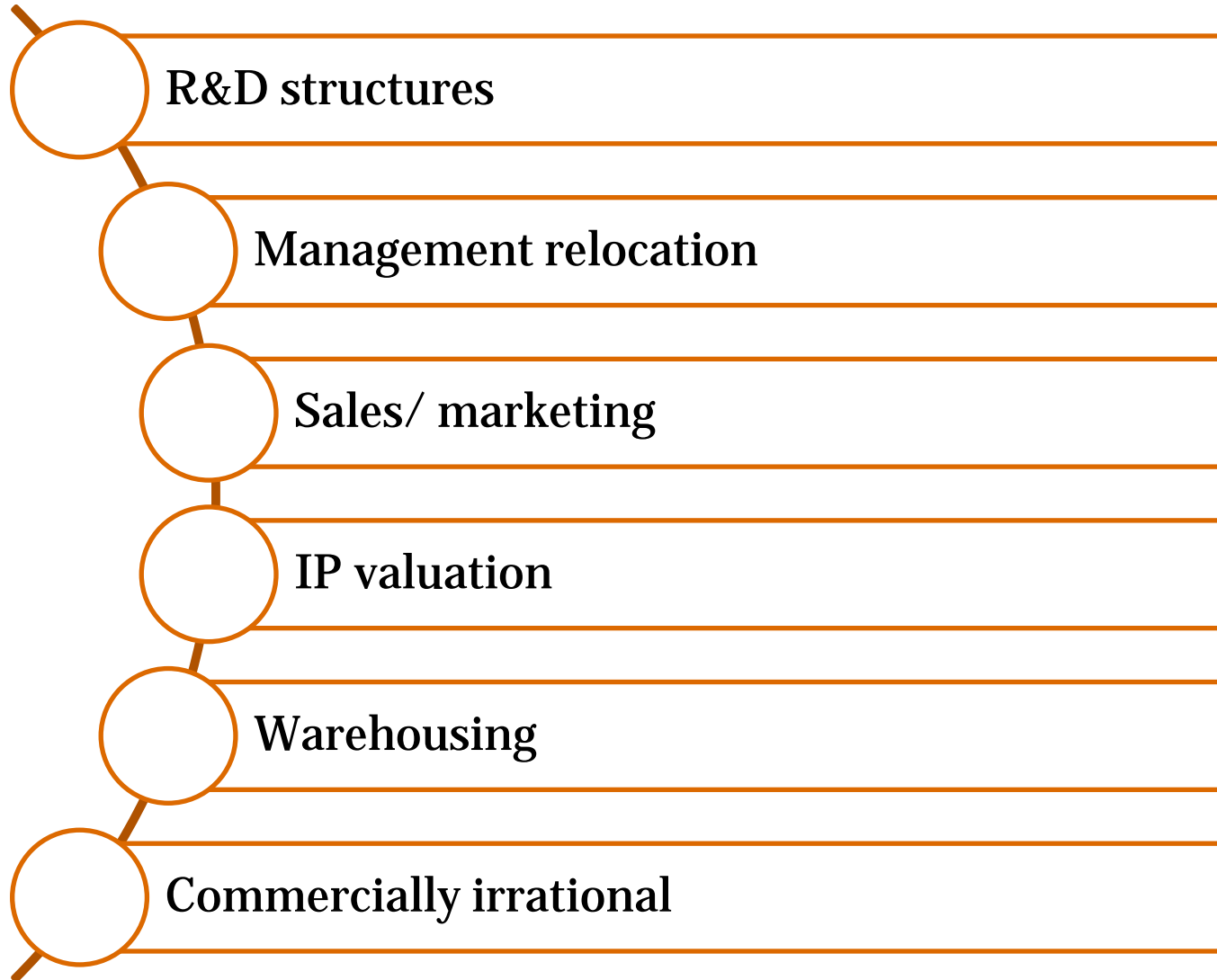
Action 14

Make dispute resolution mechanisms more effective

Action 15

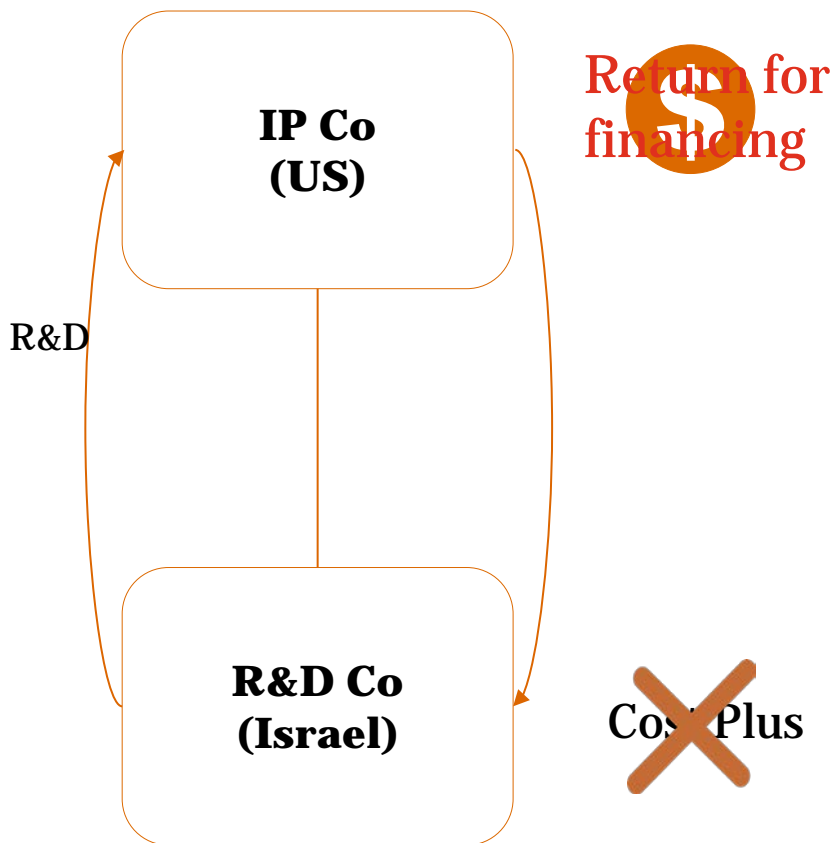
Develop a **multilateral instrument**

So practically what is the impact of BEPS?



So practically what is the impact of BEPS?

R&D structures



BEPS risks

- Transfer Pricing
 - Intangibles
 - Risk

Impact

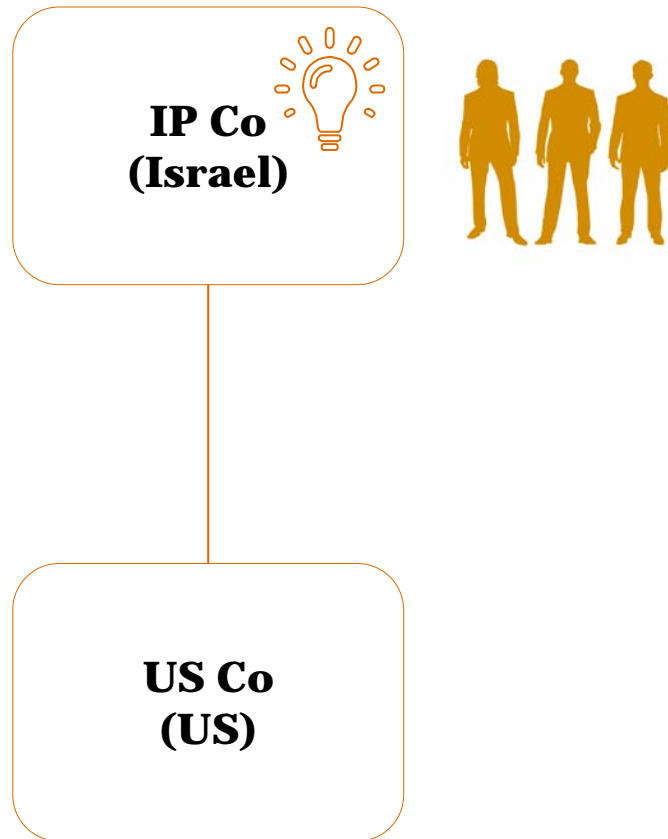
- R&D Co considered to be the economic owner of the IP
- IP Co entitled to return for financing

What are groups doing?

- Review substance within IP Co
- Substance is activity NOT only number of people and NOT only legal contract
- Understand value chain of the business and key risks
- Ensure value drivers and key risks are being overseen and managed by IP Co

So practically what is the impact of BEPS?

Management relocation



BEPS risks

- Current risk
- Transfer Pricing
 - Intangibles
 - Risk

Impact

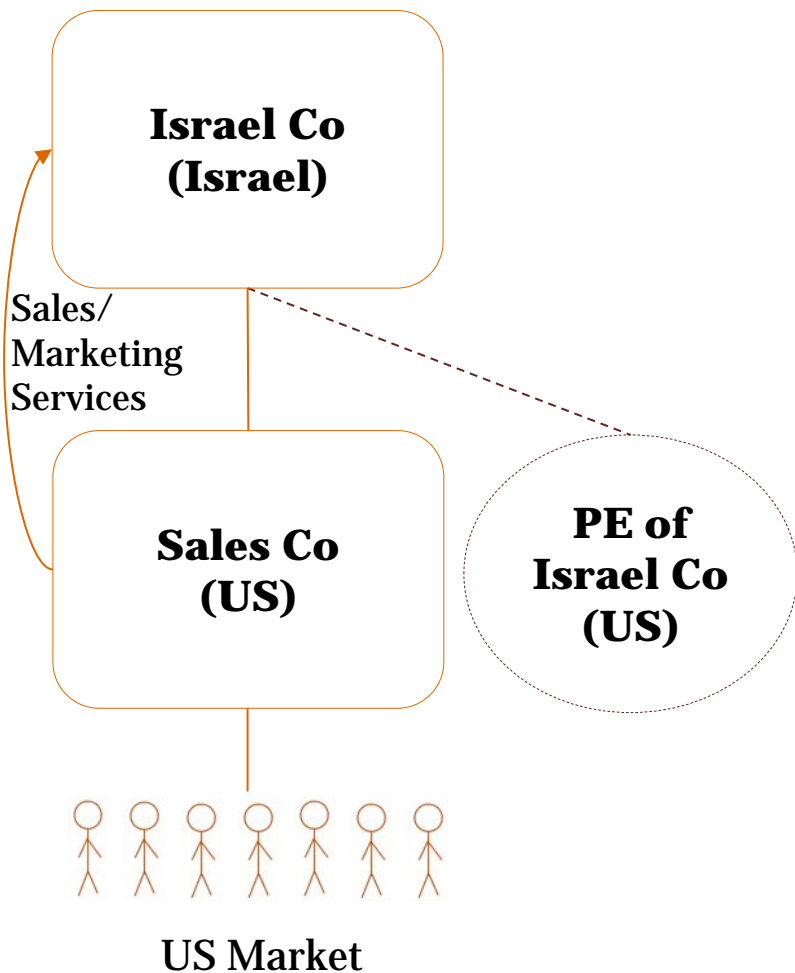
- US Co considered economic owner of IP
- IP Co remunerated for functions it performs; support services

What are groups doing?

- Substance and value chain review
- Management/ staff awareness of tax impact
- Instructions and guidelines for Management/ staff

What will be treated as BEPS structures

Sales/ Marketing



BEPS risks

- Current risk
- Permanent Establishment (PE) now clarified and codified

Impact

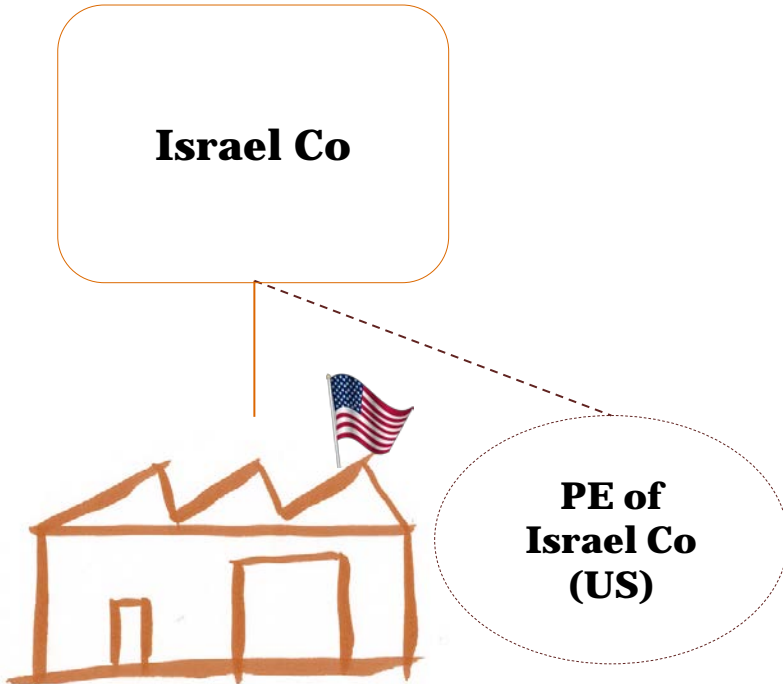
- IRS look to attribute Israel Co profit to a taxable presence in US
- Uncertainty over the profits attributable to PE

What are groups doing?

- Understand role and value of sales function
- Who is performing the 'principal role'
- 'Do's and Don'ts' for sales/ marketing people
- Review/ reconsider TP on Sales Co
- Sales/ marketing people compensation structure
- Restructure to distribution model

What will be treated as *BEPS* structures

Warehousing



BEPS risks

- Permanent Establishment (PE)
- A warehouse of importance within the business can now create a PE

Impact

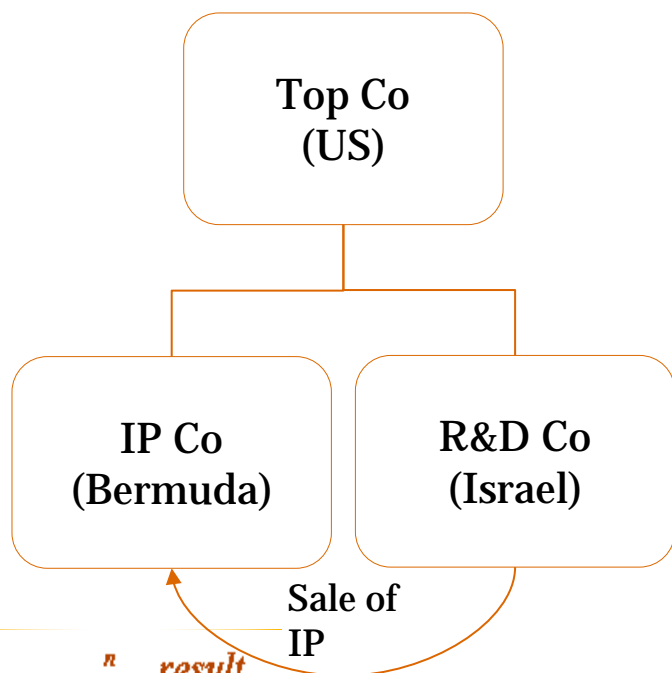
- Warehouse considered a key part of business
- IRS claim a PE of Israel Co in US (state nexus considerations)
- Profits of Israel Co attributed to PE

What are groups doing?

- Understand role and value of warehousing function
- Is it 'auxiliary and/or preparatory'?
- Review/ reconsider transfer pricing
- Check state nexus rules

What will be treated as BEPS structures

IP Valuation



$$NPV = \sum_{i=1}^n \frac{result_i}{(1+rate)^i}$$

100 p.a.

3 Years

Later

$$NPV = \sum_{i=1}^n \frac{result_i}{(1+rate)^i}$$

1,000 p.a.

BEPS risks

- Transfer Pricing
 - Hard To Value Intangibles

Impact

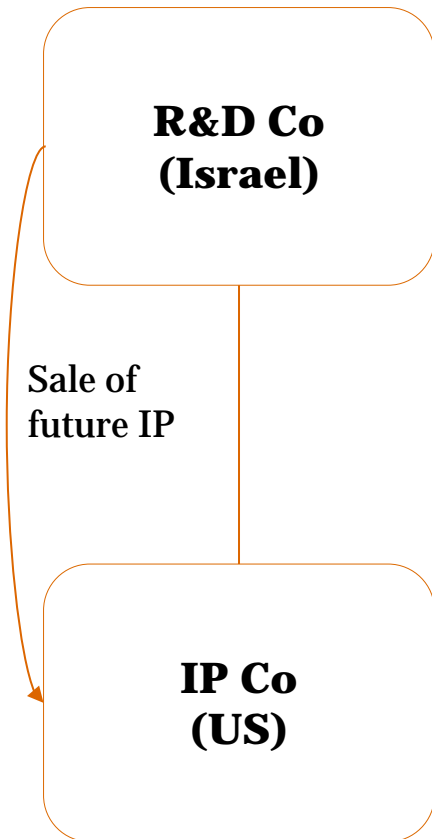
- Tax Authorities can use actual numbers to adjust valuation
- Where significant variance of valuation (>20%) and for no unforeseeable reason

What are groups doing?

- Ensure valuation and sales contract arm's length to extent feasible
- Consider clauses for valuation impact which third parties would agree
- Strategy to mitigate tax audit risk
- Consider tax provisions

What will be treated as BEPS structures

Commercially irrational



BEPS risks

- Transfer Pricing
 - Recharacterisation

Impact

- Sale of IP is disregarded
- IP Co treated as a finance provider
- IP remains in R&D Co

What are groups doing?

- Assess commerciality of transaction and classification of transactions
- Is group worse off pre-tax? I.e. is transaction tax driven
- Restructure arrangement

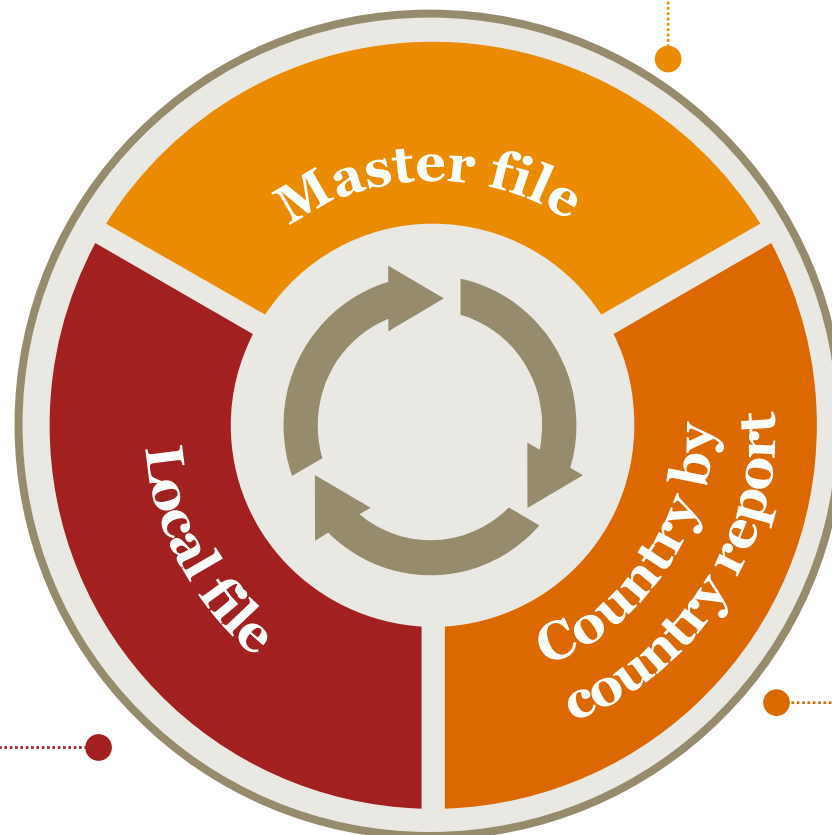
Documentation

Overview of MNE's global operations:

- Group operational structure
- Key products
- Intangibles
- Financing arrangements
- Financial data

TP analysis to supplement Master file

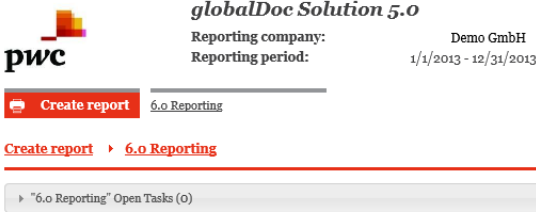
- Local business
- TP analysis
- Financial information



Financial data by country

- Revenue
- PBT
- Tax paid
- Capital
- Employees
- Assets

Documentation – GlobalDoc



globalDoc Solution 5.0
Reporting company: Demo GmbH
Reporting period: 1/1/2013 - 12/31/2013

Create report 6.0 Reporting

Create report > 6.0 Reporting

> "6.0 Reporting" Open Tasks (0)

Browse... Load configuration Save configuration

Select chapters:

- Chapters
 - General information
 - 1.0 General
 - 1.1 Legal structure
 - 1.2 Organisational structure
 - 1.3 General description of business
 - 1.4 Accounting and charging principles
 - 2.0 Transactions with related parties
 - 2.1 Transfer pricing policy
 - 2.2 Relevant related parties
 - 2.4 Description of transactions
 - 3.0 Functional and risk analysis
 - 3.1 Functional analysis
 - 3.2 Risk analysis
 - 4.0 Transfer pricing analysis
 - 4.1 Appropriateness of applied method
 - 4.2 Financial analysis
 - 5.0 Documentation of special cases
 - 7.0 Document management

Select transaction groups:

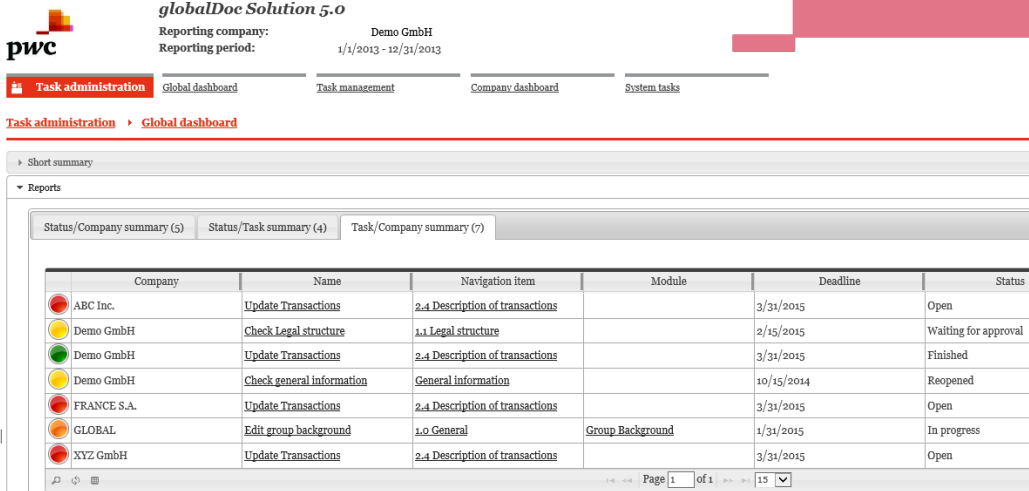
- 2.3 Grouping of transactions
 - 1 Deliveries between Component production and Product
 - 2 Deliveries between production and selling
 - 3 Services
 - 4 License transaction

Select report template: DefaultTemplate Skip empty sections ☒ Review mode

Leading technology with respect to the preparation of TP documentation reports and the storage of documents and information

Ideal combination of standardisation, flexibility and individuality with regard to the TP documentation

Integrated and comprehensive workflow-management-tool including status overviews and reminder-emails



globalDoc Solution 5.0
Reporting company: Demo GmbH
Reporting period: 1/1/2013 - 12/31/2013

Task administration Global dashboard Task management Company dashboard System tasks

Task administration > Global dashboard

Short summary

Reports

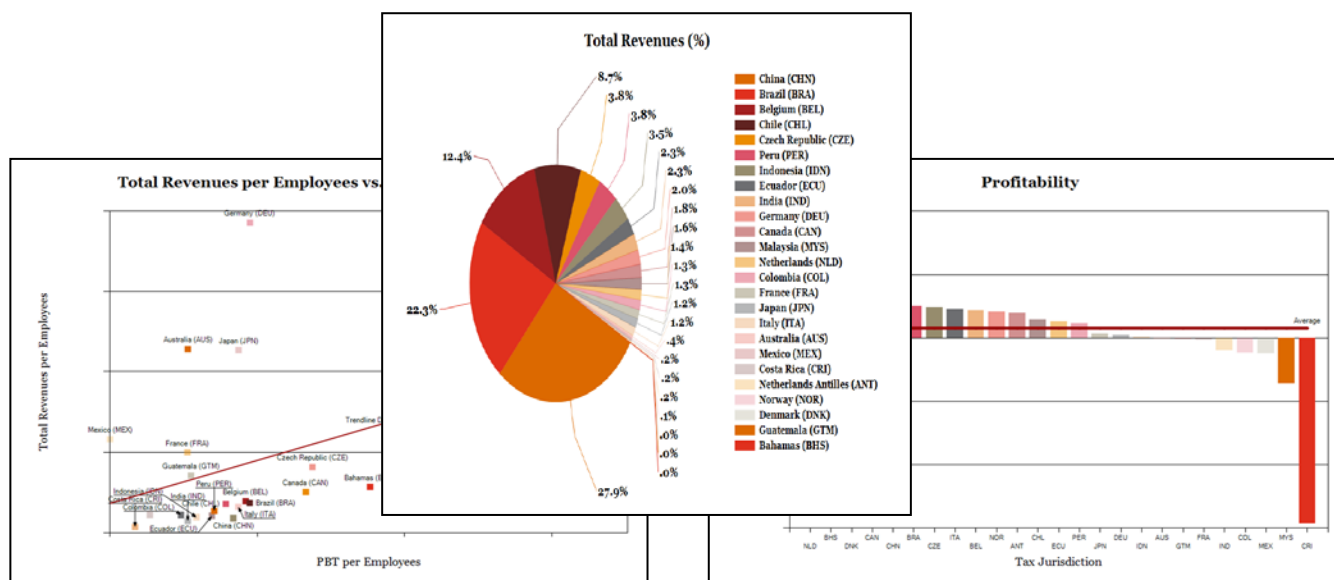
Status/Company summary (5) Status/Task summary (4) Task/Company summary (7)

Company	Name	Navigation item	Module	Deadline	Status
ABC Inc.	Update Transactions	2.4 Description of transactions		3/31/2015	Open
Demo GmbH	Check Legal structure	1.1 Legal structure		2/15/2015	Waiting for approval
Demo GmbH	Update Transactions	2.4 Description of transactions		3/31/2015	Finished
Demo GmbH	Check general information	General information		10/15/2014	Reopened
FRANCE S.A.	Update Transactions	2.4 Description of transactions		3/31/2015	Open
GLOBAL	Edit group background	1.0 General	Group Background	1/31/2015	In progress
XYZ GmbH	Update Transactions	2.4 Description of transactions		3/31/2015	Open

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Documentation – CbC Analyzer

- Data diagnostic analysis using key intercompany ratios
- Visualized comparison of entities within selected tax jurisdictions
- World Heat Map highlights tax jurisdictions requiring special attention and identifies key pressure areas
- Quantitative basis for qualitative BEPS impact assessment and remediation planning



Global implementation of BEPS

Multilateral
instrument

Incorporate the tax treaty-related
BEPS measures into the existing
network of bilateral treaties

PE, Treaty abuse,
MAP

Local
legislation

Adjustment to local legislation to
align with BEPS guidance

TP documentation,
CbC, Interest
deductibility,
Hybrids, CFC

Unilateral

Local tax rules by countries
applying their own approaches

UK & Australia
Diverted Profits
Tax

Behavioral

Change in approach by Tax
authorities

.....

Implementation review



Financing

Transparency and disclosure



Holding and repatriation

Operating model

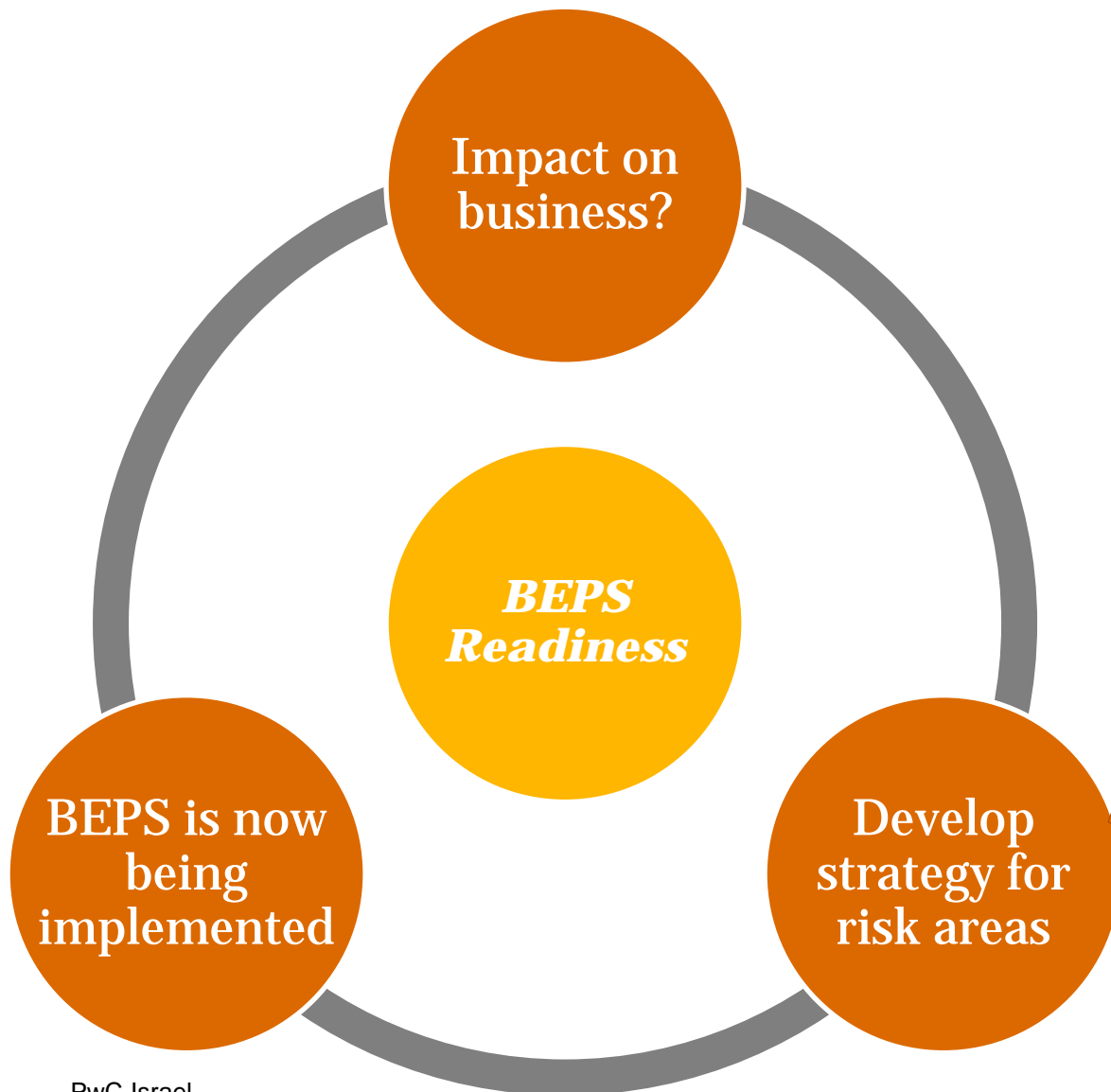


Intellectual property

Permanent Establishment



Key takeaways



- Reassess tax strategy
- Understanding of business value chain
- Substance in appropriate locations
- Management and employee awareness
- Restructure/ reorganize
- Operational guidance
- TP documentation (Master file, Local file, CbC)
- APAs?

Thank you

Vered Kirshner

PwC | Tax Partner

Office: +972 3 7954510

Mobile: +972 54 5651358

Email: vered.kirshner@il.pwc.com

Ben Blumenfeld

PwC | Transfer Pricing Senior Manager

Office: +972 3 7954429

Mobile: +972 58 5145858

Email: ben.blumenfeld@il.pwc.com

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