

# **What do you have in common with Amazon, Google and Starbucks?**

**BEPS update and impacts on Jersey  
30 January 2014**

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# ***BEPS status and recent developments***

# ***1***

# ***OECD BEPS action plan***

## Overview

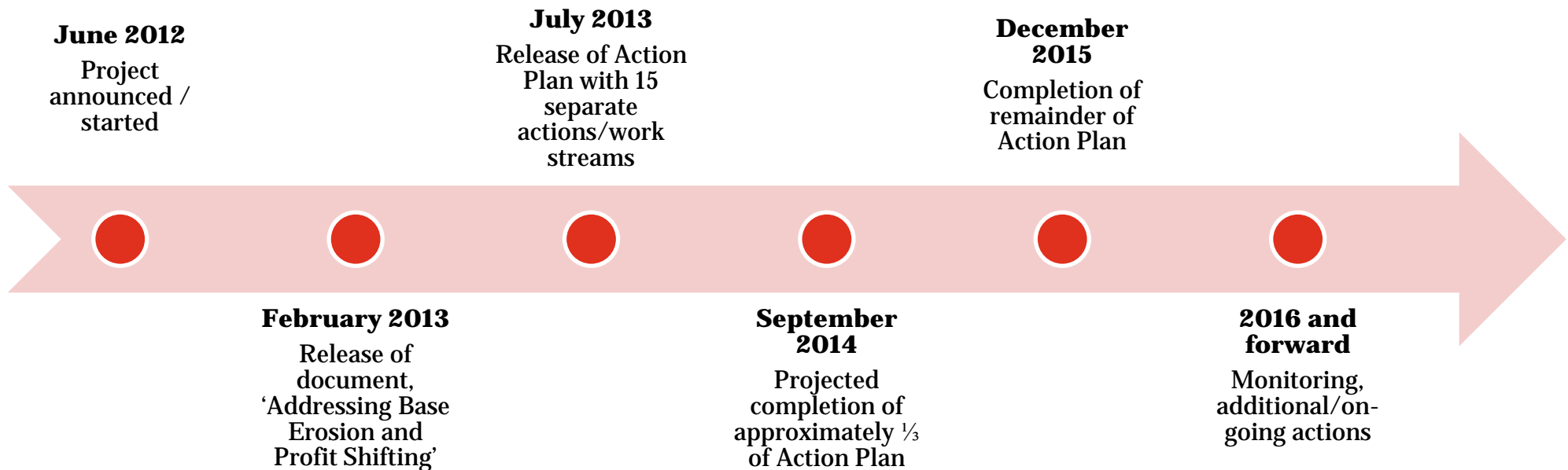
### **BEPS action plan**

Comprehensive action plan published on 19 July 2013 and now endorsed by G20 in St Petersburg:

- Identifies 15 actions that are required to address BEPS;
- Sets deadlines for actions (the majority within 24 months); and
- Identifies resources and methodology required to implement solutions.

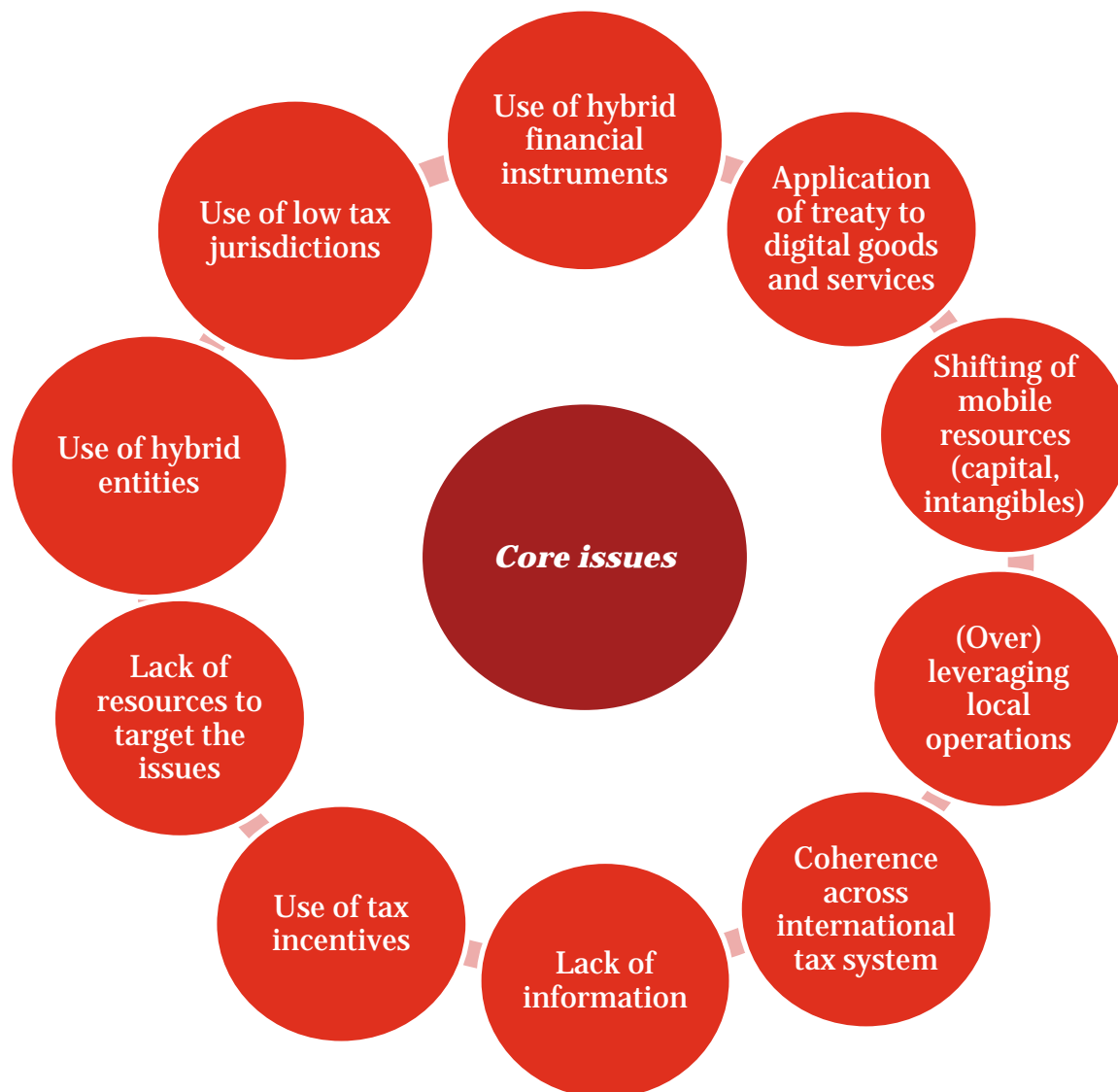
Work on the 15 actions outlined in the Plan has already started and will continue the technical work to develop concrete measures that countries can put in place to tackle BEPS.

### **Timeline**



# ***Foundation for BEPS***

## **Core issues**



# *Current environment continues to be shaped by different drivers*

**Multinational Corporations**  
with controversial tax structures



**David Cameron (G8 Leader)**  
as well as the rest of the G8, G20 and  
other political leaders



BEPS Update and Impacts on Jersey  
PwC

The top 5 of International Tax Review's  
2013 "Global Tax 50" are indicative of the  
different drivers of current tax policy and  
administration

**Pascal Saint-Amans (Director)**  
and the guidance from the OECD Centre  
for Tax Policy and Administration



**Algirdas Semeta (Commissioner)**  
and the polices of the EU Taxation,  
Customs Union, Audit and Anti-Fraud  
Commission



**The Media**



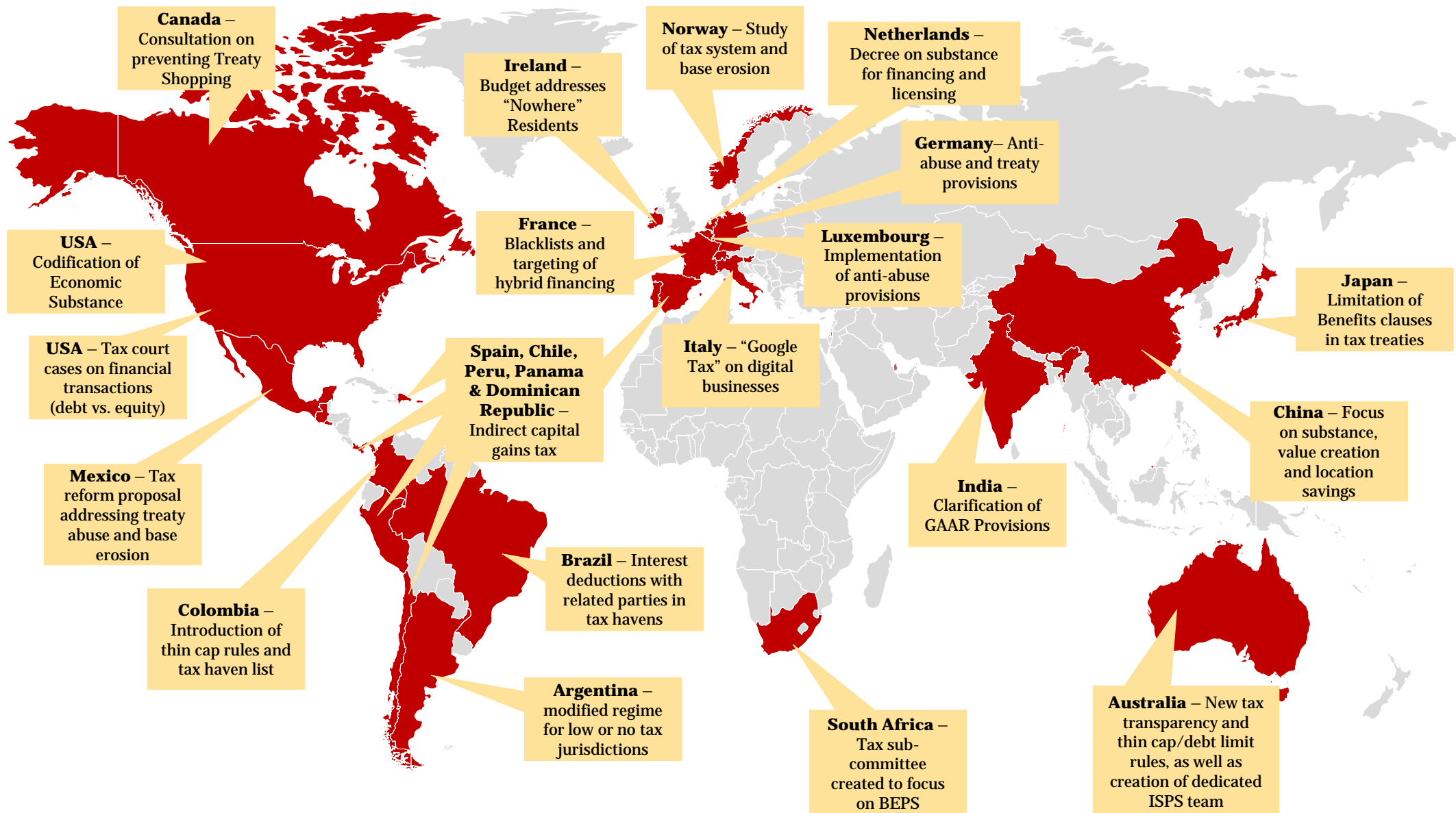
**BEPS  
Environment**

30 January 2014

# ***Status of OECD BEPS agenda***

<b>Focus</b>	<b>Focus of Current OECD Activity</b>	<b>Immediate/Upcoming Impacts</b>
Digital Economy	<b>Action 1:</b> Address the tax challenges of the digital economy, via a focus on concepts of source, residence, characterisation and value-driving activities	Task force convened / Discussion Draft in March 2014 / Public Consultation in April 2014
Coherence	<b>Action 2:</b> Neutralise the effects of hybrid mismatch arrangements, via recommendations on changes to domestic laws that facilitate double non-taxation  <b>Action 6:</b> Prevent treaty abuse, via recommendations on design of domestic rules that grant tax treaty benefits in inappropriate circumstances	Discussion Drafts in March 2014 / Public Consultation in April 2014
Substance	<b>Action 5:</b> Counter harmful tax practices more effectively, taking into account transparency and substance  <b>Action 7:</b> Prevent the artificial avoidance of PE status, via changes to model tax convention treatment of commissionaires and exemptions  <b>Action 8:</b> Assure that transfer pricing outcomes are in line with value creation: intangibles	5/7- No clear movement at OECD level, but tax authorities already investigating PEs and harmful tax practices  8 - Public Consultation of Revised Draft in Nov. 2013 / Final Draft in Sept. 2014 / Influence already having an effect
Transparency	<b>Action 13:</b> Re-examine transfer pricing documentation, via updated guidance to assist risk assessment – including country-by-country reporting	Discussion Draft in Feb. 2014 / Consultation in March 2014 / Expected Finalisation in May 2014
Multilateral Instrument	<b>Action 15:</b> Developing a Multilateral Tax Treaty	

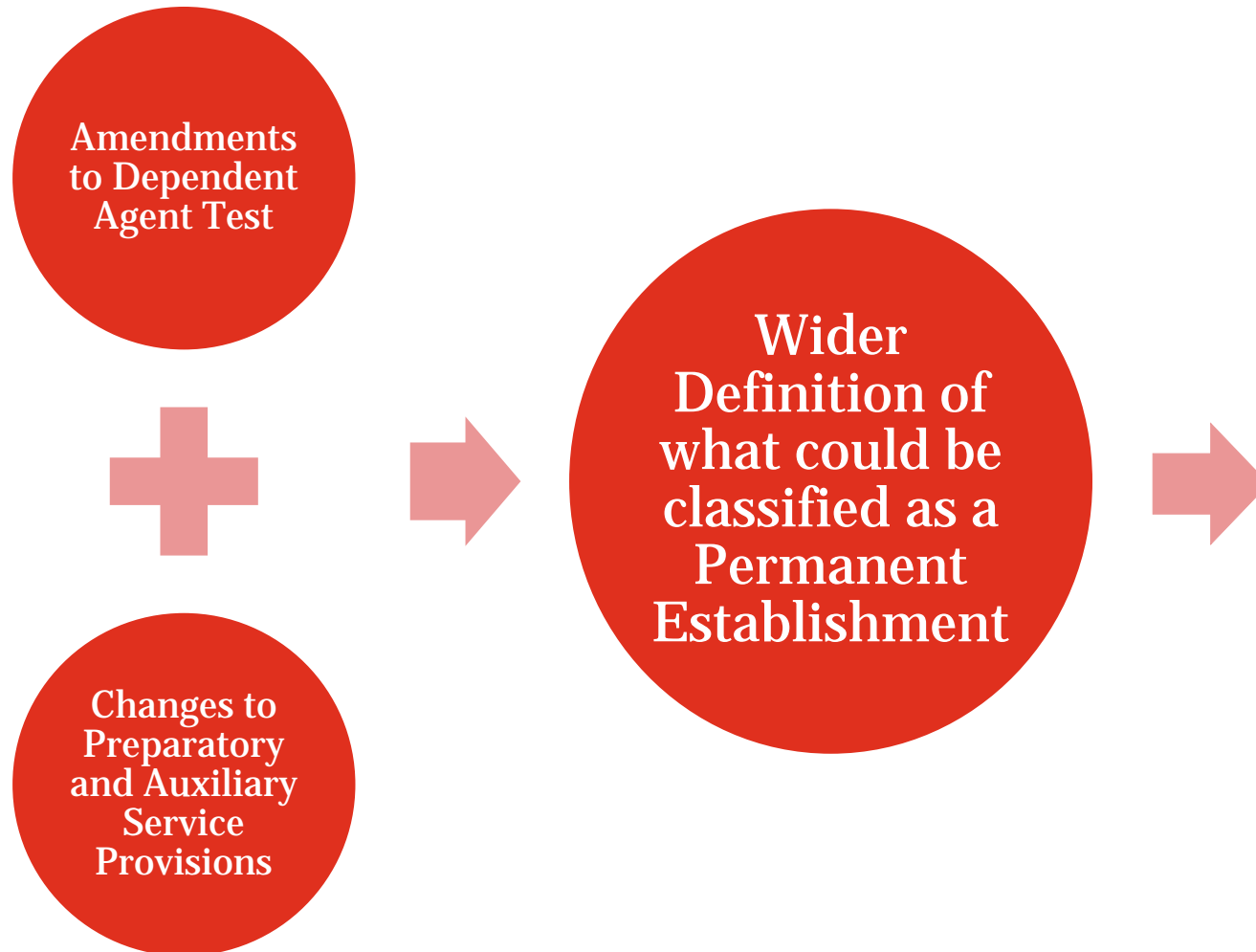
## *Unilateral actions already occurring*



# ***Major implications for Jersey companies***

# 2

## ***Greater permanent establishment risks***



### Implications for Jersey

- Greater scrutiny of activities performed outside of Jersey.
- Potential P.E.s from joint-venture partners and service providers.
- Challenges in jurisdictions without trading safe harbours for offshore funds.

## ***Definition of intangibles***

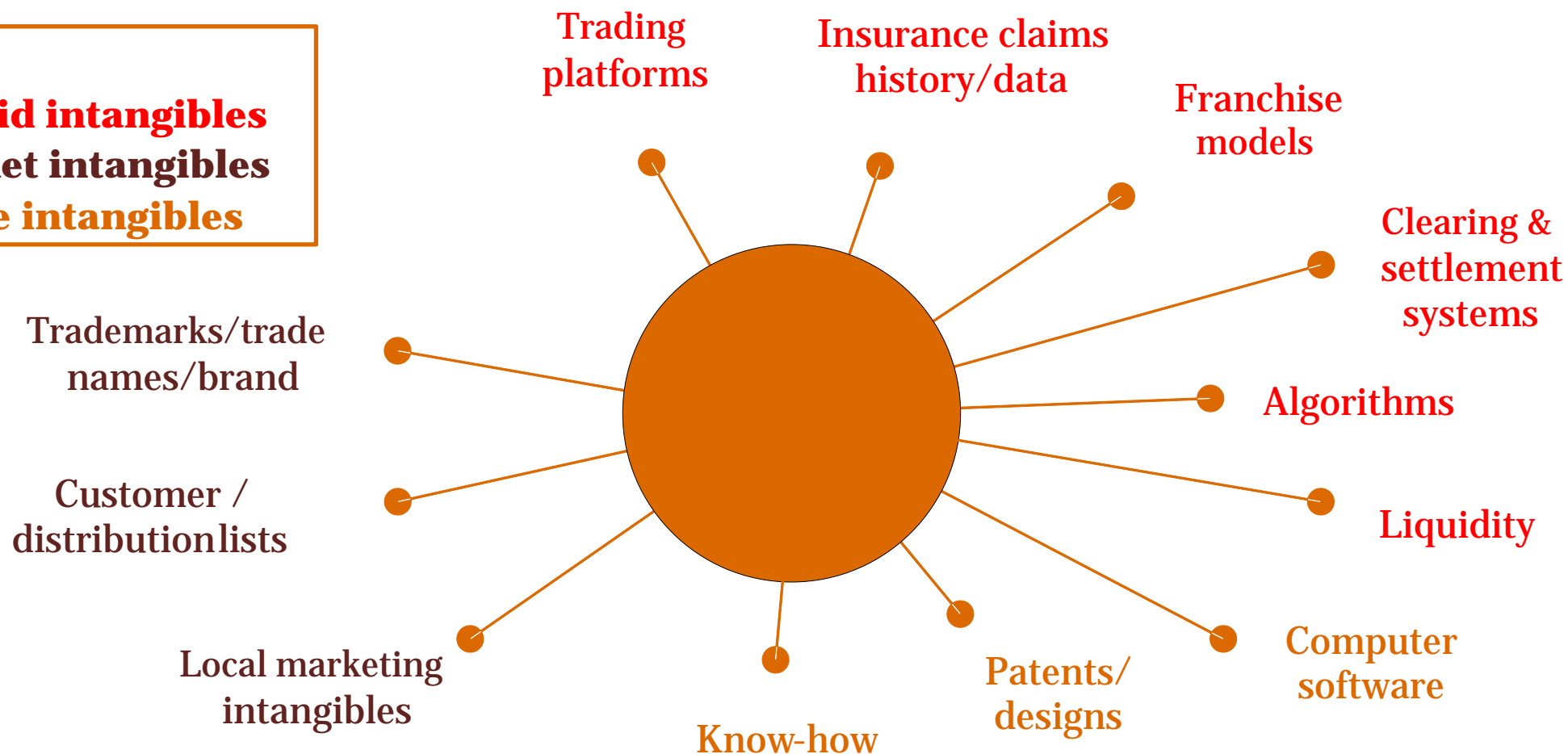
Widening the scope

**Key:**

**Hybrid intangibles**

**Market intangibles**

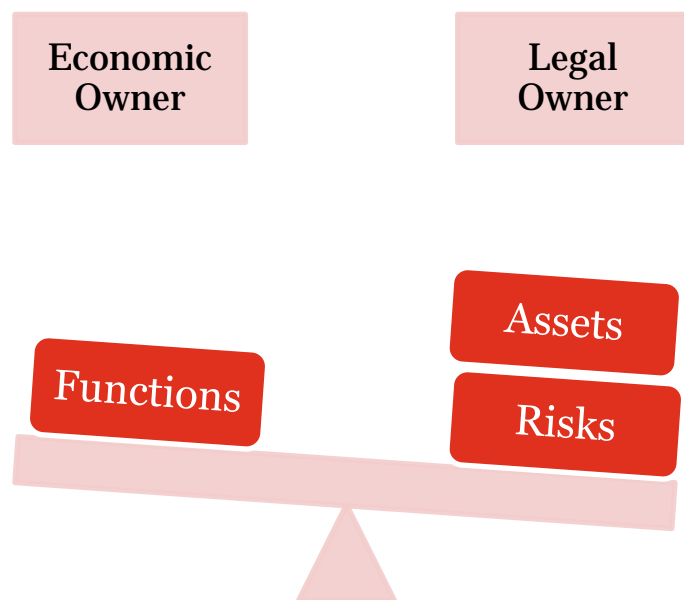
**Trade intangibles**



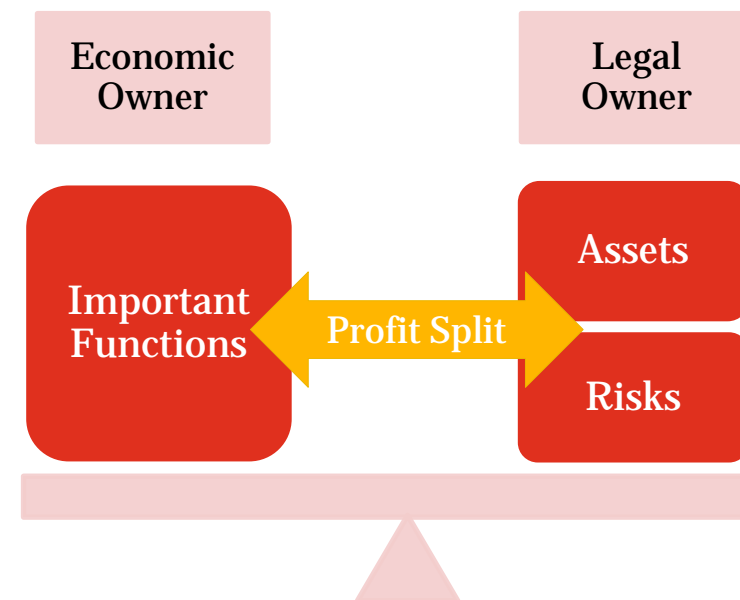
# ***Value from Intangibles***

## Readdressing the balance

### Perception of Current Position

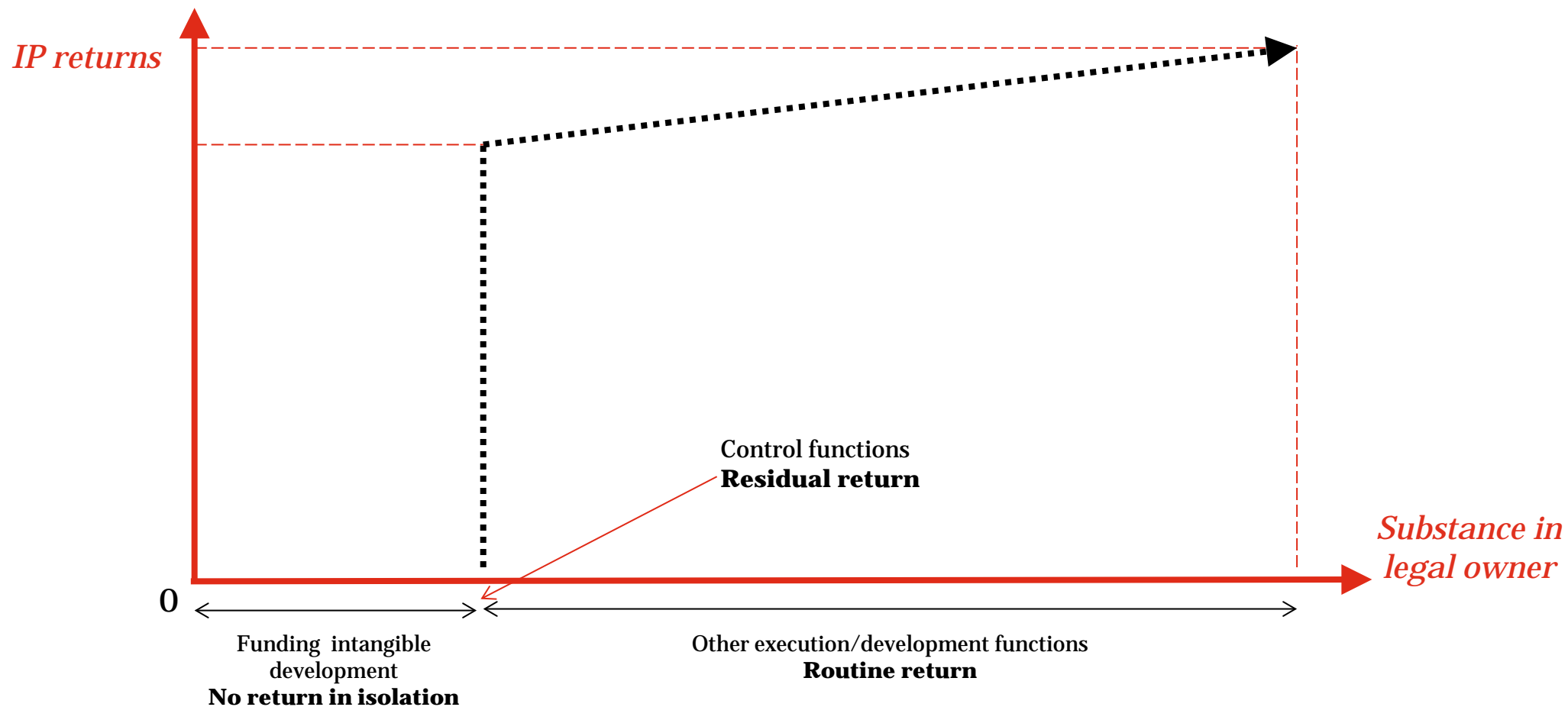


### Proposed OECD Approach under RDD



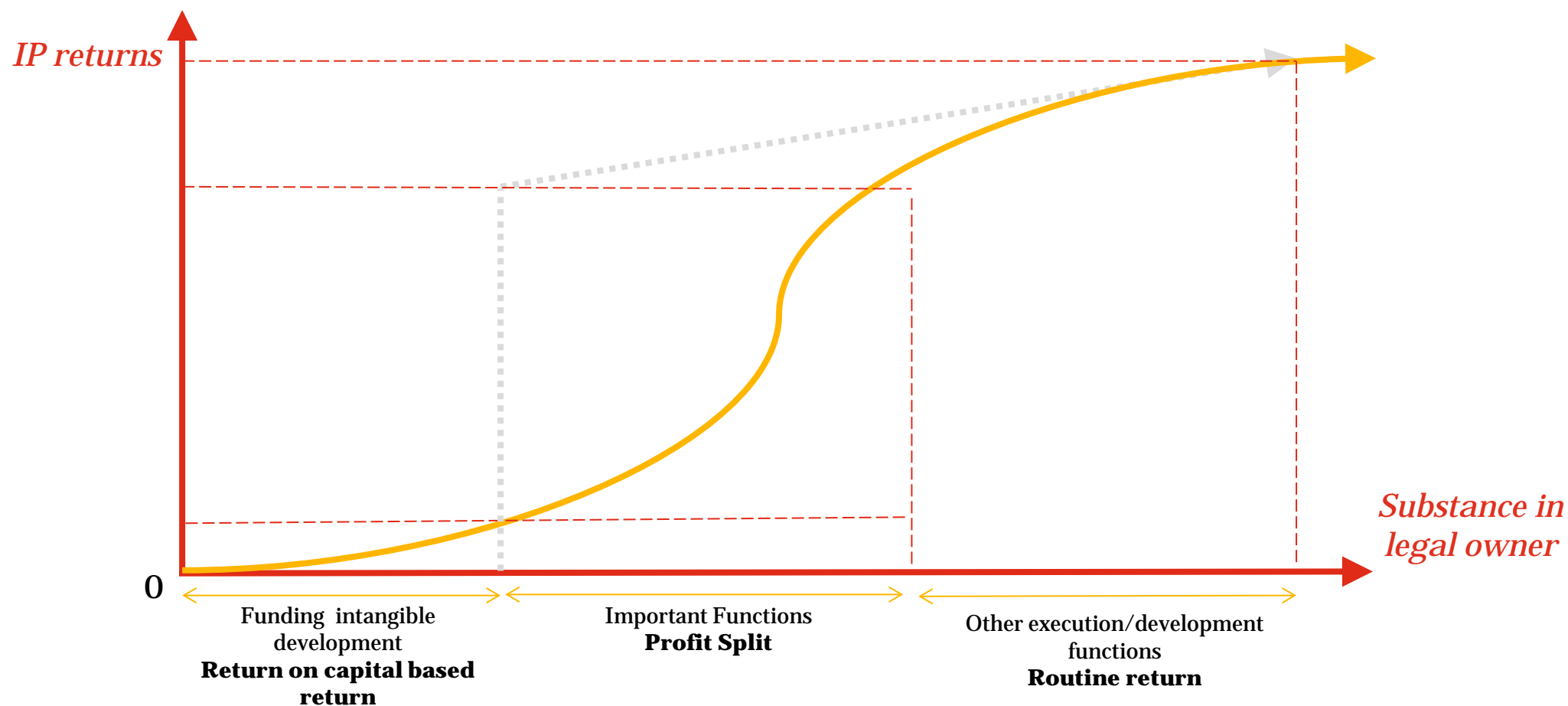
# ***The Need for Substance***

Current position



# ***The Need for Substance***

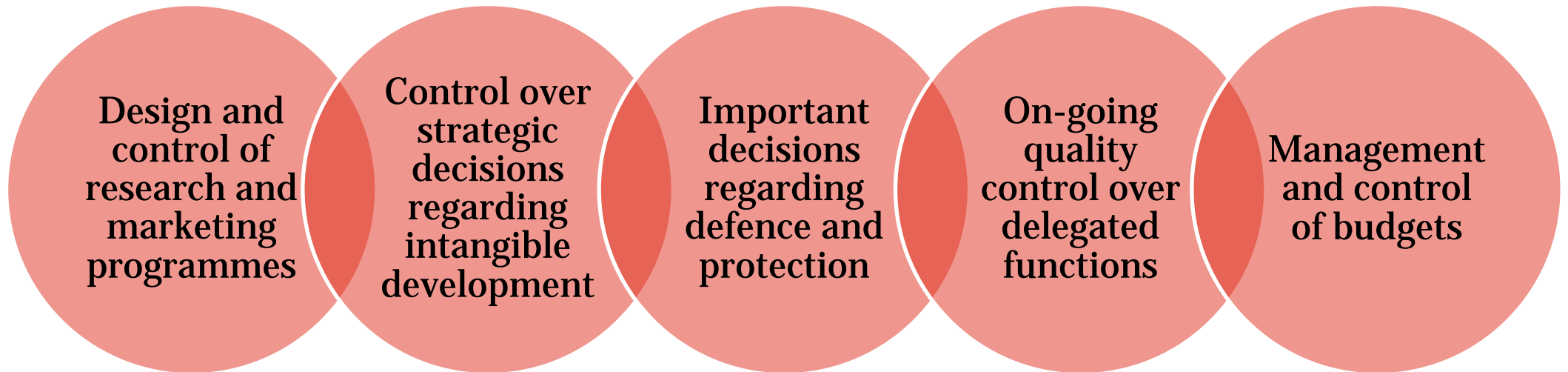
## Proposed OECD approach



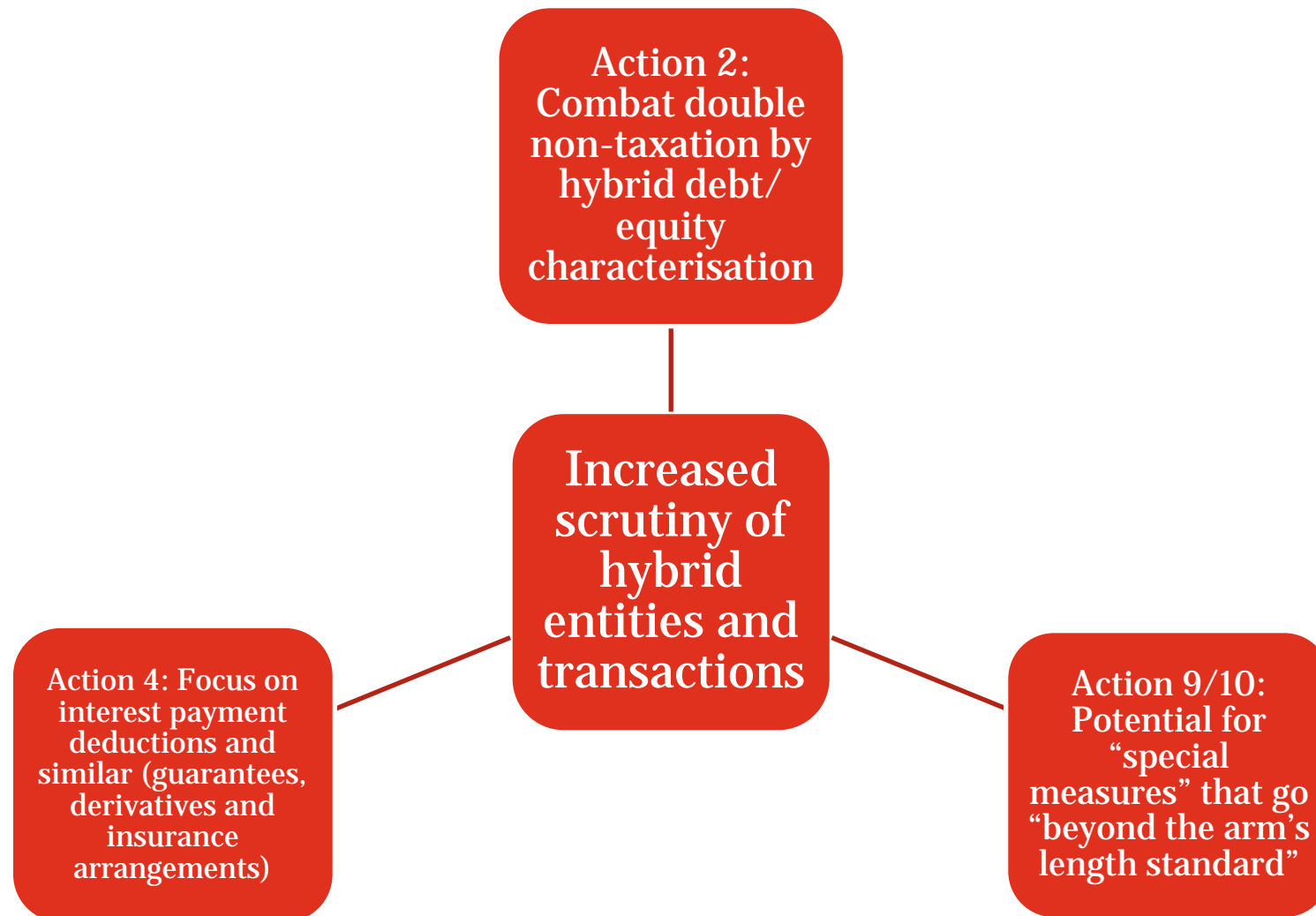
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## ***Real Question for Businesses***

What substance do we need?



## ***Recharacterisation of transactions***



## ***Transparency and information exchange***



- Country-by-Country Reporting/
- OECD documentation requirements, with global master file and local file/
- Increased sharing of information between tax authorities/

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# ***US updates***

# 3

## ***Key tax policy players***

### **Administration**



Barack Obama    Jacob “Jack” Lew  
President            Secretary

### **House Ways & Means Committee**



Dave Camp (R-MI)    Sander Levin (D-MI)  
Chairman            Ranking Member

### **Senate Finance Committee**



Max Baucus (D-MT)    Orrin Hatch (R-UT)  
Chairman            Ranking Member

# ***International tax reform proposals***

## **A comparison**

<b>Proposals</b>	<b>Chairman Camp [2011]</b>	<b>Chairman Baucus [2013]</b>
Corporate Rate	25%	Support for <30%
DRD/Exemption	95%	100%
Anti-Base Erosion	Prefers Option C; carrot and stick	Minimum tax or repeal deferral for most income
Transition Tax Rate on Historic Earnings	5.25%	20% with E&P deduction provision
Payment Period for “Deemed Repatriation”	Payable, with interest at underpayment rate, over 8 years	Payable, interest-free, over 8 years
Territorial	Yes	Yes
“Check-the-box”	Present law	Eliminated for non-U.S.
Interest Deductibility	Thin-capitalization	Interest expense allocated to non-U.S. taxed income

## ***Comparison of tax reform proposals***

<b>Proposal</b>	<b>House Republicans</b>	<b>Senate Finance Chairman Baucus</b>	<b>President Obama</b>
Individuals	10% and 25%	To be determined	10%, 15%, 25%, 28%, 33%, 36%, and 39.6%
Corporations	25% top rate	To be determined	28% top rate
Capital gains and dividends	15% top rate	To be determined	20% top rate (capital gains); ordinary rates (dividends)
AMT	Repeal	To be determined	Repeal
Domestic production deduction	To be determined	Requested comments on improvements	Target and increase deduction to 10.7% (18% for advanced manufacturing)
R&E	To be determined	Requested comments on improvements	Make R&D credit permanent and increase ASC
Cost recovery	To be determined	Repeals MACRS and ADS; Replaces with simplified cost recovery system	Address depreciation schedules
Interest expense	Limit for thin capitalization	Limit for unremitted foreign earnings; deny for deductions allocated to non-US taxed income	Limit for unremitted foreign earnings; reduce bias of debt financing over equity
International	Territorial	Repeal or modify deferral; minimum tax options Y & Z	Minimum ETR on foreign earnings

# ***Opportunities for Jersey-based businesses***

# 4

# ***It's not all doom and gloom***

## ***Tax Neutrality is Still Relevant***

- Jersey generally tax neutral.
- No withholding taxes.
- Jersey is expanding its DTA network.
- Government commitment to maintaining current position.
- Close relationship with the UK strengthened by Capital Economics report.
- Respects key aspects of EU law without being tied up in all EU regulations.

## ***Jersey Legacy and Stability***

- Commitment to the current regime.
- Island 'open for business'.
- Preferable geographic location (flight connections).
- Ease of doing business (e.g. language, etc.).
- Legal/political stability.
- Knowledgeable and experienced local non-executives.
- Easy access to regulators and greater flexibility.

## ***Business Changes can lead to Tax Efficiency***

- Changes in operations or business focus often provide valid business purpose for changing the functional, risk and asset profile of the group (e.g. compliance functions).
- Use these opportunities to critically assess Jersey-based operations and the support for these operations in a post-BEPS world.
- Current UK rules provide opportunities to work within hybrid mismatch guidelines.
- Substance in Jersey can still offer overall tax benefits to a group.

## ***Stay Ahead of the Game***

- Final drafts of OECD guidelines will not be issued before September 2014, with few surprises expected.
- These guidelines may be incorporated into jurisdictional law relatively quickly, so the time to prepare is now.
- Importance of contemporaneous documentation – both for penalty protection and ease of data collection.
- Ensure that tax authorities get the right story from documentation to lower risk of enquiries/audits.
- Take opportunity to reduce compliance burden.

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# ***Next steps***

# 5

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## ***BEPS is here to stay***



## ***BEPS is here to stay***

### **Shape the BEPS agenda**

- Attend (free) OECD webcasts/briefings on the BEPS actions.
- Publish requests for input and/or comments on discussion drafts.
- Partake (through advisors or business orgs if necessary) in public consultation.
- Engage with tax authorities to understand how BEPS actions will be interpreted locally.

### **Prepare for greater scrutiny**

- Review operations and structures to identify areas of risk.
- Review existing documentation and critically assess whether it supports substance.
- Keep BEPS in mind when business changes.
- Prepare for country-by-country now (do you have the right systems in place?)
- Seek APAs or bi/multi-lateral rulings to gain certainty.

# Managing and mitigating the risks from the BEPS Action Plan\*

#	BEPS Action Plan Item	Potential impact and implications	Recommendations	Timing
1	Address tax challenges of <b>digital economy</b>	- Impact appears minimal	- Further analysis necessary if digital operations increase.	Long Term
2	Neutralize <b>hybrid mismatch</b> arrangement effects <i>Has your company considered the impact of probable changes on WW ETR?</i>	- Impact could be material	- Foreign law developments should be closely monitored. - Consider enhancements to current structures as necessary.	Middle Term
3	<b>Strengthen CFC rules</b>			Middle Term
4	Limit <b>base erosion via interest deductions/other financial payments</b> <i>Does your company have any companies with excessive debt? Do you have Fincos in low tax jurisdictions? Does your company use financial guarantees? Is your company's policy regarding intercompany loans implemented consistently and does it reflect current thinking on implicit support?</i>			Immediate
5	Counter harmful tax practices more effectively, taking into account <b>transparency and substance</b> <i>Are you prepared for any tax ruling(s) you have, globally, to be made public?</i>	- Disclosure of legal entity information, tax rulings and other non-public information	- Assess potential impact including reputational issues.	Middle Term
6	Prevent <b>treaty abuse</b> <i>Do you have holding company platforms, SPV's or other functions/companies that are taking advantage of a treaty friendly jurisdiction? Is your organization prepared to discuss operational and business reasons for the existence of these structures, in the context of substance?</i>	- Increased interest in and need for substance	- Consider on-going process to monitor and document substance.	Immediate
7	Prevent the artificial <b>avoidance of PE status</b> <i>Does your organization use commissionaire arrangements, instead of distributors? Does your organization currently have a strategy for identifying, recognizing, and compensating PEs: dependent, fixed, service?</i>	- Commissionaire agents can be deemed as PEs.	- Consider converting commissionaire agents to LRDs consistent with operating model.	Immediate
8	<b>Transfer pricing: Intangibles</b> <i>Does your company have IPcos in low tax jurisdictions? Is the revenue/employee ratio significantly higher in your IPco than elsewhere in the organization? Do you use a centralized research center with a highly trained and educated work force? Do you treat capital as a significant value driver for your company? Do you use cost contribution/cost sharing arrangements?</i>	- Potential excess income provision may bring profits to jurisdiction of IP ownership.	- The likelihood of a minimum tax proposal enacted within the next few years is low. - Consider approaches to develop additional substance in key jurisdictions over time to support residual profits being retained by them.	Middle Term
9	<b>Transfer pricing: Risks/Capital</b> <i>Does your company centrally manage foreign exchange risk? Does your company have complex credit facilities with provisions including cross or subsidiary guarantees or mandatory internal factoring arrangements? Has your company entered into an alternative risk transfer arrangement?</i>	- Intercompany debt may be treated as equity resulting in additional taxes if capital structure is not supportable and consistent with the market. - If a challenge arises, it would require resources to manage the dispute with authorities and/or auditor.	- Proactive preparation of transfer pricing documentation is a prudent step in the management of audit risk. - Confirm that capital structures are consistent with industry practices.	Immediate
10	<b>Transfer pricing: Other high-risk transactions</b> <i>Do you use centralized cash pools or captive insurance arrangements to manage risks? Have you evaluated the impact of applying a profit split method to your high-risk transactions?</i>	- Authorities may question the interest rates for borrowings and deposits in connection with credit profile of cash pool participants and functions and risk of the cash pool leader.	- Document cash pool arrangement to support remuneration to cash pool participants and cash pool leader.	Immediate
12	Disclose <b>aggressive tax planning</b> arrangements <i>Is your organization prepared to discuss the structural and organizational changes that have occurred over time?</i>	- Increased disclosure of aggressive tax planning schemes/structures.	- Monitor law developments.	Immediate
13	Re-examine <b>transfer pricing documentation</b> <i>Do you have entities earning returns above/below an arm's length range? Do you have entities earning losses? Does your transfer pricing documentation mirror what is described in your intercompany agreements? Does your organization rely heavily on the CPM/TNMM as the best/most appropriate method (focusing on one-sided results)? Is your company prepared to disclose system-wide profit, globally, to each taxing authority in which you operate?</i>	- Supporting facts and application of transfer pricing methods may be inconsistent if reports are managed autonomously at the local or regional level.	- Prepare a "core" documentation template, which include functional and economic analyses that can be leveraged for local documentation reports. - Improves efficiency of global TP documentation process and provides an excellent foundation for future report updates.	Immediate

\* Action items 11, 14 and 15 were omitted because they are more taxing authority action items

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# ***Questions***

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# ***Resources and contacts***

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## ***Resources***

### **OECD BEPS website**

<http://www.oecd.org/tax/beps.htm>

### **OECD BEPS action plan**

<http://www.oecd.org/ctp/BEPSActionPlan.pdf>

### **PwC BEPS website**

<http://www.pwc.com/beps>

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## ***Contacts***

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