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INTERNATIIONAL TAX RULES IN RUSSIA: CONCEPTUAL FINDINGS in the light of BEPS OECD/G20 PROJECT and GLOBAL E-COMMERCE DEVELOPMENTS

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1- Abstract

In this paper author compares Russian international tax rules with international "best practice" (incorporated in BEPS deliverables and other OECD and academic reports) with the aim of finding out ways of their improving and development. Main findings include: high level of uncertainty due to existence of distance in applying and interpretation typical international tax concepts (including permanent establishment, VAT place of supply and e-commerce related rules, beneficial owner, transfer pricing and others) between Russia and developed states. Second, some indicators of base erosion were estimated and they showed existence of BEPS behavior in Russia. Third, Russian treaty policy based on concluding OECD-Model treaties and participating in BEPS and implementing new complex anti-abuse rules and recommendations (such as LOB, PPT, CbC, for example) in combination with current court and fiscal practice can harm investment climate and lead to defeat in tax competition game in favor of more developed states.

2 - Aim of paper

Aim of this research paper is to find out specific Russian problems regarding international tax law including opportunities for non-taxation and double taxation, to compare these problems with international experience and to reveal impact of these problems on outcomes of tax competition game.

These include:

- to discuss several possibilities for base erosion and loopholes in international aspects of Russian tax law and bilateral tax treaties;
- to analyze international aspects of Russian VAT legislation from the point of view of neutrality;
- to assess opportunities and risks of implementing deliverables of BEPS OECD/G20 Project in Russia;
- to assess the scale of base erosion and profit shifting in Russia;
- to reveal impact of Russian international tax architecture on it's competitiveness in global regulatory competition game.

3 – Literature review

Problems of international taxation, base erosion and profit shifting are discussed broadly in international literature. We can name OECD BEPS Deliverables, UN papers on BEPS, where loopholes in international tax architecture are identified and some solutions for closing them in forms of changes to OECD Model Tax Convention, and OECD Transfer Pricing Guidelines are proposed. IMF papers (2014), where there are estimates and discriptions of spillovers in international taxation. International tax competition is also discussed broadly in literature. In Unger (2008) main ideas are that there is a strong empirical evidence of "race-to-the-bottom' in corporate income tax rates in the second half of the 20th century and beginning of the 21-st century and the result of this is shifting of tax burden from mobile capital to less mobile labor. She also suggests that

consolidation of tax base and tax harmonization in EU is not a reasonable solution because it undermines benefits of being EU member state. In OECD (2016) publication[1] on consumption tax trends significant VAT rates rises in EU states since its introduction were identified, which is also a sign of shifting of tax burden from capital towards labor, because all people spend their wages on consumption.

Main conclusions from the literature are that developed countries are trying to reduce their budget deficits after financial crisis of 2008 and tax competition driven by digital economy and capital mobility is a serious obstacle to this. These reasons from our point of view are locomotives of the BEPS Project initiative, which is an attempt to combat harmful international tax competition[2] [3], to establish borders for non-harmful or "fair"[4] tax competition (in the form of low tax rates, allowed special R&D schemes[5], holding and non-domiciled individuals regimes[6], tax incentives for corporate treasury centers[7], etc.), to close international tax loopholes[8] and to identify tax challenges of the digital economy[9].

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[1] OECD (2016), Consumption Tax Trends 2016: VAT/GST and excise rates, trends and policy issues, OECD Publishing, Paris. DOI: http://dx.doi.org/10.1787/ctt-2016-en ("The new data shows that the structure of tax revenues continues shifting towards labour and consumption taxes. The combined share of personal income taxes, social security contributions and value-added taxes were higher in 2014 than at any point since 1965, at 24.3% of GDP on average in 2014")

[2] OECD (2015), Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance, Action 5 - 2015 Final Report, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris. http://dx.doi.org/10.1787/9789264241190-en (Harmful tax competition is defined in OECD Action 5 Report and in OECD BEPS (2013) Report as ring-fencing, lack of transparency, low effective tax rates on income from geographically mobile financial and other service activities, no effective exchange of information, lack of substance, etc.)

[3] The Code of Conduct for business taxation was set out in the conclusions of the Council of Economics and Finance Ministers (ECOFIN) of 1 December 1997. This document also promoted fight against harmful tax competition defined as low effective rates, tax benefits reserved for non-residents, tax incentives for activities which are isolated from the domestic economy and therefore have no impact on the national tax base, granting of tax advantages even in the absence of any real economic activity, the basis of profit determination for companies in a multinational group departs from internationally accepted rules, in particular those approved by the OECD, lack of transparency. Yet this document is not legally binding and has only political implications.

[4] This term is broadly used in public debate on tax competition. See, for example, European Commission - Fact Sheet. Questions and Answers on the Action Plan for Fair and Efficient Corporate Taxation in the EU. Brussels, 17 June 2015. URL: http://europa.eu/rapid/press-release_MEMO-15-5175_en.htm

[5] OECD (2015), Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance, Action 5 - 2015 Final Report, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris. http://dx.doi.org/10.1787/9789264241190-en (So-called "nexus approach" is offered in this Report, which "allows a taxpayer to benefit from an IP regime only to the extent that the taxpayer itself incurred qualifying research and development (R&D) expenditures that gave rise to the IP income")

[6] Information from UK Government website. Tax on foreign income URL: https://www.gov.uk/tax-foreign-income/non-domiciled-residents (In UK "residents who have their permanent home ('domicile') outside the UK may not have to pay UK tax on foreign income. The same rules apply if you make any foreign capital gains, for example you sell shares or a second home.")

[7] Corporate Treasury Centres in Hong Kong. Case Studies. Hong Kong Monetary Authority. 2016. ("To encourage a greater level of corporate treasury activities, the [Hong Kong] Government has amended the Inland Revenue Ordinance to allow, under specified conditions, the deduction of interest expenses in calculating profits tax for the intra-group financing business of corporations, and reduce profits tax for specified treasury activities by 50% for qualifying corporate treasury centres.")

[8] OECD Official Website. BEPS F.A.Q. URL: http://www.oecd.org/tax/beps/beps-frequentlyaskedquestions.htm ("The expectation is that once implemented, the measures restore taxation in a number of instances where income would otherwise go untaxed. Depending on the planning structure used, one or more of the measures developed will have an impact and ensure that income is taxed at least one time and not more than once. Rather than closing individual schemes, the measures go to their roots")

[9] OECD (2015), Addressing the Tax Challenges of the Digital Economy, Action 1 - 2015 Final Report, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris. http://dx.doi.org/10.1787/9789264241046-en ("While the digital economy and its business models do not generate unique BEPS issues, some of its key features exacerbate BEPS risks… The digital economy .. raises broader tax challenges for policy makers. These challenges relate in particular to nexus, data, and characterization for direct tax purposes, which often overlap with each other. The digital economy also creates challenges for value added tax (VAT)

There are much less papers where you can find analysis of base erosion and profit shifting issues and international tax competition problems in the context of Russian circumstances. These papers are mostly written by practicing lawyers, not economists. They include V. Machekhin (2011) where he reveals lack of clarity in relation to content, hierarchy, way of application of instruments containing in Russian tax treaties, which are aimed at countering treaty shopping and. E. Timofeev and A. Zelenskaya (2012) concluded in their article that enforcing tax treaty provisions in Russia has unpredictable results. R. Ahmetshin (2014) considers it necessary to solve the problem of unpredictability of law when implementing BEPS initiatives. B.Heifets (2013) – Russian economist – considers OECD BEPS initiatives to be important for Russia but recommends more unilateral approach in solving BEPS problems. Even more strict opinion is in Glaziev (2014). He insists that spread of international tax planning is a problem for economic security and national interests of Russia. Polejarova (2016) notices, that when implementing foreign best practice recommendations on tackling tax avoidance, it is not possible to do this automatically because of differences in legislative basics and history of regulation between countries. Another problem is the coordination between different ministries and working groups when drafting new tax law proposals, which can lead to lack of coherence in the final text.

4 - Detailed description of the research approach

4.1 Reasons for project

Nowadays landscape of international taxation in Russia is coming through dramatic changes. First, Russian government is implementing so-called "de-offshorization" package of legislation[10], second, Russia takes part in BEPS project[11] as a G20 country, third, Russia has ratified OECD Convention on mutual administrative assistance and now is looking for automatic exchange of information. What is more, there are changes in court practice in international tax cases. Russian Federal Tax Service uses different anti-abuse rules, such as beneficial ownership[12] and thin capitalization more commonly in recent years. All these developments need theoretical and methodological basement. Also, it is necessary to work out Russian long-term international tax strategy in the context of international tax competition. This is a main reason for conducting research on such a topic.

4.2 Thesis of the paper

OECD/G20 BEPS project is a global step forward towards setting the single set of rules for non-harmful (or "fair") tax competition and for liquidating loopholes in international tax architecture[13], which nowadays are generally based on OECD Model Tax Convention

collection, particularly where goods, services and intangibles are acquired by private consumers from suppliers abroad.")

[10] This package include (1) CFC rules, (2) beneficial owner concept, (3) rules on taxation of income of foreign companies from the indirect sale of Russian real estate, (4) corporate residence rules. On 24 November 2014, Federal Law № 376-FZ "On amending Parts I and II of the Russian Federation Tax Code (in respect of taxation of the profits of controlled foreign companies)" (hereinafter - the "Law") was signed by the President of the Russian Federation.

[11] Moreover, It has already started implementation BEPS Action 13 recommendations on transfer pricing documentation and Common Reporting Standard on Financial Information Exchange. Relevant Draft Bills were published on the Ministry of Finance website on 6th of March. URL: http://regulation.gov.ru/projects#npa=41254

[12] See, for example recent case on applying beneficial owner concept to capital gains. *Treaty between Russia and Cyprus – Arbitrazh Court decision: beneficial ownership concept applied to capital gains* (1 Feb. 2017), News IBFD.

[13] Such loopholes are described in detail in OECD (2013), Addressing Base Erosion and Profit Shifting, OECD Publishing. http://dx.doi.org/10.1787/9789264192744-en ("In addition to a clear need for increased transparency on effective tax rates of MNEs, key pressure areas include those related to: international mismatches in entity and instrument characterization; application of treaty concepts to profits derived from the delivery of digital goods and services; the tax treatment of related party debt-financing, captive insurance and other inter-group financial transactions; transfer pricing, in particular in relation to the shifting of risks and intangibles; the

and destination-based VAT[14]. So, tax competition will take another form and can lead to different outcomes in case of successful implementation of BEPS Project recommendations by the participating countries.

Russian international tax rules are far less developed than those of OECD member states. Today, Russia faces various challenges with respect to international taxation rules: viz.,to develop legislation and practices in the sphere of international taxation so as to level up with the developed countries[15]; to work out effective rules against tax avoidance; to avoid harming the business climate by drafting excessively tough rules and thereby losing in tax competition game; to protect tax base of its MNC's; to establish a level playing field for foreign and national investors as well as the suppliers; to address the tax (specifically VAT) challenges of new digital business models.

As the central thesis of our research, we suggest that in such a case, the best solution for a transitional economy is to analyze carefully the risks and the possible recommendations of the international projects such as OECD's BEPS. However, it is imperative to understand that implementing those recommendations without considering national circumstances can have detrimental effects on the country's investment scenario, which could lead to a loss in global tax competition game[16]. Highly mobile factors (e.g. intellectual property, capital) could migrate to states with more developed institutions because of global tightening of the "rules of the game".

Main argumentation in support of this suggestion is the following. First, tax revenues from taxing MNEs could be lost because of relocation of Russian MNEs headquarters to foreign jurisdictions with certain, fair, predictable tax rules after introduction of complex anti-avoidance rules in Russia. Second, today there are low or zero withholding tax rates for the main types of investment income paid to foreign legal entities (dividends, interests and royalties) in Russian double tax treaties, which are based on the OECD Model Tax Convention. Third, important MNE's functions (R&D, finance and treasury, management) can be transferred outside Russia in order to substantially support transfer pricing arrangements between parent companies and Russian subsidiaries. Forth, ultimate beneficiaries could leave the country in order to escape from recently introduced CFC rules, related administrative burden and high tax risks. These risks are further exacerbated with risks of breaching currency[17] legislation.

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effectiveness of anti-avoidance measures, in particular GAARs, CFC regimes, thin capitalisation rules and rules to prevent tax treaty abuse; the availability of harmful preferential regimes)

[14] It is important to note OECD's important work on promoting destination principle in recommendations on setting place of customer as main rule for supply of services. Yet, as we will see in this paper not all the countries implement this recommendations today. OECD, International VAT/GST Guidelines: November 2015

[15] Russian current tax legislation was rapidly developing since 1990s, when country transited to market from planned economy. Basic elements of tax legislation in its current form appeared only in the end of 1990s with the introduction of Tax Code. Also, a lot of double tax treaties were concluded in 1990s (today Russia has 80 DTTs) generally based on OECD Model Tax Convention.

[16] These arguments generally develop "efficient enterprises" approach. According to this approach, "key issue with respect to regulating global movement of money is the reduction of transaction costs to facilitate the creation of more wealth". Countries compete with each other in providing not only lower tax burden, but also more favorable regulation framework with lowest transaction costs possible. It is suggested in Gordon, Richard K. and Morriss, Andrew P., Moving Money: International Financial Flows, Taxes, & Money Laundering (October 20, 2013). Hastings International and Comparative Law Review, Vol. 37, No. 1 - Winter 2014; U of Alabama Legal Studies Research Paper No. 2348144; Case Legal Studies Research Paper No. 2013-21. Available at SSRN: https://ssrn.com/abstract=2348144

[17] According to current Russian currency legislation (Федеральный закон от 10.12.2003 N 173-ФЗ (ред. от 03.07.2016) "О валютном регулировании и валютном контроле") certain very common and usual operations can trigger fines equal up to 100% of sum of these operations. For example, if Russian currency resident (Russian citizen, physically present in Russia for at least one day a year) transfer funds from sell of his foreign immovable property on account in foreign bank in OECD member state (but not primarily on his account in Russian bank), it will trigger such a fine.

4.3 Actions of the research and research approach

We are conducting research related to the following elements of Russian international tax rules:

1) VAT regime for cross-border services supplies, VAT application to cross-border electronic commerce;
2) controlled foreign company rules;
3) treaty abuse;
4) permanent establishments;
5) transfer pricing on intangibles;
6) documentation on transfer pricing;

Also, we perform research on economic topics of

1) the scale of base erosion in Russia;
2) economic impact of current double tax treaty network.

Almost all of these directions coincide with Actions of BEPS Plan and this is done intentionally, because this research paper largely deals with understanding of the BEPS recommendations and revealing Russian legislative and practical problems, risks and possibilities connected with their implementation. Different methodology and structure is used for work on different directions of the project, which is summarized below.

4.3.1 VAT regime for cross-border services supplies, VAT application to cross-border electronic commerce

In this part of our research, we analyzed problems of international VAT taxation of services and electronic commerce when suppling between Russia and EU states. In addition, we analyzed the recent EU experience in levying and administering VAT on services and electronic commerce and suggested recommendations for Russia. We analyze an impact of interaction between Russian and EU place of supply rules for services on competition between foreign and national suppliers and on tax revenues.

4.3.2 Controlled foreign company rules

We compared recommendations on Action 3 Report of BEPS concerning the design of CFC rules with Russian new legislation on CFC rules, which came into force with “de-offshorization package”. We focused on the “building blocks” of CFC rules outlined in deliverables on Action 3 Report.

4.3.3 Double Tax Treaty abuse

Working on this issue we discovered the OECD recommendations on BEPS Action 6, we also examined recent Russian tax policy concerning changes in Double Tax Treaties, reviewed some practical law literature to find out important problems concerning applying treaty provisions in practice and analyzed current case law on “beneficial owner” concept.

4.3.4 Permanent establishment

Working on the direction we analyzed the differences between agency PE concept in the OECD Model Convention with Commentaries and the Russian Tax Code. We also performed Russian and foreign court cases analysis.

4.3.5 Documentation on transfer pricing

Here we performed comparative analysis of requirements for TP documentation and information disclosed in it in Russia and in foreign states. In addition, we discovered the development of TP documentation ideas in OECD reports.

4.3.6 Transfer pricing on intangibles

As a work on this section, we analyzed recent Russian court practice on transfer pricing on intangibles and discovered the ideas on the topic in OECD reports and the approaches in foreign legislation.

4.3.7 The scale of BEPS in Russia

We use methodology outlined in final report on Action 11 of BEPS project to detect some signs of BEPS behavior of MNCs in Russia. We assess Indicator 1 and indicator 5 from this BEPS Action 11 Report for data for 2015 and 1st quarter of 2016 for Russia. Indicator 1 shows countries with relatively high FDI/GDP ratio. We estimate share of such countries in total inward investment in Russia For 2015 and 1st quarter of 2016. Indicator 5 shows countries with relatively high royalty received/R&D expenses ratio. We estimate share of such countries in total royalties paid from Russia for 2015 and 1st quarter of 2016.

4.3.8 Economic impact of current double tax treaty network

We test the hypothesis that countries who are among leaders of inward investing in Russia have the most favorable withholding tax treaty conditions. The confirmation of this hypothesis in combination with estimation of BEPS indicators can potentially contribute to understanding of economic outcomes of current treaty network.

5 – Results of analysis

5.1. VAT issues

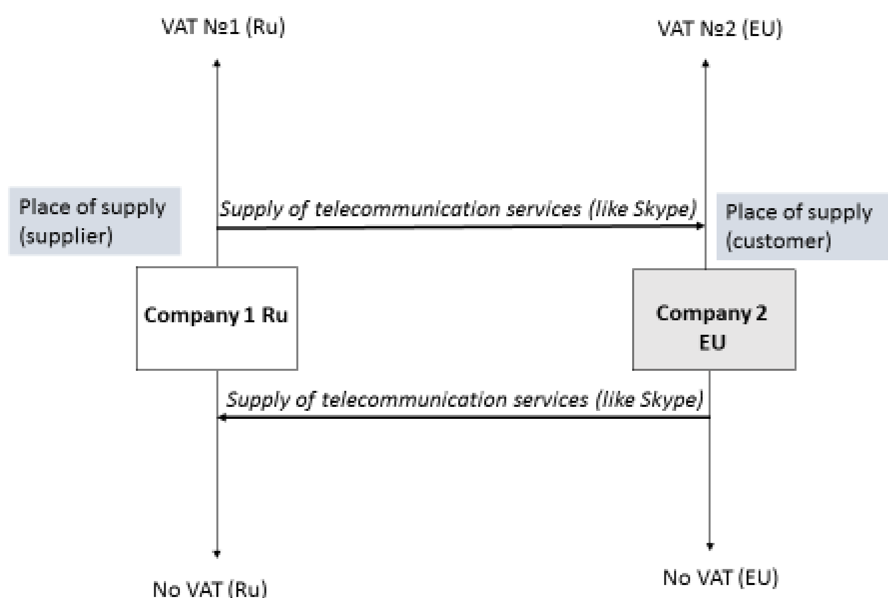
1) First, there is double VAT taxation of international supplies of certain services from Russia to EU states and double non-taxation of supplies of such services from EU states to Russia[18] (see some examples in Annex A). This has negative impact on Russian budget revenue[19], leads to distortion of competition[20] and is a stimulus for Russian suppliers to provide such services to Russian companies through EU registered companies to avoid VAT. Some examples of such services include telecommunication services, design services, television and broadcasting services. We can conclude that by changing place of supply of services rules according with OECD VAT International Guidelines EU states have made an important step in winning in tax competition with suppliers from countries outside EC and leveling playing field for the foreign and domestic suppliers inside EC (see Figure 1).

Figure 1 –inconsistency in VAT place of supply rules for services between Russia and EU states

[18] This happens because main rule for place of supplies of services for VAT is determined as place of supplier in Russia according to Article 148 Paragraph 1(5) of Russian Tax Code and place of customer in EC according to Council Directive 2008/8/EC of 12 February 2008 amending Directive 2006/112/EC as regards the place of supply of services (OJ L 44, 20.2.2008, p. 11).

[19] Main reason for this suggestion is that in general import of such services from Russia to EC states is less, than export.

[20] Distortion of competition happens because EC supplies must pay no VAT when importing such services to Russia and Russian suppliers are paying double VAT (both in Russia and in EC state), when exporting such services to EC clients. So, Russian suppliers are at competitive disadvantage both when competing with EC suppliers on national and foreign markets, because they incur higher VAT costs.



Source: author

2) Second problem is absence of right to deduct input VAT for certain export services (those which place of supply is outside Russia[21]) in Russia. This also makes export of such services from Russia to EC states less favorable, then their import from EC states to Russia[22]. Examples of such services include consulting, accounting, legal services, developing software or database and others.

3) Third, today, there is a discussion about VAT taxation of e-commerce in Russia. In summer, 2016 new rules were adopted, requiring foreign companies (such as Google, Apple) supplying digital content to Russian final recipients (B2C) to register for VAT and to remit VAT in Russia. This decision has stopped distortions of competition and created one level playing field for domestic and foreign sellers of digital content[23].
At the same time, B2C supplies of goods ordered from foreign sellers by Internet are exempted today from Russian VAT[24]. This creates distortion of competition. Idea, which is discussed today, is to put obligations of tax agents for VAT purposes on Digital Internet Platforms (Ebay, Aliexpress) and obligations of taxpayers on foreign sellers to ensure VAT neutrality in international context. Our analysis shows that while this idea is theoretically sound, such VAT collection mechanism could distort the market of e-commerce in favor of Russian domestic Internet sellers because of very high administrative burden on foreign sellers and Digital Internet Platforms. They will most likely deny on shipping to Russia because Russian market is not priority for them (about

[21] According to Article 148 Paragraph 1(4) of Russian Tax Code place of supply of certain services is determined as place of customer.

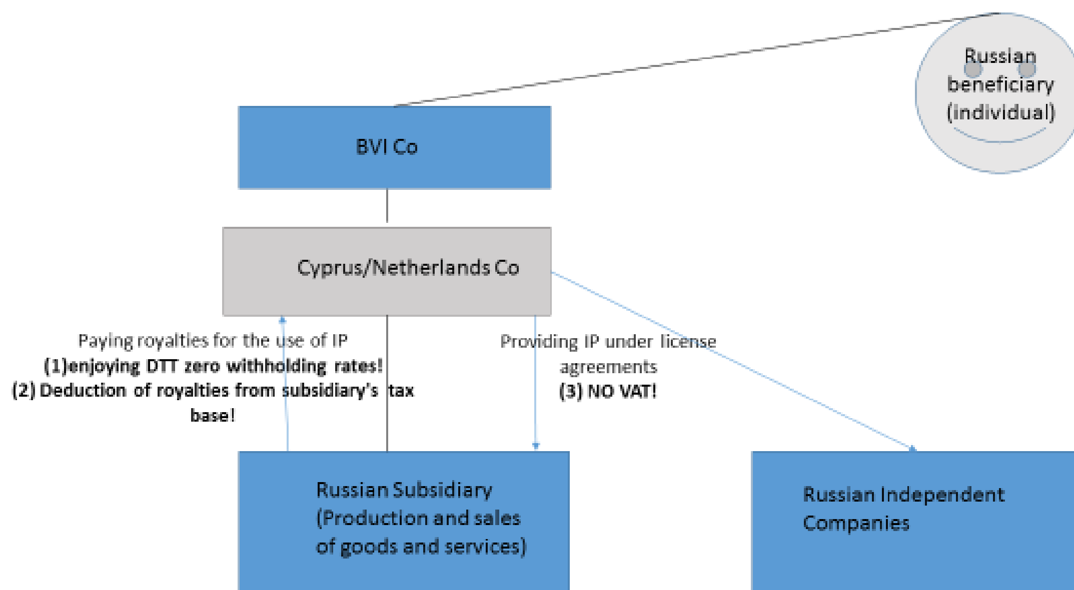
[22] Because in accordance with Article 170(2(1)) and Article 171 of Russian Tax Code input VAT related to supply of such services cannot be deducted for VAT purposes, but can decrease taxable profit for Corporate income tax base purposes, which is much more costly for the taxpayer.

[23] See Federal Law from 1st July 2016 №244-FZ

[24] In fact there is a very high threshold of 1000 Euro or 31 kg per person per month exceeding which trigger liability of paying both VAT and customs duty in one payment using 30% rate (base is customs value of goods). However, in practice very few people exceeds this thresholds (about 5 times per month, in practice of one major express-couriers), as evidenced by author’s talks with express-courier’s representatives in Association of European businesses.

1% of global EBay revenue). Second, there is no economic foundations of putting tax agent responsibilities on Digital Internet Platforms because technically funds are not transferred through their accounts and their responsibilities are limited. They are merely intermediaries.
This problems could be probably solved, if combined approach would be implemented containing:
1) voluntary online VAT registration for foreign sellers and/ Digital Online Platforms;
2) traditional collection model at customs as fallback rule.
Incentives in the form of faster customs clearance would stimulate companies to register online for VAT[25].

4) Fourth, there is a VAT tax incentive in Russia under Article 149 (2(26)) of Tax Code, this provision exempts from VAT supplies of exclusive rights on inventions, know-how, models, production samples, software, databases, topologies of integral micro schemes, and rights on use of these results of intellectual activity based on license agreement. From our point of view, this tax incentive has distortive and base erosion effects.
First, it stimulates Russian businesses providing licensing activities to structure their operations through foreign (for example EU-based) associated companies in order to obtain triple tax advantage: (1) VAT exemption due to Article 149 (2(26)); (2) zero withholding tax rate on royalties due to Article of relevant tax treaty based on Article 12(1) of OECD Model, (3) deduction of royalty payments from tax base of Russian associated company subsidiary (See figure 2).
Figure 2 – Tax planning structure for licensing of intellectual property rights



Source: author

Second, this tax incentive can trigger cascading effect, if it would be applied wholly domestically (all the value added chain would be inside Russia)[26]. In this case, it would

[25] Same approach is suggested to be one of the best choices in OECD (2015), Addressing the Tax Challenges of the Digital Economy, Action 1 - 2015 Final Report, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris. http://dx.doi.org/10.1787/9789264241046-en
[26] This economic effect is analyzed in literature. Effective VAT rate and, so, level of "excessive" or double VAT burden depends from the length of value added chain below exemption. See, Keen M. Targeting, Cascading,

result in destroying VAT neutrality and increase in final consumer prices. This is contrary to the aim of the incentive, which is to support innovative enterprises in Russia, because increase in retail prices will lead to diminishing demand and consequently supply. Cascading effect would be further extended because, according to Russian Tax law[27], if company produces VAT exempt supplies, than it cannot recover input VAT related to this supply, which triggers additional VAT costs inside value added chain.

Third, this tax incentive undermines tax policy efforts, related to introduction of so-called "Google tax" (VAT on B2C supplies of electronically provided services), because it exempts very large share of electronically provided content (for example software) from VAT. This is contrary to the tax policy objective of leveling playing field in the market of electronic commerce between Russian and foreign suppliers. Foreign suppliers would still enjoy more tax benefits, because Russian companies cannot deduct input VAT and because zero rate for royalty. Also, it causes distortions in the market of electronic commerce itself between providers of IP, exempt under 149 (2(26)) and other electronic content.

5.2. Transfer pricing documentation

Requirements to transfer pricing documentation in Russia include all the most widely spread in foreign states blocks of information. At the same time there are large list of states in which these requirements are tougher than in Russia. The most of the information including in proposed Master file is absent in Russian TP documentation requirements, all the information which is included in the proposed CbC-reporting template is absent in Russian TP requirements. The main risk of implementing deliverables on BEPS Action 13 in Russia is that it is very powerful tool, which (in the absence of high-quality law-enforcing environment) can lead to fiscal attack on business by tax administration and courts without conducting proper relevant legal and economic analysis[28]. Implementation of Action 13 BEPS requirements is facing strong opposition of both business community and Ministry of Economic Development. MoF Project Law implementing CRS and BEPS Action 13 documentation requirements got negative public assessment of regulative impact[29]. Experts stress that several administrative procedures are not developed yet and there is evidence, that implementing CbC is best solution of problem of base erosion. Also, commentators argue concerns about political appropriateness of disclosing economic information about Russian state-owned oil & gas giants[30], which are main Russian potential MNCs, who falls within CbC threshold (50 Bln Rubles of revenue).

5.3. Transfer pricing on intangibles

Positions of some countries (for example, USA's and China's) on TP in intangibles are rather aggressive (and based on defending their national tax base), so there can be many disputes between countries after implementation of BEPS Action 8 measure. China

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and Indirect Tax Design. IMF Working Paper. February 2013; Gillis M., Shoup C., Sicat G. Value added taxation in developing countries: a World Bank symposium. World Bank, 1990.

[27] Article 170 (2(1)) states that such input VAT shall be deducted when computing tax base for corporate income tax. Economically this equals to recovering 20% of input VAT.

[28] See, the detailed comparative analysis of documentation requirements in Russia and OECD states in New tendencies in transfer pricing documentation: international experience / Milogolov N.S., Pinskaya M.R., Tserenova K.N. // Taxes-journal. 2015. №5. P. 45-48 (Новые подходы к документации по трансфертному ценообразованию: международный опыт / Милоголов Н.С., Пинская М.Р., Церенова К.Н. // Налоги-журнал. 2015. № 5. С. 45-48.)

[29] See N.S. Milogolov Draft law implementing Common Reporting Standard and BEPS Action 13 documentation requirements – negative resolution published (19 May 2017), News IBFD

[30] Expert discussion of international tax policy of Russia at Centre of Developments, when working out proposals for economic strategy till 2025.

insists that functions of Chines members of MNEs are not routine and USA insists that the most important functions when developing intangibles are in the USA[31].

Russian court's position on cost sharing agreement and using it by MNEs for deduction of costs on low value added services (centralized IT support, administration, etc.) is controversial. Courts allow and disallow of using OECD Commentaries approach in different cases[32], which results in high level of uncertainty.

There is also a strong need in developing internationally recognized methodology on intangibles evaluating for transfer pricing purposes in Russia and of clear policy in this area. For example, some BRICS countries (China, India, Brazil) have their own chapters in UN 2013 Transfer Pricing Manual. Otherwise, there is a high probability that more sophisticated tax administrations can attract tax base of MNEs doing business in Russia. Also there is high probability of double taxation of the same tax base of one company (part of MNE), because dispute resolution mechanisms in Russia are not used by competent authorities and because the term "intangibles" in BEPS Action 8 Report is understood much broader[33] than in Russian law[34]. As a result, Russian tax authorities can simply deny taxpayer in deduction of costs on royalties paid to foreign company and in applying DTT withholding tax rate, because there is no intangible from Russian authorities' point of view for which to pay. For example, such situation may arise when paying royalties for customer lists, customer relationships, customer data, etc.

5.4. Permanent establishment

There are following problems with Permanent Establishment in Russia:

- ambivalence of interpreting Agency Permanent Establishment rule by Russian courts;
- double VAT taxation, when importing goods to Russia through commissionaire;
- outdated anti-fragmentation rule combined with rudimental method of calculating tax base;
- absence of clear methodology of determining PE tax base

5.4.1. Ambivalence of interpreting Agency Permanent Establishment rule by Russian courts

There is a recent Oriflame case[35] where this rule was used to deny taxpayer (Russian subsidiary of Dutch parent company Oriflame) in deduction of royalties paid to parent company because it was stated that Russian subsidiary is only agency permanent establishment of foreign company but not the separate legal entity, so, have no right to

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[31] See, Richard Ainsworth Andrew Shact TRANSFER PRICING: UN PRACTICAL MANUAL – CHINA Boston University School of Law Working Paper No. 14-1 (January 6, 2014)

[32] See, British American Tobacco case (Определение Высшего Арбитражного Суда Российской Федерации № ВАС- 7048/13 от 15.07.2013 по делу № А40-62131/12), Royal Bank of Scotland case (Постановление Федерального арбитражного суда Северо-Западного округа от 19.04.2011 по делу № А56-94331/2009)

[33]See OECD (2014), Guidance on Transfer Pricing Aspects of Intangibles, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing. http://dx.doi.org/10.1787/9789264219212-en ("Marketing intangible" - "An intangible … that relates to marketing activities, aids in the commercial exploitation of a product or service, and/or has an important promotional value for the product concerned. Depending on the context, marketing intangibles may include, for example, trademarks, trade names, customer lists, customer relationships, and proprietary market and customer data that is used or aids in marketing and selling goods or services to customers.")

[34] See Article 257(3) of Russian Tax Code [intangible assets are] acquires and (or) created by taxpayer results of intellectual activities and other objects of intellectual property (exclusive rights on them), used in production of goods (performing works, supplying services) and for management needs of company for long period of time (more than 12 months).

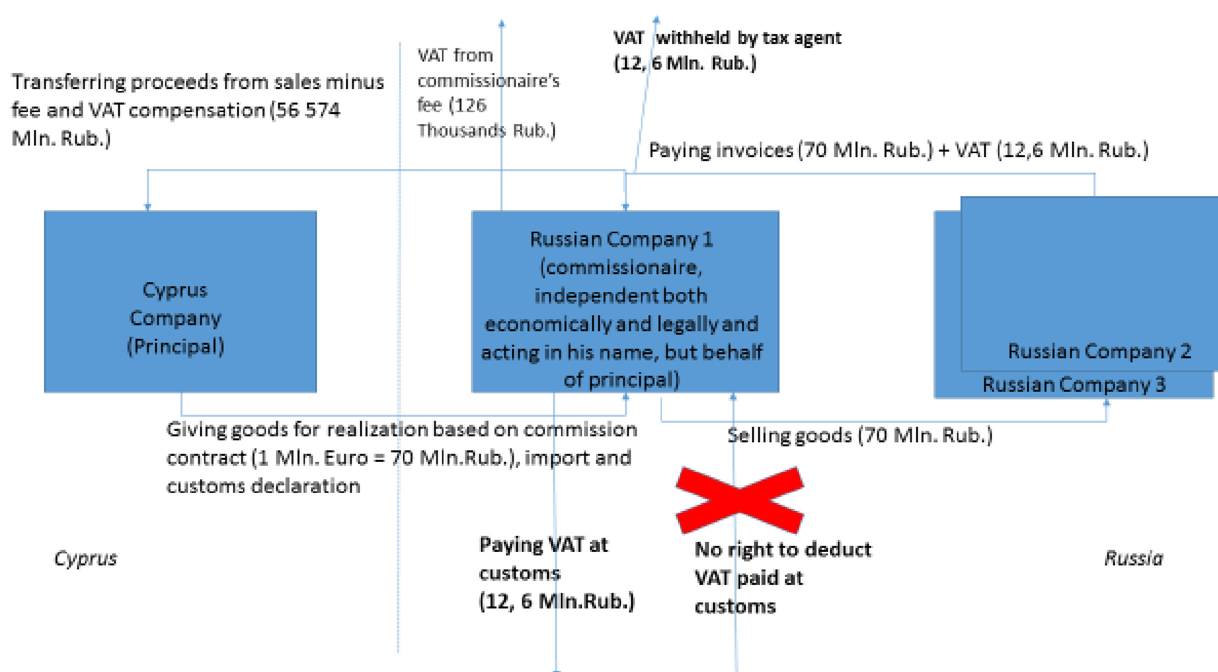
[35] АС г. Москвы. Решение по делу № А40-138879/14 от 04/12/2014. URL: http://kad.arbitr.ru/Kad/PdfDocument/01d83dc7-c12a-4e7d-9a6a-fbd170f847a4/A40-138879-2014_20141204_Reshenija%20i%20postanovlenija.pdf

apply DTT withholding rates to royalty payments. After this case, there is anticipation in professional community, that Russian tax service will use this technique to deny Russian subsidiaries of foreign companies in applying DTT withholding tax rates. This technique used by tax authorities contradicts with principle of “separate taxpayer”, which is in the heart of current international tax architecture.

5.4.2. Double VAT taxation, when importing goods to Russia through commissionaire

There is a problem of double VAT taxation, when importing goods to Russia through commissioner (See figure 3), which makes commissioner structures unpopular in Russia and all the discussion from BEPS Action 7[36] Report practically irrelevant to Russian practice. This happens because in Russia commissioner as a VAT tax agent has no right to claim deduction on VAT he paid to customs on behalf of the principal, when importing goods. It differs largely from EU approach[37] where supplies to and from commissionaire acting from his own name are deemed to be two separate supplies for VAT purposes. This situation results in irrecoverable VAT when importing through commissioner, so, foreign companies does not use commissioner structures, analyzed, for example, in *Dell*[38] case, when doing business in Russia, but prefer to conduct business through distributor.

Figure 3- Double VAT, when importing goods to Russia through commissionaire



Source: author

[36] In particular, this peculiarity of Russian VAT rules make irrelevant the discussion regarding lowering PE threshold for commissionaire structures. See OECD (2015), Preventing the Artificial Avoidance of Permanent Establishment Status, Action 7 - 2015 Final Report, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris. http://dx.doi.org/10.1787/9789264241220-en Part A, P. 15-28

[37] See COUNCIL DIRECTIVE 2006/112/EC of 28 November 2006 on the common system of value added tax (Article 14 and Article 28) and JUDGMENT OF 3. 9. 2015 — CASE C-526/13 FAST BUNKERING KLAIPĖDA. URL: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62013CJ0526&from=EN

[38] See, for example, The Norwegian Dell Case and the Spanish Roche Case Die F‰lle Dell und Roche: Kommission‰rsbetriebsst‰tte ja oder nein? SEITE 260 RAFFAELE PETRUZZI / HERBERT GREINECKER. URL: https://www.wu.ac.at/fileadmin/wu/d/i/taxlaw/teaching/Petruzzi_Greinecker_SWI_2012_260.pdf

5.4.3. Outdated anti-abuse rule combined with rudimental method of calculating tax base

In Russia there is a very special PE anti-abuse rule combined with rudimental method of calculating tax base of permanent establishment based on formulary apportionment. According to Russian Tax Code, Article 307(3), when foreign company

(1) has fixed place of business in Russia used solely for preparatory and auxiliary activities and

(2) acts not in her own interests, but in the interests of third party, and

(3) acts for no consideration,

this leads to:

(1) PE in Russia,

(2) profits of this PE shall be determined as 20% of its expenses.

This rule leads to very unfair and simplified results and is not consistent with BEPS Action 7 recommendations on anti-fragmentation rules and with authorized OECD approach on calculating tax base of PE as independent enterprise. Yet, authorized OECD approach is reflected in Article 307(9) of the Russian Tax Code, where it is stated that profit of PE (both for domestic and treaty purposes) shall be determined taking into account functions, assets and risks. This complicated Russian anti-abuse rule has two substantive issues in it:

- anti-avoidance rule to deal with artificial avoidance of PE status;
- special simplified rules on determining profits.

It is not, however, clear, why there is a PE abuse in situation described above. Probably, the explanation is, that this situation is one of the examples of fragmentation of activities.

5.4.4. Absence of clear methodology of determining PE tax base

There is no methodological or administrative guidance on determining tax base of permanent establishment taking into account functions, assets and risks. So, even after relevant provision appeared in Article 307(9) of the Russian Tax Code, techniques of determining PE profits haven't changed. It is still determined using direct method of profit and expenses allocation. Transfer pricing methodology and recommendations from OECD Report (2010)[39] are not used at all in practice.

5.5. Controlled foreign company rules (CFC)

Russian CFC rules are generally in line with OECD recommendations, but there are some important distinctions. Also, all the main elements of modern CFC rule are present in Russian CFC rules.

The most important peculiarity is that there is no "purpose test" or special analysis to detect part of CFCs income, which is of high BEPS risk in Russian rules. However, there is requirement of exemption of entity with active income of more than 80% and of holding, sub-holding and bond issuer provided their corresponding active income exceeds required share of total income. Passive income is identified on a formal basis.

We consider this to be rather unfair because in this entity-based approach excess active income can be taxed (for example, if active income is less than 80% of total income, all of it is taxed). At the same time passive income with high risk of base erosion is not taxed (if active income is more than 80%, all the passive income is excluded). We think that policy aim of the CFC rule, which is in worldwide tax system (such as Russia) to counter base erosion, shall be reflected in its design either as a "purpose test" or when defining

[39] OECD. REPORT ON THE ATTRIBUTION OF PROFITS TO PERMANENT ESTABLISHMENTS. 22 July 2010.

CFC income. Experience of EU states, especially France[40] and UK[41], shows that broad CFC rules applied to all foreign companies and structures, not only artificial, can potentially lead to contradictions with supranational law in EU and constitutional freedoms. Yet, CFC rules themselves are very complicated and new development for Russian tax system and probably this mechanical approach has its main advantage – simplicity and certainty.

Russian CFC rules are applied only to individuals - Russian tax residents. Individual is considered to be tax resident in Russia if he physically presents in Russia for at least 183 days during calendar year. So, Russian CFC rules can easily be avoided if individual, who is ultimate beneficiary of MNE, spends less than half a year in Russia. This already happens with some billionaires. About 1/3 of Russian billionaires became non-residents after introduction of CFC rules in Russia[42].

5.6. Economic indicators of base erosion in Russia

We have estimated two BEPS indicators for Russia with methodology contained in BEPS Action 11 report and received some evidence of BEPS behavior in Russia. We have a little bit modified this methodology in order to perform analysis based on existing data. So, we have estimated (1) share of countries with high FDI/GDP ratio and of countries with (2) share of countries with high ratio of royalty received to R&D expenses in operations with Russian companies.

First, share of countries with high FDI/GDP ratio (Gross inward FDI/ GDP ratio above 200%) in total inward investments in Russia in 2015 and 1st quarter of 2016 is 64% from all inward investments, which is very significant. These jurisdictions are commonly referred to as “cash-boxes” because there are no corresponding economic activity in them (OECD Action 11, Indicator 1). See Annex B.

Second, in 2015 28,5% of payments for intellectual property use were paid from Russia to jurisdictions with ratio of royalty received to R&D expenses is more than 87% (OECD BEPS Action 11 Indicator 5). At the same time, ratio of royalty received to R&D expenses is about 13% in Germany and 27% in USA, countries which are renowned world leaders in R&D. This is the evidence that there is not economic activity sufficient to create this intellectual property in jurisdictions to which royalty are paid, so these jurisdictions are just used as holding jurisdictions. See Annex C.

These results can confirm the existence of base erosion and profit shifting in Russia at significant scale.

5.7. Tax treaty policy

There is unclear methodological basis for performing international tax policy in Russia, no publicly available estimation of effects of current DTTs and other elements of international tax policy on macro-and microeconomic coefficients, macroeconomic data on inward and outward FDIs is impacted with BEPS.

The most of the Russian DTTs are based on the OECD Model and have very low withholding tax rates on source country income (See Annex D). As our analysis for 2014 data shows top investors in Russian economy have zero withholding tax rates on interests and royalties and 5/10 % rates on dividends. This fact in combination with the fact that

[40] See recent Decision of French Constitutional Court, where it provides that CFC rules with different treatment of CFCs in other EU states and non-EU states are contrary to constitutional principal of equality before public expenditure (Décision n° 2016-614 QPC du 1er mars 2017)

[41] See C-196/04 - Cadbury Schweppes plc, Cadbury Schweppes Overseas Ltd v Commissioners of Inland Revenue, judgment of 12.9.2006

[42] See Reuters. Как план Путина вернуть миллиарды из офшоров дал обратный эффект. Вторник, 6 июня 2017 URL: http://ru.reuters.com/article/topNews/idRUKBN18X102-ORUTP

Russia today is a developing resource-rich and capital and technology importing country makes current network of DTTs unfavorable to Russia in terms of revenue loss. It is more likely that Russian economy is losing tax revenue because of low withholding tax rates than that it is winning from attracting more FDIs with a help of low DTTs withholding tax rates, because current treaty network is used primarily for "round-tripping" ownership structure (see Figure 4) as majority of recent tax cases show, but not for genuine foreign investments, yet, we don't have sufficient data to prove this hypothesis. If Russian ultimate beneficiaries decide to expand on foreign markets and to export investments, they usually use foreign holding companies in intermediate jurisdictions, such as, for example Cyprus/Netherlands/Luxembourg in case of EU or Singapre/HongKong in case of Asia, because of regulatory advantages[43]. So, passive income from such investments is usually accumulated in parent offshore companies. It is unlikely, that introduction of CFC rules in Russia will stop them from doing it, it is more likely, that they will just change their residence for tax purposes, because of regulative challenges or establish independent structures for foreign investments.

There are certain offshore jurisdictions (Bahamas, Bermuda and British Virgin Islands) among top investors in Russia. We cannot for sure explain the fact that investments to Russia are passing through these jurisdictions in the absence of tax treaties with them. It can potentially trigger high withholding taxes on interests, dividends and royalties in Russia, which is surely unfavorable to investors. Possible reason is that there is no established mechanism of taxation of capital gains of non-residents in the form of alienation of shares in Russian Federation[44], so, one can easily sell offshore company owning shares of Russian company and these capital gains will not be taxable in Russia[45]. Our hypothesis for future research that there are some methodological problems on data of Central Bank on inward investment. Data on FDI can be distorted with BEPS and there can be a distance between how investments are structured legally, how return on investments are passing in reality to their ultimate beneficiaries and how investments are accounted in FDI statistics database. Typical and most simple construction for investments in Russia is BVI-Cyprus-Russia three-stages holding structure with BVI (British Virgin Islands) holding company at the top and ultimate beneficiary controlling this holding company directly, through trust or other legal arrangement (See Figure 4 below).

5.8. Countering treaty abuse

Our analysis of international tax cases shows that there is a very high level of uncertainty in applying anti-abuse and international tax treaties provisions. Tax authorities and courts are changing their position on important issues in unpredictable manner. Sometimes it seems that the only goal of decision makers is to raise budget revenue but not to establish clear and certain «rules of the game». This especially relates to beneficial ownership concept and techniques of tax authorities of countering treaty shopping.

[43] This suggestion is supported with numerous discussions with practicing lawyers on ROS-IFA meetings.

[44] Yet, capital gains derived by non-residents from alienation of shares of companies, which assets contain (directly or indirectly) on more than 50% from immovable property situated in Russia are subject to withholding tax in Russia due to Article 309 (1(5)). This change is part of "de-offshorization" tax package.

[45] According with article 247 (2) and 247 (3) foreign companies' income is subject to tax in Russia if it is either derived through it's PE in Russia (247(2)) or Russia is source of income (247(3)) in relation to income listed in Article 309, where we can find: (1) dividends, (2) income after company liquidation, (3) interests, (4) income from intellectual property, (5) income from indirect sale of immovable property, (6) income from sale of immovable property, (7) rent income, (8) income from international transportation, (9) fines and late interest payments, (10) other analogous income. So, that is subject to interpretation either Article 309 (1(10)) – Other analogous income - include income in the form of alienation of shares in Russian companies, but the answer is more likely negative, because there is no defined mechanism of calculating and paying such a tax in Russian Tax Code.

Beneficial owner concept is used in Russia in much broader manner of interpretation, than in Commentaries to OECD Model Tax Convention (both from 2014 and even before). In Russia, tax authorities[46]:

- analyze economic activity of the group "as a whole" (as single unit);
- assess functions performed, assets used and risks borne by foreign company receiving income from Russia and if the level of "substance" is not considered to be enough, otherwise they deny in applying treaty withholding tax rates;
- apply "beneficial owner" concept not only to types of income listed in Articles 10-12, but also, for example to capital gains.

At the same time, according to Commentaries to OECD Model Tax Convention, 2014 "the recipient of a dividend, interest, or royalty is the "beneficial owner" of the payment in question when he has the right to use and enjoy the dividend, interest, or royalty unconstrained by a contractual or legal obligation to pass on the payment received to another person".

There is also beneficial owner definition in Russian Tax Code, Article 7, according to which term beneficial owner is also defined rather broadly, it is stated, that when identifying such person one shall look at functions, assets and risks. This provision has entered into force since 2015 as part of so-called "de-offshorization package".

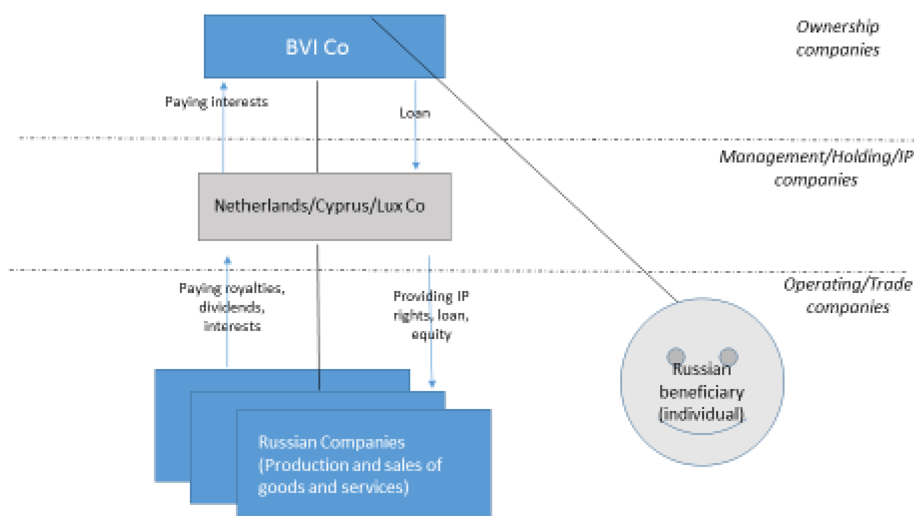
First, It is not clear either such broad interpretation of treaty term (beneficial owner) is in line with treaty obligations of Russia, especially the rules of interpretation of treaty provisions in accordance with Articles 31 and 32 of VCTL and with the idea of interpreting treaty in good faith. Second, it is not clear how such broad domestic application of beneficial owner concept will be combined with chosen BEPS Action 6 Minimum standard approach (either LOB or PPT). This all leads to high level of uncertainty for foreign investors.

At the same time, tax authorities' position can be understood, they just can easily find out using both (1) information from open sources (internet and commercial databases) and (2) because of improved automatic exchange pursuant to Russian DTT' articles based on Article 26 (Exchange of information) of the OECD Model Tax Convention[47], that foreign counterparties of relevant transactions are conduit companies without relevant substance, which are used for the round-tripping ownership structures of Russian assets. See Figure 4, as an example.

Figure 4 – Typical Russian international tax planning "round tripping" structure of ownership of Russian assets

[46] See N.S. Milogolov FTS clarifications on beneficial ownership (1 June 2017), News IBFD

[47] See, for example, Article 26 of Tax Russia-Cyprus Tax Treaty, 1998 (amended in 2010).



Source: author

The real problem is that tax authorities in their efforts on countering international tax planning "round tripping" structures of ownership do not distinguish such structures and other tax planning structures, with little substance but still used for real foreign investment and genuine operations between different companies of one multinational company. This can be the case, when, for example a holding company is used as corporate treasury for the whole group, so there are lots of inward and outward financial flows to and from this company, which are not "back-to-back". These problems[48], in applying "beneficial ownership" concept as broad tool were discussed in detail by OECD experts, when preparing for changes in Commentaries to Articles 10, 11, 12 of the OECD Model Tax Convention. Main expert's conclusion is that if fiscal authorities interpret this concept in broad meaning, then every intermediate company, which is not operating business, can be denied in treaty's benefits, which undermines genuine economic and financial relations inside the MNCs. That is why beneficial ownership test is not part of BEPS Action 6 recommendations and other concepts (primary Limitation-of-Benefits Test and Principal Purpose Test) are included in the Multilateral Convention on Implementing BEPS Measures with the aim of tackling tax treaty abuses.

5.9. Treaty and international tax policy proposals for Russia

We suggest, that more simple treaty policy, based on UN Model with higher level of taxation at source is more convenient for Russia at the current stage of economic and fiscal development. This can eliminate the problem of unproportionate and high administrative and compliance burden when applying beneficial ownership and other treaty abuse tests, because revenue loss from limitation of source country taxing rights would be insignificant in this situation and there will be less need to direct significant tax administration resources on countering treaty abuse. At the same, as experts reports

[48] See, OECD Discussion Draft "Clarification of the Meaning of „Beneficial Owner" in the OECD Model Tax Convention" Response by John Avery Jones, Richard Vann and Joanna Wheeler. URL: http://www.oecd.org/tax/treaties/48420432.pdf

show[49], Russia is in strong need of financial and technological investments, that is why main international tax policy goal shall be to facilitate foreign investments, while not eroding tax base. That is very unlikely, that Russia would become capital exporting country (in terms of genuine FDIs) in recent perspective. Main argument in favor of high withholdings is their simplicity in application and fairness in distributing tax rights between capital importing and capital exporting states.
The only exception is tax rate on dividend. From our point of view, lower (and even zero!) dividend withholding tax rates can stimulate foreign investments in equity, while not eroding national tax base, because (1) dividend income is already taxed at the level of corporate entity; (2) dividends unlike interests and royalties do not decrease income tax base.
We suggest, that moving to limited territoriality and capital import neutrality can also facilitate FDIs. Related actions can include:

- moving from worldwide to territorial taxation of passive income (dividends, interests, royalties) by modifying unilateral tax relief from method of tax credit to method of tax exemption. This can facilitate Russian companies to invest worldwide, but to repatriate their profits back to Russia, which is normal for modern businesses, otherwise, foreign investments from originally Russian ultimate beneficiaries could be structured totally through foreign jurisdictions;
- establishing one single rate for residents and non-residents for personal income tax purposes (today tax rate for non-residents is 30% while it is 13% for residents;
- facilitating investments in Russia and through Russia into Eurasian Economic Union states by establishing of intermediate holding companies in Russia with: (1) extending of current participation exemption regime to foreign shareholders of Russian companies and (2) decreasing current ownership threshold from 50% to 10%;
- strengthening tax residence criteria for individuals (for example, with introducing second criteria of permanent home in combination with 90 days of physical presence in Russia during fiscal year). The criteria of “permanent home” has advantage in front of criteria of “center of vital and economic interests” in terms of administrative simplicity and predictability in consequences of the application of the rule;
- introducing rules of taxation of capital gains from the alienation of shares of Russian companies belonging to non-residents in Russia on net basis.

Also, as we stated above certain technical improvements are strongly needed in such areas at transfer pricing, VAT on services and e-commerce, permanent establishments.

6 – Conclusion

1. In spite of the fact that Russian international tax rules are generally based on international tax practices, there is a huge gap between Russian international taxation rules and the rules of OECD states. This leads to an extreme level of uncertainty with respect to what business models are best fit for doing business in Russian Federation. Also because of the gap, there arises a problem of double taxation or high taxation risks, which are a complete disadvantage for Russia in international tax competition game.

[49] Currently three alternative long-term economic strategies for Russia (to be implemented after Presidential election) are discussed broadly in press. All of them agree in strong need in in-country investments to achieve sustainable economic growth.

2. There are huge distortions of VAT neutrality towards international trade in services and towards digital supplies. This leads to distortions of competition, loss in tax revenues and market behavior and using tax avoidance schemes motivated with tax benefits.

3. Today, in countries like Russia i.e. a transitional economy, the measures adopted to counter tax evasion could probably lead to economically unfounded fiscal attack on MNCs and beneficiaries by country's tax authorities. This in turn would be advantageous for developed countries, as they would try to attract such MNCs and beneficiaries under their jurisdictions and thereby increasing their own tax revenue from FDIs and gaining from zero withholding tax rates on royalties and interests in DTTs based on OECD Model (which we already see after introducing Russian "de-offshorization" legislation package). Main argument in support of such conclusions is that final allocation of tax base between countries depend on several factors, like (1) tax planning techniques, (2) country's international tax rules and tax authorities actions on ensuring taxation in their jurisdiction (which generally is limited with the territory or residence), especially transfer pricing administration (3) other states' tax rules and tax authorities actions on ensuring taxation in their own jurisdictions (4) instruments of dispute resolutions between jurisdictions and their efficiency; (5) level of tax burden.
All of these factors and their details matter in the tax competition game for attracting investments and/or broadening the tax base. In countries with less developed institutions (tax law and court practice on international tax issues) implementation of new complex anti avoidance rules can harm the investment climate and increase uncertainty leading to defeat in tax competition for foreign investments, MNCs substantive functions, high net worth individuals residing and tax base. Also, at the same time, new business models of the digital economy may lead to non-taxation of profits and sales and pose some global challenges for international tax architecture.

4. OECD/G20 BEPS project is an attempt by the participating countries to combat harmful international tax competition (defined in OECD Action 5 Report and in OECD BEPS (2013) Report as ring-fencing, absence of substance, etc.) and to establish a level playing field for all participating countries. It is not stated officially, but one of the aims of BEPS Project is also to stop "race-to-the-bottom" in corporate income tax rates in times of high fiscal deficit in developed countries (for example, in EU and USA). But this Project is conducted in challenging circumstances when:
(1) International tax architecture is in crisis due to development of new digital business models, growing importance of highly mobile intellectual property, key staff and capital, which contribution to value creation is very hard to determine by tax authorities;
(2) non-harmful tax competition (in the form of low tax rates, special R&D schemes, holding and non-domiciled individuals regimes, etc.) flourishes in states with developed law and administration practice such as Netherlands, Singapore, Switzerland, UK, Ireland, etc. Even in EU, countries cannot agree on consolidation of their corporate tax base because it lowers their competitiveness.

5. Outcomes of BEPS Project probably may not be very bright, especially for transitional economies because of tax competition and fiscal sovereignty issues. Tax burden of taxation will still fall mainly on less mobile factors (consumption and labor), because more mobile factors (capital and intellectual property) will still be located at most comfortable "holding" jurisdictions with minimal level of taxation, even if global transparency would increase. Nevertheless, level of substance at these "holding" jurisdictions probably will increase as result of BEPS and other global initiatives of the OECD. Therefore, the inequality gap between developed countries attracting most important and valuable

"substance" (highly skilled workers, capital and intellectual property) and developing and transitional countries will probably be increasing even in the post-BEPS period.

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Annex A – Open list of services subject to non-taxation and double taxation when exporting and importing between Russia and EC states

Type of services	**Double taxation of export from Russia to EC**	**Non-taxation of import from EC to Russia**
Telecommunication services	+	+
Tele and radio broadcasting services	+	+
Acceptance of any obligation to refrain from pursuing or exercising, in whole or part, any business activity	+	+
Transfers and assignments of copyright, patents, licenses, trademarks and similar rights	-[50]	+
Services of leading register journal of securities	+	+
Services on forecasting of natural resources resulting from data analysis of space photos of earth	+	+
Translation of technical documentation	+	+
Certification of production	+	+
Testing security and quality of food	+	+
Services on transferring factoring rights	+	+
Seeking clients in accordance with agency contract	+	+
Creation of movies	+	+
Giving credit rating to banks	+	+

Source: prepared by author based on Letters of the Ministry of Finance

[50] This services are exempt from VAT in Russia (Article 149 (2(26)). That is why no VAT is incurred on export of such services

Annex B – Share of countries with GDP/Gross FDI ratio above 200% in sum of operations on inward investments to Russia

Inward investment to Russia ($ mln)			
Countries with Gross inward FDI/ GDP ratio above 200%	Balance of operations		Sum of operations in 2015 and 1st quarter of 2016
	2015	1st quarter of 2016	
Bahamas	5 090	1 347	6437
Bermuda	1 692	216	1908
British Virgin Islands	2 242	427	2669
Hong Kong	136	-75	211
Cyprus	-7 057	-3 608	10665
Liberia	1	0	1
Luxembourg	-5 770	436	6206
Malta	41	21	62
Marshall Islands	1	0	1
Cayman Islands	-79	9	89
Seychelles	-65	4	69
Sent Vincent and Grenadine	-26	-5	31
Sent Kites and Nevis	65	0	65
Singapore	185	-54	239
Total countries Gross inward FDI/ GDP ratio above 200%			28654
All countries			44970
Share of countries with Gross inward FDI/ GDP ratio above 200% in sum of operations with inward investments in Russia			64%

Data source: Central Bank of Russian Federation. FDI in Russia by partner countries (participation in capital, reinvestment of income and debt instruments), United Nations Conference on Trade And Development WORLD INVESTMENT REPORT Investor Nationality: Policy Challenges. 2016, World Investment Report 2016: Annex Table 07. FDI inward stock as a percentage of gross domestic product, 1990-2015.

Annex C – Ratio of payments for the use of intellectual property from Russia to countries with high ratio of royalty received to R&D expenses

	GDP ($млн)	R&D expenses (%/GDP)	R&D expenses ($mln)	Royalty received ($mln)	Ratio of royalty received to expenses on R&D (%)	Withholding tax rate on royalties when applying tax treaty concluded by Russia with these countries
	1	2	3	4	5	6
Netherland	879319,3	1,97	17322,6	36958,6	213%	0%
Luxembourg	64874,0	1,16	752,5	1418,5	189%	0%
Ireland	250813,6	1,58	3962,9	6329,5	160%	0%
Switzerland	701037,1	2,96	20750,7	18111,4	87%	0%
USA	17348071,5	2,81	487480,8	130361,0	27%	0%
Germany	3868291,2	2,88	111406,8	14992,6	13%	0%
Russia	2030972,6	1,13	22950,0	665,8	3%	-

Data source: World Bank, Russian Tax treaties

Annex D – Russian tax treaty rates with countries top investors in the Russian economy (for the end of 2014)

Russia - Treaty Withholding Rates Table

This chart is based on information available up to 1 February 2016.
Effective date: 01 Jan 2015
The following chart contains the withholding tax rates that are applicable to dividend, interest and royalty payments by Russian companies to non-reside
The reduced treaty rates may be applied immediately where the non-resident has provided the withholding agent with a certificate of residence issued by

Russia - Treaty Withholding Rates Table

	Dividends		Interest[1]	Royalties
	Individuals, companies	Qualifying companies[2]		
	(%)	(%)	(%)	(%)
Domestic Rates				
Companies:	15	15	9/15/20	20
Individuals:	15	n/a	0/30	30
Treaty Rates				
Treaty With:				
Austria	15	5[6]	0	0
Cyprus	10	5[14]	0	0
France	15	5/10[16]	0	0
Germany	15	5[17]	0	0
Luxembourg	10/15[22]	10	0	0
Netherlands	15	5[32]	0	0
Switzerland	15	0/5[39]	0	0
United Kingdom	10	10	0	0
United States	10	5	0	0

1. Many treaties provide for an exemption for certain types of interest, e.g. interest paid to the state, local authorities, the central bank, export credit institutions or in relation to sales on credit. Such exemptions are not considered in this column.

2. Unless stated otherwise, the reduced treaty rates given in this column generally apply if the recipient company holds directly or indirectly. The lower rate applies if the recipient owns directly at least 25% of the capital or the voting power in the Russian company, as the case may be.

6. The rate applies if the recipient company owns directly at least 10% of the capital in the Russian company and the value of the holding exceeds USD 100,000.

14. The rate applies if the value of the holding is at least EUR 100,000.

16. The 5% rate applies if the French company (i) has directly invested at least EUR 76,225 (FRF 500,000) in the Russian company and (ii) is subject to tax in France, but is exempt with respect to the dividends (i.e. participation exemption). The 10% rate applies if only one of the requirements is fulfilled.

22. The 10% rate applies if the Luxembourg individual or corporate recipient owns directly at least 30% of the capital in the Russian company and the value of the holding is at least EUR 75,000.

32. The rate applies if the recipient company holds directly at least 25% of the capital in the Russian company and the value of the capital investment is at least ECU 75,000 or its equivalent in the national currencies of the contracting states.

39. The rate applies if the Swiss company owns at least 20% of the capital in the Russian company and the value of the holding exceeds CHF 200,000. With effect from 1 January 2013, a 0% rate applies if the beneficial owner of the dividends is (i) a pension fund (or similar institution; (ii) the Government of the other State, any political subdivision or local authority thereof; or (iii) a Central Bank.

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Data source: IBFD Tax research platform, IMF