RUSSIAN INTERNATIONAL TAXATION WEEK

Capital gain taxation of Russian companies: application of DTT, Tax Code, approach in Article 13(5) of the UN Model, perspectives for Russia

9 -14 April, 2018

Moscow

Why it is important?

1) Tax claim of such disputes is significant (especially for developing countries)
2) Legal position of source countries in such deals is not well-designed (due to imperfect national legislation or lack of relevant norm in double tax treaties)
3) It is not clear how to collect taxes from such indirect deals

Russian national and supranational legislation

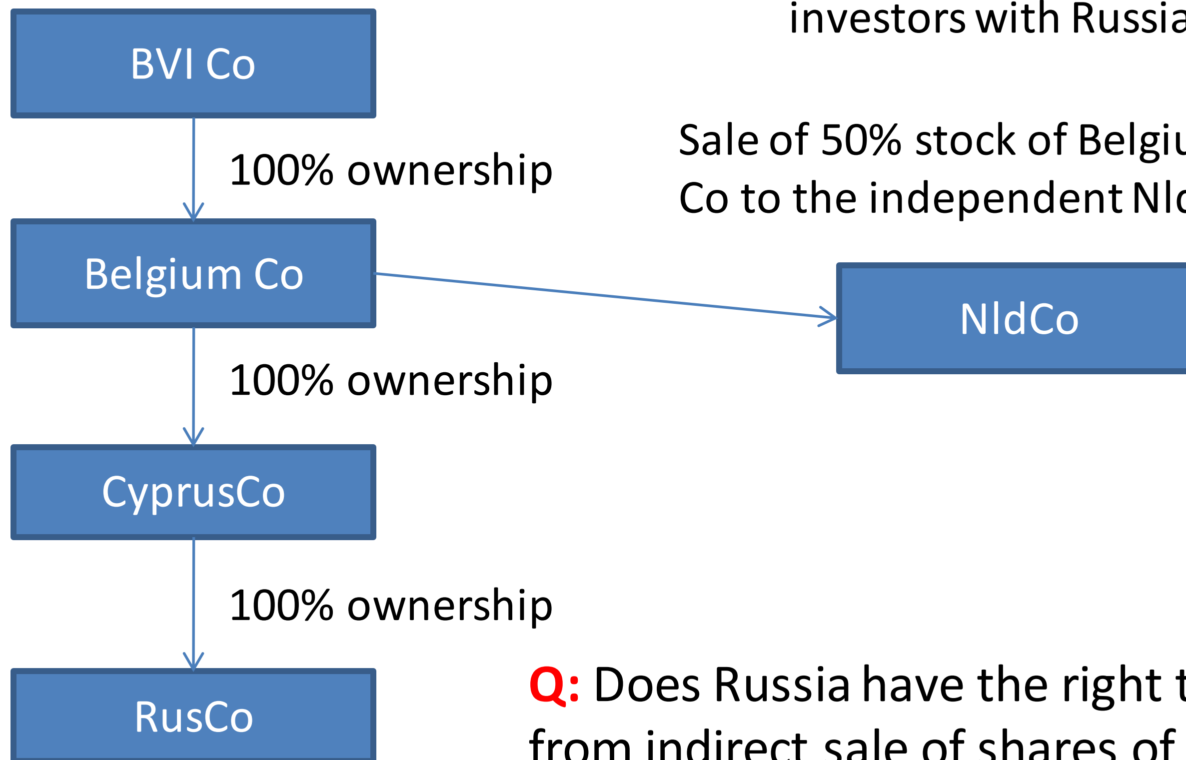
1) Article 309 of the Tax Code, p.1, sub. 5
2) Provision in Russian double tax treaties similar to article 13 (4) of the OECD MTC

But both norms **relates to determination of the 50% criteria of immovable property in assets of alienating company**, which limits Russia's potential right to tax capital gains

Example

21,2 bln.$

total value of transactions of foreign investors with Russian assets

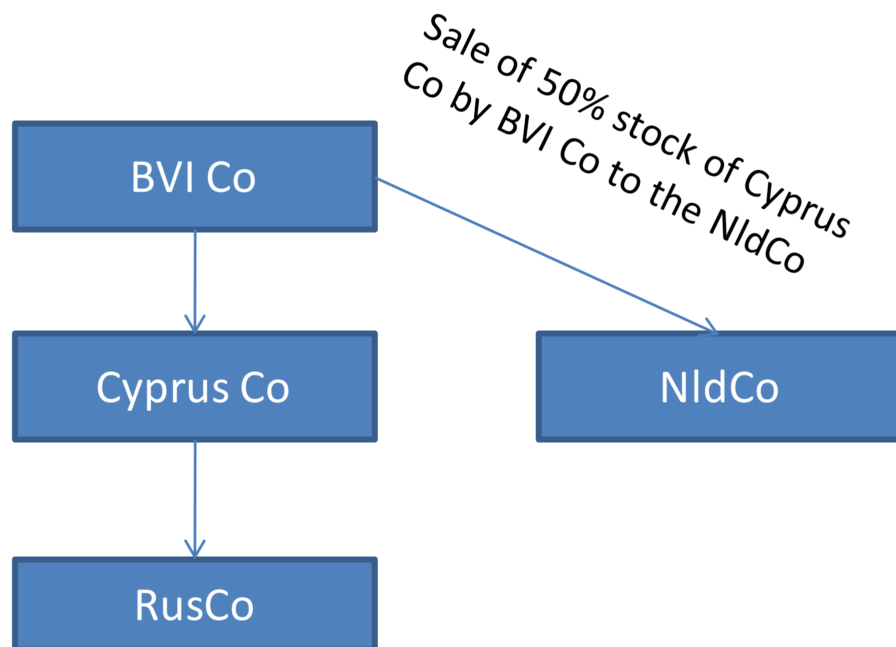


Q: Does Russia have the right to tax the income from indirect sale of shares of Belgium Co, if 50% criteria is not met?

A: Probably, no

What can be done x1?

Development of the Russian tax legislation

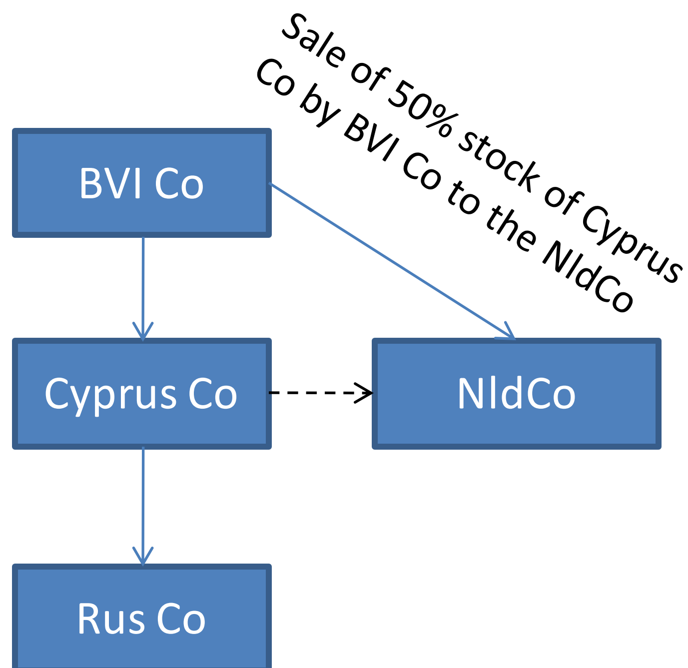


Introduction of a direct rule into Russian national legislation allowing to tax foreign companies income by Russian tax authorities, if foreign income was received from the sale of Russian assets and if application of such rule doesn't contradict double tax treaties

But how to determine whether Russian tax rule is applicable and on what criterion should be based such determination (maybe it should be based on similar provision in UN MTC)?

What can be done x2?

Development of the Russian double tax treaties

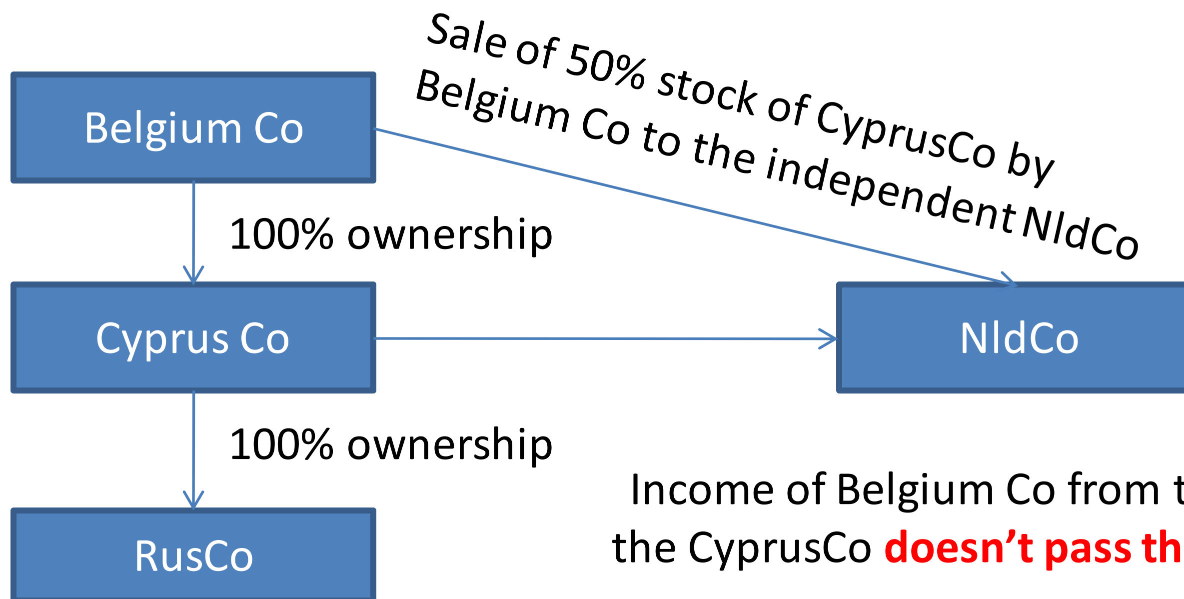


«Gains, other than those to which paragraph 4 applies, derived by a resident of a Contracting State from the alienation of shares of a company which is a resident of the other Contracting State, may be taxed in that other State if the alienator, at any time during the 12-month period preceding such alienation, held directly or indirectly at least ___ per cent (the percentage is to be established through bilateral negotiations) of the capital of that company».

MLI doesn’t cover provision of indirect sale of shares, so the process of DTT’s review will be very slow…

Will the implementation of this norm into DTT solve the problem of taxation of the indirect sale of shares?

Ok, but who will be a taxpayer?



Income of Belgium Co from the sale of 50% stock of the CyprusCo **doesn't pass through** Russian company

Russian tax legislation doesn't provide for occurrence a tax liability for foreign company and responsibility for declaration of such income (for Belgium Co) or such expenses (for Nld Co) in order to tax control In Russia.

Will the implementation of income declaration in Russia for non-residents solve this problem?

Thank you!