

**TAX TREATY
DEVELOPMENTS
CYPRUS - RUSSIA**

**PRESENTATION BY
TAXAND CYPRUS
& PEPELIAEV GROUP
(TAXAND RUSSIA)**

25 FEBRUARY 2021

Your global tax partner

AGENDA

- ❖ Setting the scene and overview
- ❖ Scope of Treaty
- ❖ Protocol changes
- ❖ Dividend & Interest articles
- ❖ Summary point
- ❖ Case examples 1-8
- ❖ The Emerging Companies Market
- ❖ Regulated Market
- ❖ Flotation Methods
- ❖ Timeframe
- ❖ MLI
- ❖ Conclusion

STATISTICAL AND BACKGROUND INFORMATION



According to the Russian Ministry of Finance:

- ❖ More than 1.4 trillion roubles were “siphoned off” to Cyprus in 2018 and more than 1.9 trillion roubles in 2019.

The Order of the Russian President regarding the taxation of income in the form of dividends and interest paid to low tax jurisdictions

- ❖ The revision of the DTTs started on 1 April of 2020
- ❖ The Protocol to the DTT with Cyprus was signed on 8 September 2020.
- ❖ The Protocol to the DTT with Luxembourg was signed on 6 November 2020.
- ❖ The Protocol to the DTT with Malta was signed on 1 October 2020.

AFTER THE PROTOCOL COMES INTO FORCE

POSSIBLE SCENARIOS

01

Applying the “new” version of the DTT.
Adapting the Cypriot structures to take into account the new provisions of the DTT: is it possible and who will be adversely affected?

02




Using a “look-through” approach for payments from Russia: in which situations will this be a solution?

03

A change of jurisdiction: problems and the consequences of moving

NEW RATES UNDER THE DTT



	 Cyprus	 Luxembourg	 Malta		
Before the Protocol				After the Protocol	w/o the DTT
Dividends (qualified investments)	5	5	5	5	15
Dividends (other)	10	15	10	15	15
Interest (qualified)	-	-	5	0/5	20
Interest (other)	-	-	5	15	20

REDUCED RATES

PROTOCOL TO THE DTT

Rate of tax on dividends increased to 15%

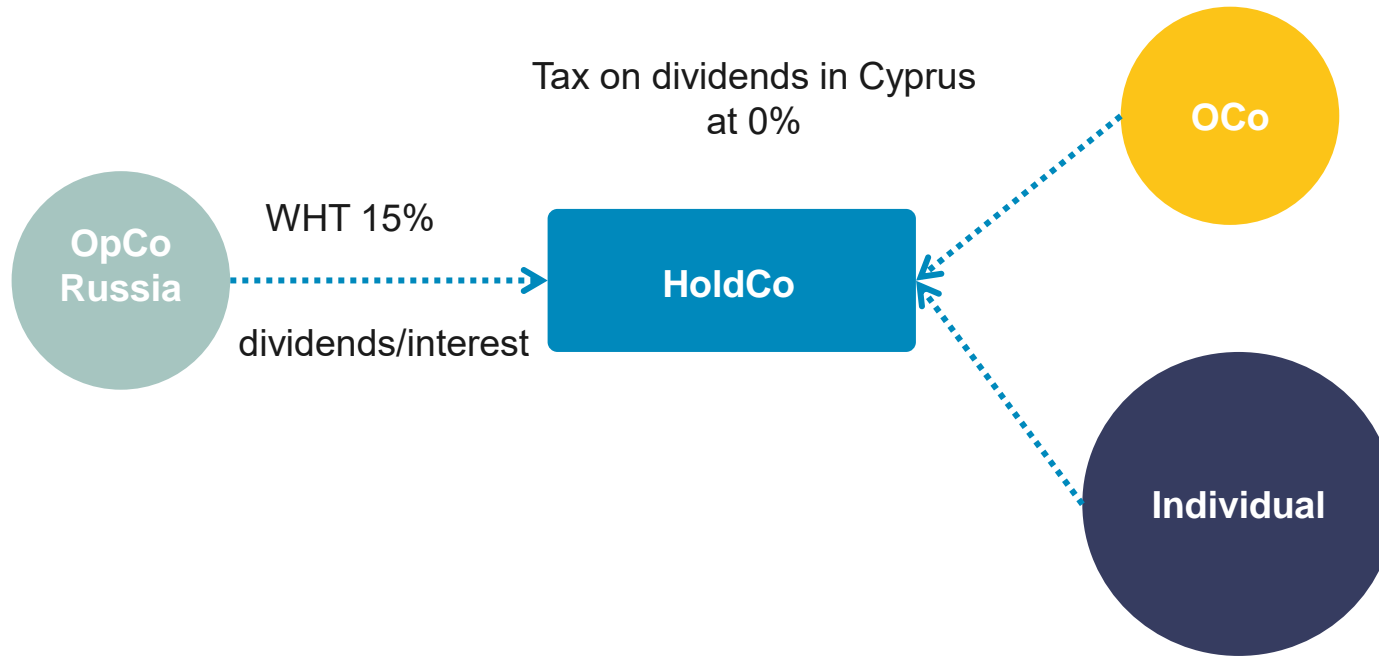
- ❖ Exceptions (5% WHT rate):
 - insurance company;
 - pension fund;
 - public company (the 15% and 15% rule);
 - state-owned companies and the Central Bank.

Rate of tax on interest increased to 15%

- ❖ Exceptions (full exemption from WHT):
 - insurance company;
 - pension fund; bank;
 - state-owned companies and the Central Bank;
 - corporate bonds, Eurobonds listed on a registered foreign stock exchange.
- ❖ (5% WHT rate) public company (the 15% and 15% rule).

OPTION 1.1

APPLYING THE “NEW” DTT WITH CYPRUS



- ❖ No subsequent distribution
- ❖ The owner of HoldCo is from a country without a DTT
- ❖ The owner of HoldCo is a resident or non-resident of Russia
- ❖ HoldCo is a CFC

OPTION 1.2

“QUALIFIED” INVESTORS UNDER THE PROTOCOL

01

Public company, which shares are listed on a registered foreign stock exchange. Position of the Russian Ministry of Finance regarding depository notes: Letter No. 03-08-05/102406 dated 18 November 2020.

02

Corporate bonds or Eurobonds "listed on a registered foreign stock exchange" (Letter No. 03-08-05/98428 of the Russian Ministry of Finance dated 12 November 2020)

03

Alternative solutions for debt financing: is it possible to classify payments under them as “other income”?

LOOK - THROUGH APPROACH



01

Passive income must be distributed to the end recipient;

02

CypCo must prove that it is not the beneficial owner of the income;

03

End recipient must prove that it is the beneficial owner of income.

SETTING THE SCENE



1 January
1999
First
(original)
treaty
CY-RUS

1 January
2012
New
Protocol
CY-RUS

1 January
2021
New
Protocol
CY-RUS

MLI*

January

January

January

1999

2012

2021

*In addition Art. 7 Para. 1, MLI should be read:

Notwithstanding any provisions of a Covered Tax Agreement, a benefit under the Covered Tax Agreement shall not be granted in respect of an item of income or capital if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that

resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of the Covered Tax Agreement.

SCOPE OF TREATY

- ❖ Title of a DTT: ...for the avoidance of double taxation
- ❖ Whose benefits? Alternate title can be: Treaty disadvantages imposed on tax administrations.
- ❖ Treaties don't just grant benefits, they also impose obligations.
- ❖ Treaty interpretation and Vienna convention.
- ❖ Hierarchy of Laws in Cyprus and Russia.
- ❖ Schedular approach of tax treaties.



PROTOCOL ONLY 3 CHANGES



- ▶ Art. 1 Personal Scope
- ▶ Art. 2 Taxes Covered
- ▶ Art. 3 General Definitions
- ▶ Art. 4 Resident
- ▶ Art. 5 PE
- ▶ Art. 6 Income from Immovable
- ▶ Art. 7 Business Profits
- ▶ Art. 8 Income from Int. Traffic
- ▶ Art. 9 Associate Enterprises
- ▶ **Art. 10 Dividends**
- ▶ **Art. 11 Interest**
- ▶ Art. 12 Royalties
- ▶ Art. 13 Gains from Alienation..
- ▶ Art. 14 Income from Personal Serv.
- ▶ Art. 15 Income from employment

- ▶ Art. 16 Director Fees
- ▶ Art. 17 Income of sportsmen
- ▶ Art. 18 Income from government
- ▶ Art. 19 Pensions
- ▶ Art. 20 Students
- ▶ Art. 21 Capital
- ▶ Art. 22 Other Income
- ▶ Art. 23 Elimination of DT
- ▶ **Art. 24 Non Discrimination**
- ▶ Art. 25 MAP
- ▶ Art. 26 Exchange of Information
- ▶ Art. 27 Assistance in Collection
- ▶ Art. 28 Diplomats
- ▶ Art. 29 Entry into force
- ▶ Art. 30 Termination



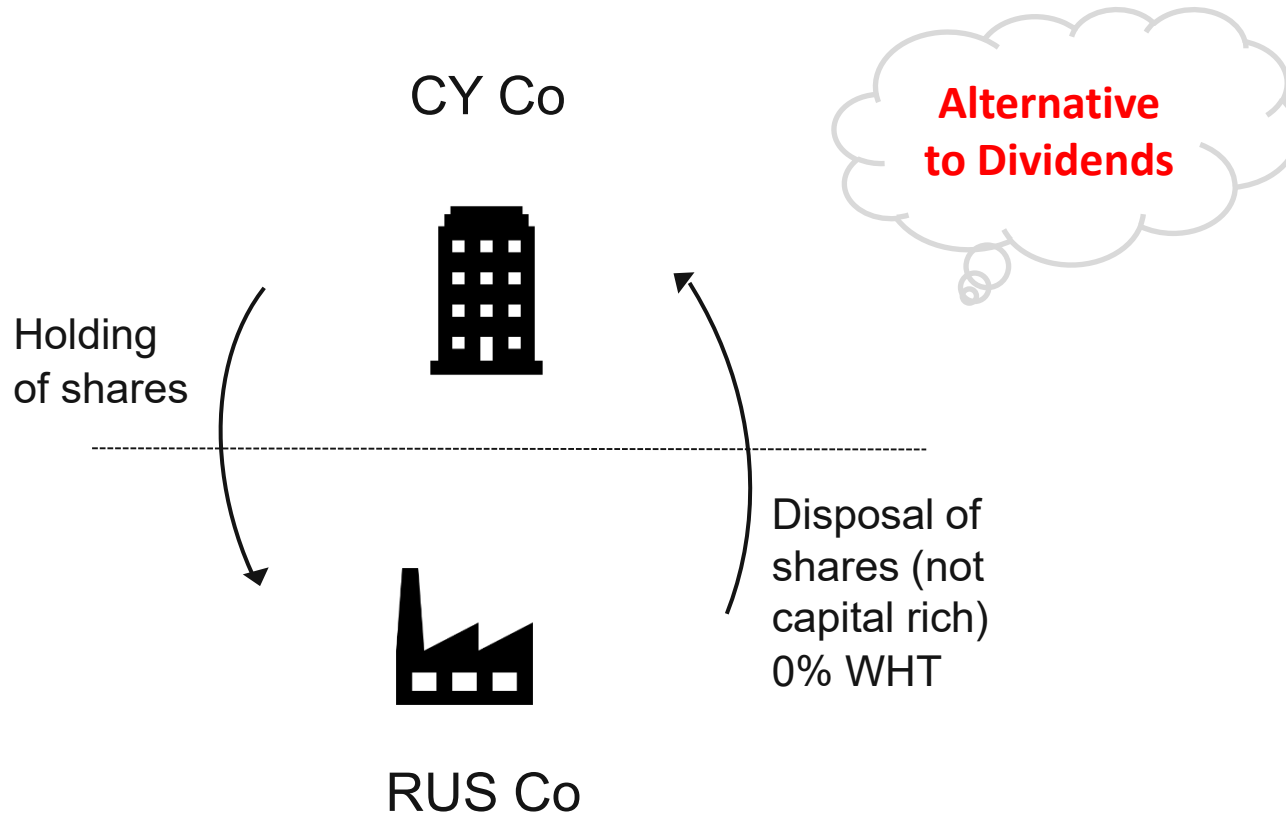
ATTRACTIVE

PRACTICAL POINTS

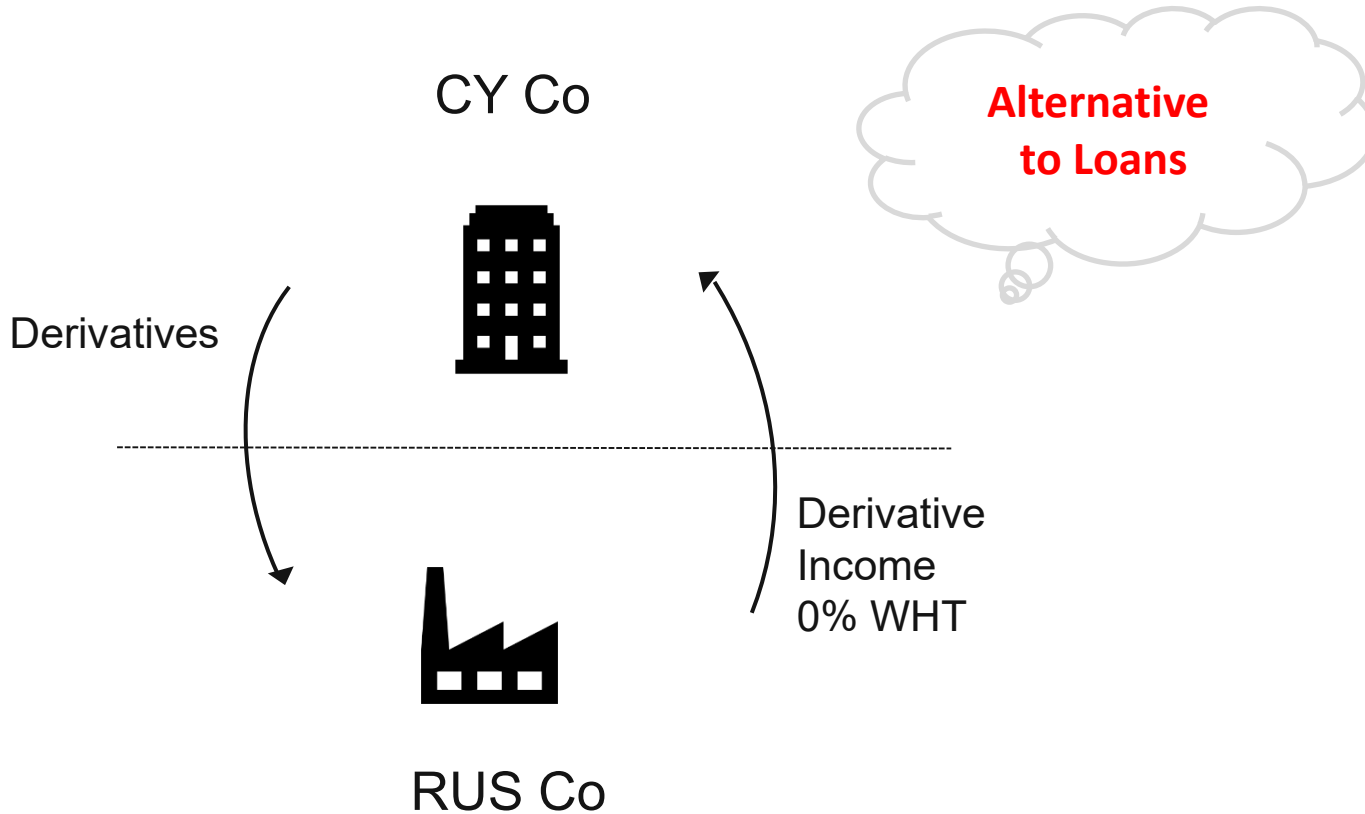
- ❖ As have been seen, the protocol effectively changed (only) two articles of the treaty.
- ❖ Many treaty articles remain attractive.
- ❖ Existing structures need to be reviewed for tax risks. Some form of reorganisation may be necessary.
- ❖ Few practical examples will follow on the next slides.



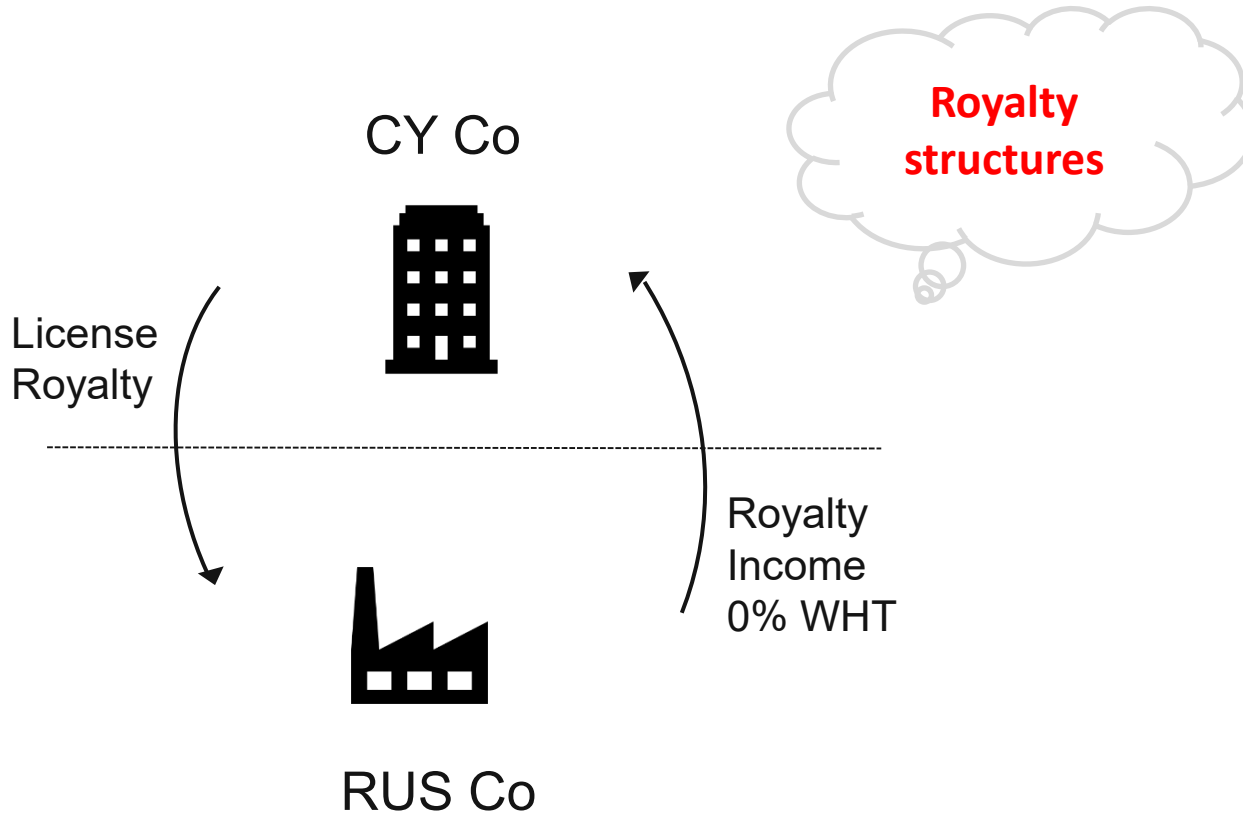
EXAMPLE (1)



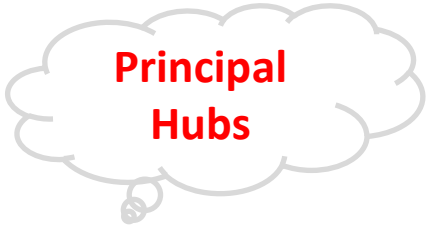
EXAMPLE (2)



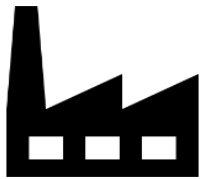
EXAMPLE (3)



EXAMPLE (4)



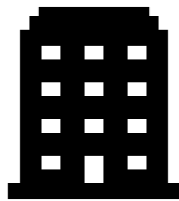
Profits!



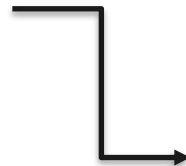
Russia
Limited Risk
Manufacturer



HUB



CY Company

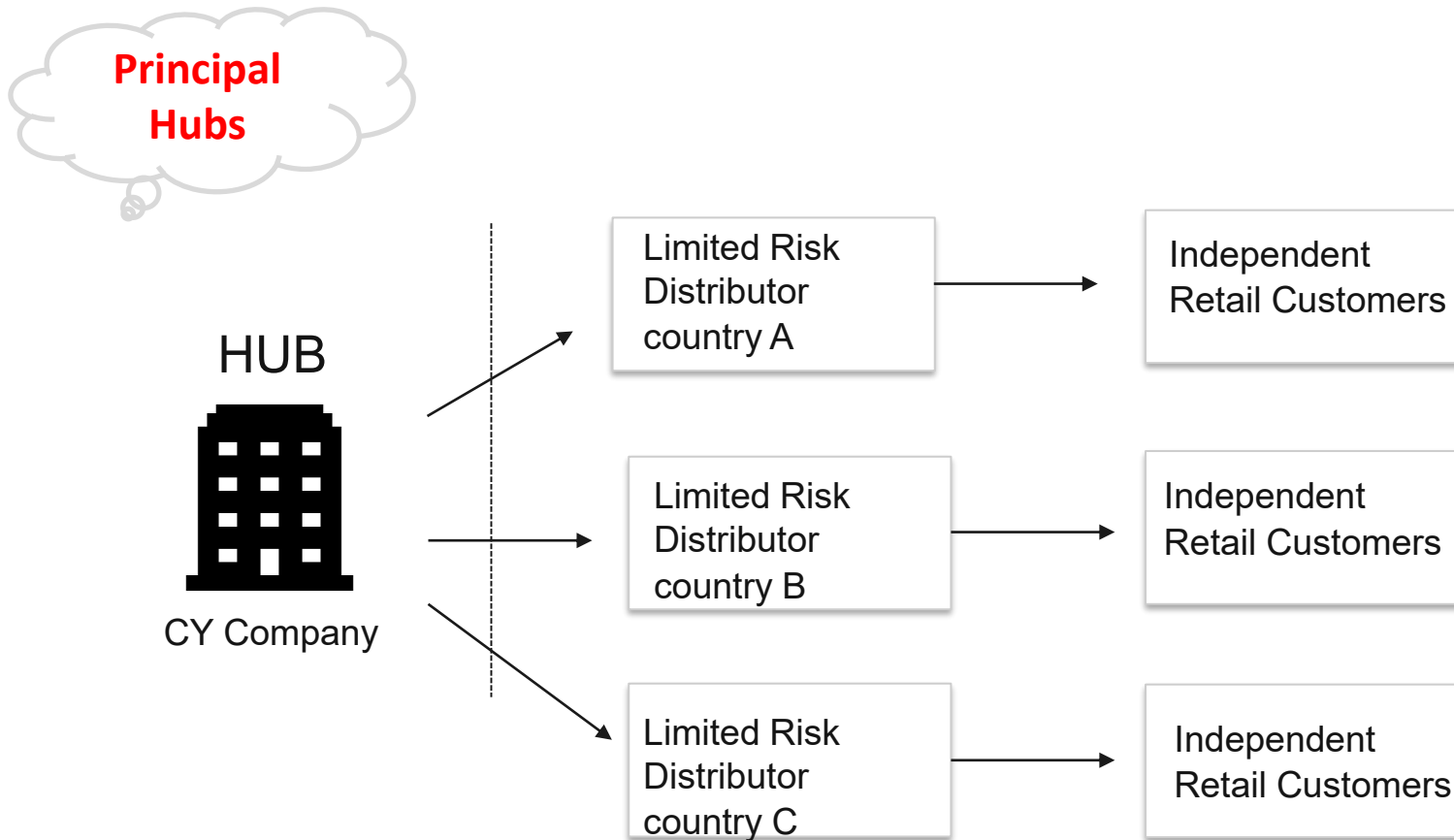


Limited Risk
Distributors

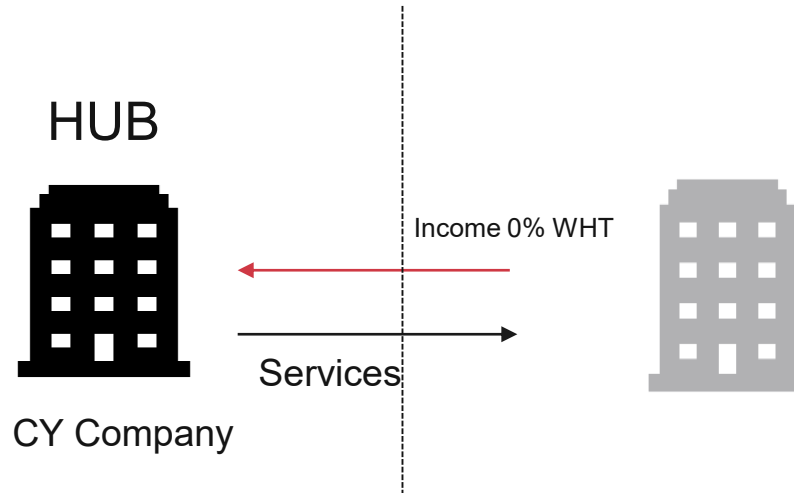


Independent
Retail Customers

EXAMPLE (5)

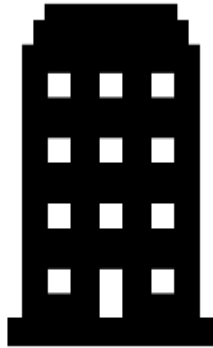


EXAMPLE (6)

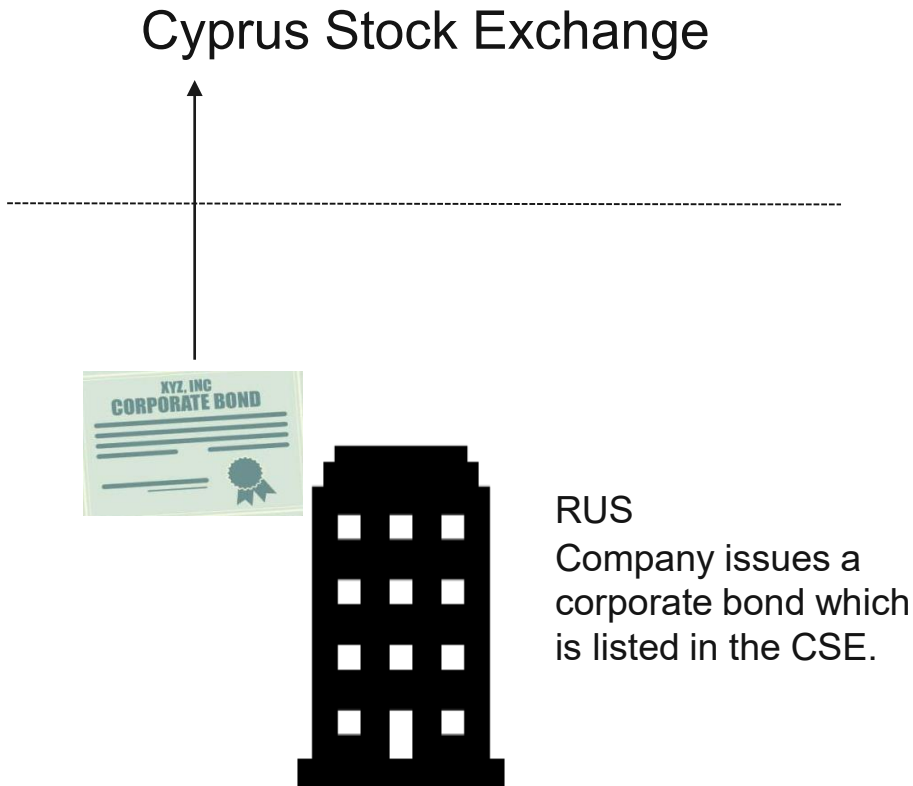


EXAMPLE (7)

Listed Company in the
Cyprus Stock Exchange



EXAMPLE (8)



THE EMERGING COMPANIES MARKET



- ❖ The Emerging Companies Market (“ECM”) is the unregulated market of the Cyprus Stock Exchange (“CSE”).
- ❖ Launched on the 30th of September 2009.
- ❖ Companies listing their securities on the ECM are not required to comply with the mandatory provisions of regulated markets such as those of:
 - listing requirements
 - size
 - number of shareholders/spread
 - continuous obligations
- ❖ Nominated Advisor (“NOMAD”) services are mandatory

PRODUCTS TRADED ON THE ECM



- ❖ Shares traded on the Emerging Companies Shares Market
- ❖ Corporate bonds traded on the Emerging Companies Bond Market
- ❖ Warrants
- ❖ Rights
- ❖ Convertible Bonds
- ❖ Non - Convertible Bonds

REGULATED CSE MARKET



- ❖ Well-established companies to list their titles on a **Regulated** stock exchange
- ❖ Companies looking to list their titles including:
 - Shares,
 - Warrants
 - Rights
- ❖ Collective **Investment Funds**
- ❖ Both **Local** and **Foreign** Entities with big capitalization

METHODS OF FLOTATION ON THE MAIN AND EMERGING MARKET



- ❖ **Public Offer:** raising funds by issuing shares to the public
- ❖ **Private Placement:** raising funds by selling securities to selected investors (banks, funds, insurance companies)
- ❖ **Combination** of the abovementioned methods or through the listing of existing shares
- ❖ **Bond Listing**

TIMEFRAME



Preparation & submission of the Admission Document

Opening of broker accounts

Estimated time of listing

Up to 3 months

Feedback from CSE

Up to 6 months

Listing can be made within a few weeks





MLI

BUT ... MLI...



Part I: Scope and Interpretation

Part II: Hybrid Mismatches

Part III: Treaty Abuse

Art 6: Purpose of CTA

Art 7: Prevention of treaty abuse

Art 8: Dividend stripping

Art 9: Real estate structuring

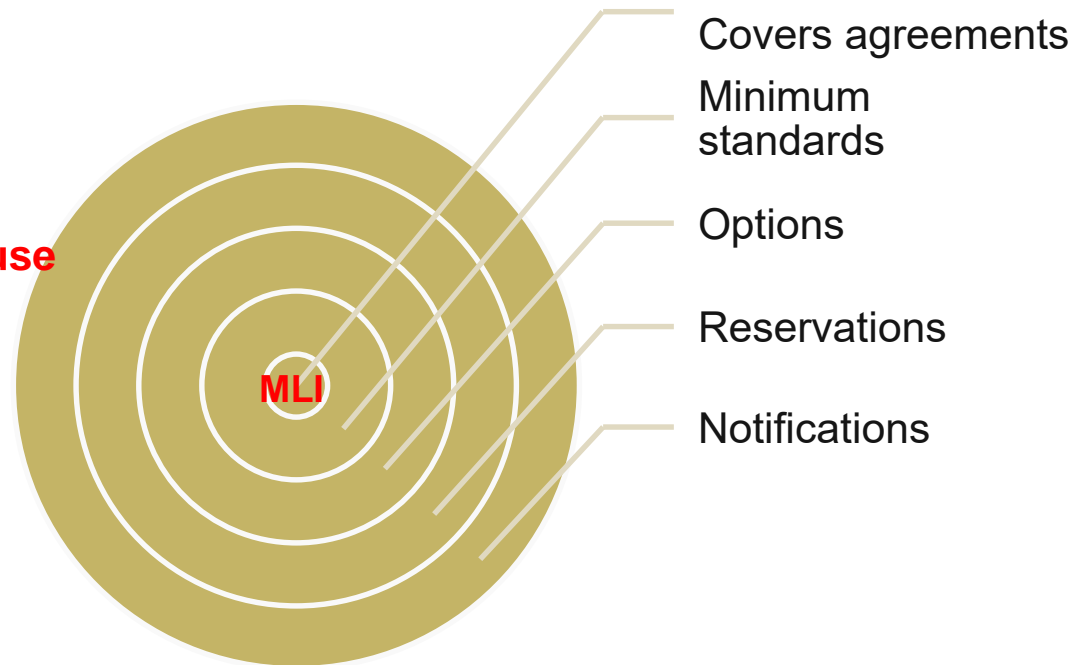
Art 10: PE in 3rd State

Part IV: Avoidance of PE Status

Part V: Improving Dispute Res

Part VI: Arbitration

Part VII: Final Provisions





CONCLUSION

TAKE INTO ACCOUNT?



❖ The new treaty:

- Need for (some) form of restructuring;
- Apply the new treaty;
- The new Treaty offers opportunities;

❖ Other points:

- Remaining existing structure and applying the Look through approach;
- Moving from Cyprus to Special Administrative Regions in Russia (Kaliningrad, Vladivostok);
- No solution for remaining existing structure: leaving Cyprus, exit taxation.

CONTACT DETAILS



Christodoulos Damianou
Partner
Taxand Cyprus
T: +357 22 875720
E: cdamianou@cy.taxand.com



Demis Ioannou
Partner
Taxand Cyprus
T: +357 22 875724
E: dioannou@cy.taxand.com



Andrey Tereschenko
Partner
Pepeliaev Group
Russia
T: +7 495 767 0007
E: a.tereschenko@pgplaw.ru

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