

**Deviation of the provisions of the  
tax agreements of the BRICS states  
(by the example of the Russian Federation)  
from the OECD / UN models  
when implementing passive income taxation**

Z.V. Balakina,  
junior research fellow of the Institute of law of BRICS, USLU

# DIVIDENDS (Art.10)



# Expanded Definition of dividends

Deviations from the Relevant OECD/ UN Model -  
Dividends include

Contracting State of  
Treaty with the RF

**Interest, retrained in dividends, in accordance with  
the rules of thin capitalization**

**Cyprus, Luxembourg,  
Malta, Morocco**

**Payments on shares of mutual investment funds or  
similar collective forms of investment (except for  
real estate funds)**

**Cyprus, Luxembourg,  
Malta, Morocco,  
Ecuador**

**Income on depositary receipts**

**Cyprus, Luxembourg**

**Certificates for participation in profits**

**Germany**

**Any payments on shares of mutual real estate  
funds as well as mutual funds generated from the  
shares more than 50 percent of their income**

**Switzerland**

# Taxing right of State of source

Different tax rate of tax of source

Examples of Contracting States of  
Treaties with the RF

only tax rate 5 %

Algeria, Venezuela, Germany, Greece

only tax rate 10%

Argentina, Belgium, Vietnam,  
Denmark, Azerbaijan

only tax rate 15%

Belarus, Bulgaria, Indonesia

tax rate 5% and 10%

Australia, Armenia, Greece

tax rate 10% and 15%, such as in  
National Model

Argentina, Brasilia, Venezuela,  
Vietnam

tax rate 5% and 15%, such as in OECD  
Model

Algeria, Germany, Iceland

# Substantial shareholding

1. Share in the capital of subsidiary	Examples of Contracting States of Treaties with the RF	2. Investment contribution to the company	Examples of Contracting States of Treaties with the RF
10 % as on the UN Model until 2017	Australia, Venezuela, Germany, Italy	700 000 \$	Australia
15 %	Hong Kong	100 000 \$	South Africa
20 %	Brasilia	100 000 euro as on National Model	Cuprus
25 % as on the OECD/ UN Models 2017, National Model	Algeria, Argentina, Armenia, Greece, China	100,000 ECU	Spain
30 %	Korea, Finland, South Africa	80 000 euro	China, Luxemburg
Doesn't provide	Denmark, Egvpt, India,	Doesn't provide	India, Mexico,

# Deviations of Definition of interest

## Deviations from the Relevant OECD/ UN Model

## Examples of Contracting States of Treaties with the RF

In the articles doesn't mention, that penalties for late payment are not considered as interest, as in the OECD/UN Model (as in the National Model)

---

Mexico, Mongolia, Malaysia, Philippines, United States, Japan, Cyprus

---

Interest directly includes the interest on sales with payment by installments

---

Indonesia

---

The term "interest" does not include interest, considered as dividends, by the rules of thin capitalization (as in the National Model)

Malta

# Interest (Article 11)



# Taxing right of State of source

Different tax rate of tax of source	Examples of Contracting States of Treaties with the RF
5 %	Spain; Qatar, Chile, Ethiopia, Malta, Latvia, Saudi Arabia, Turkmenistan
7 %	Greece
7,5 %	Iran
10% as in the OECD/ National Model	Australia, Albania, Botswana, India, Italy, Crete, Kazakhstan, Canada, Slovenia, China, Tajikistan
15 %	Indonesia, Malaysia, Mali, Romania, Algeria, Argentina, Bulgaria, Brazil.

## Taxation only in the State of Residence

Denmark, Hong Kong, Korea, Finland, Czech Republic, France, Switzerland, Sweden, Singapore

---

---

---



# Special rules of exemption from taxation in the source state



**political  
(administrative)  
units**



**local authorities**



**financial  
institutions**

**Contracting States (examples):** Portugal, Iran, Norway, Mongolia, China, Brazil, South Africa, Kazakhstan, Indonesia, Israel, Syria, Brazil, India, Uzbekistan



# Royalty



# Expanded Definition of royalty

Deviations from the Relevant OECD/  
UN Model - Royalty include

Contracting State of Treaty with the RF

payments for the use or right to use  
any industrial, commercial or scientific  
equipment

**Iran, Israel, Spain, Brazil, Namibia,  
Macedonia, Botswana, Brazil, Mexico,  
Slovenia, Hungary, Canada, Vietnam,  
Venezuela**

Payments for any additional or  
auxiliary assistance provided for the  
use or possession of the specified  
equipment or rights

**Cyprus, Luxembourg, Malta, Morocco,  
Ecuador**

payments for the use of know-how

**Slovenia**

payments for the use of computer  
programs

**Macedonia, Syrian Arab Republic,  
Hungary, Sweden, Vietnam**

# Royalty and payments for technical services (India and Venezuela)

Contracting State	Definition of payments of technical services
India	<b>Payments for the provision of any management, technical and consulting services, including services by technical and other personnel</b>
Venezuela	<b>Payments for technical, managerial and consulting services, payments for access to knowledge, experience, know-how and processes</b>

# Taxing right of State of source

Different tax rate of tax of source	Examples of Contracting States of Treaties with the RF
5 %	Iran, Namibia, New Zealand, Turkmenistan
7 %	Greece; Georgia
10% as in the OECD/ National Model	Australia, India, Canada, Kirghizia, Czech Republic, Crete, Israel, Estonia, Srilanka, Japan, Poland, Portugal
15 %	Vietnam, Brazil, Indonesia, Bulgaria, Egypt, Philippines, Egypt, Ethiopia

## Taxation only in the State of Residence (examples)

Belgium, Botswana, North Korea, Hungary, Sweden, Netherlands

---



---



---



---

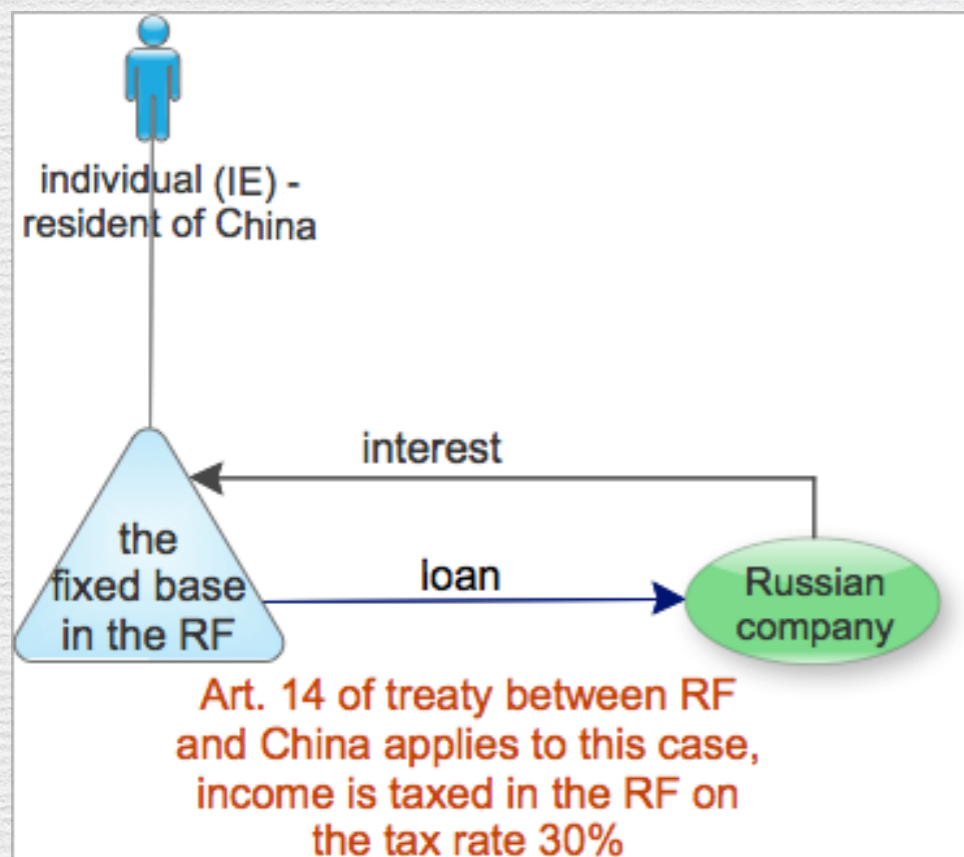
# Alternative tax rates for royalties on different rights (property, services)

Examples of Contracting States of Treaties with the RF	Tax rate of tax of source	Income	Tax rate of tax of source	Income
<b>Chili</b>	5 %	payments for the use or right to use any industrial, commercial or scientific equipment	10 %	another cases
<b>Ecuador</b>	10 %	royalties from copyrights and licenses, and payments for equipment	15 %	another cases
<b>Venezuela</b>	15 %	royalty	10 %	payments for technical services
<b>Canada</b>	10 %	royalties from copyrights and licenses		income from the granting of the right to use computer programs; from the use of copyright to works of art; from the use of a patent, industrial, commercial and scientific experience, if the payer and the receiver of royalties are independent persons.

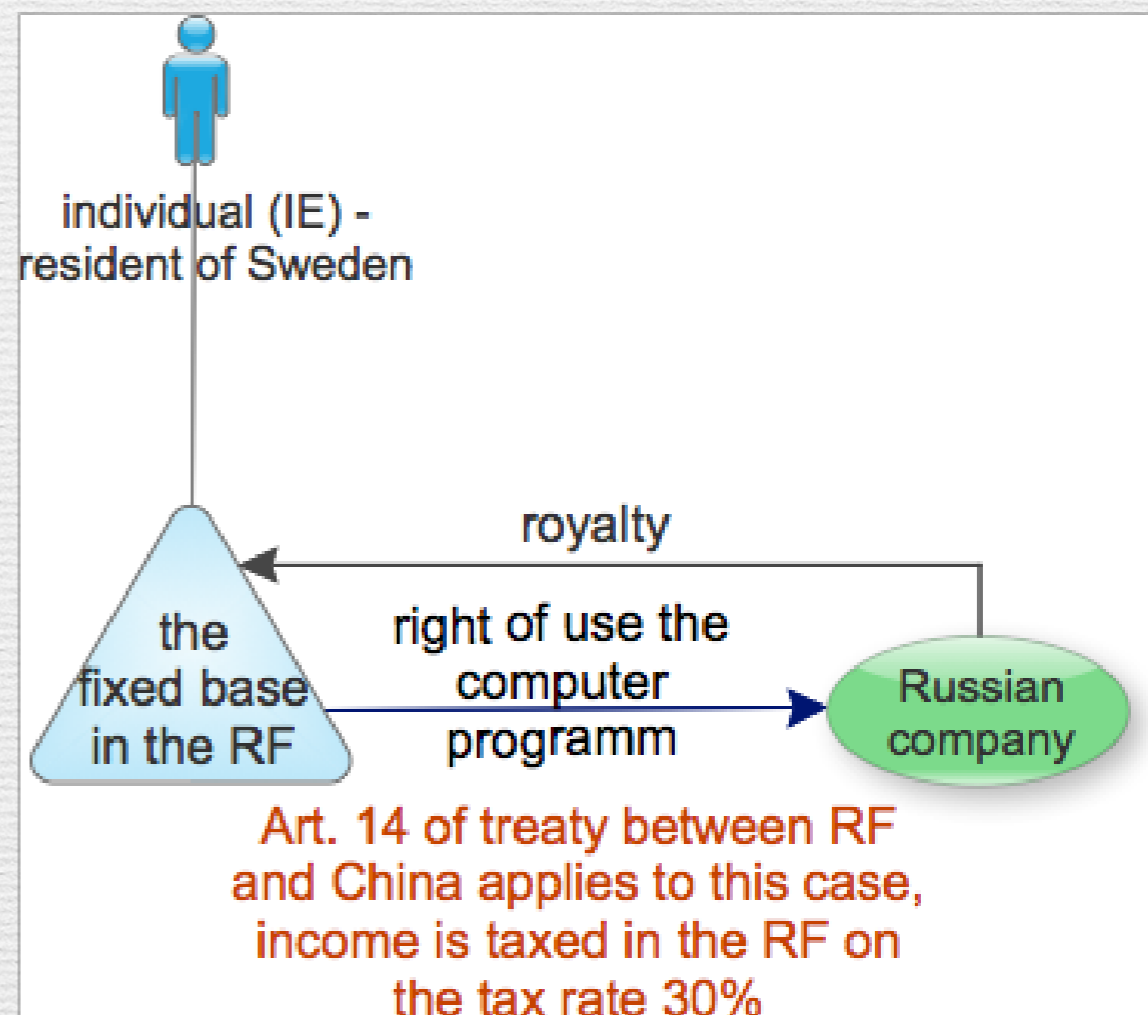
## The dividend, royalty, interest, `effectively connected' with permanent establishment or fixed base in the other state

- In articles usually adds that withholding tax doesn't apply if the recipient of the passive income not only has a permanent establishment (PE), but provides independent personal services through a fixed base in the other country, and this income is `effectively connected' with that PE or fixed base. Such passive income is treated as income of the PE or fixed base. Art. 7 or Art. 14 applies to these cases. **A** similar provision of the OECD Model doesn't apply to a fixed base.

e, 'effectively connected' with permanent fixed base in the c

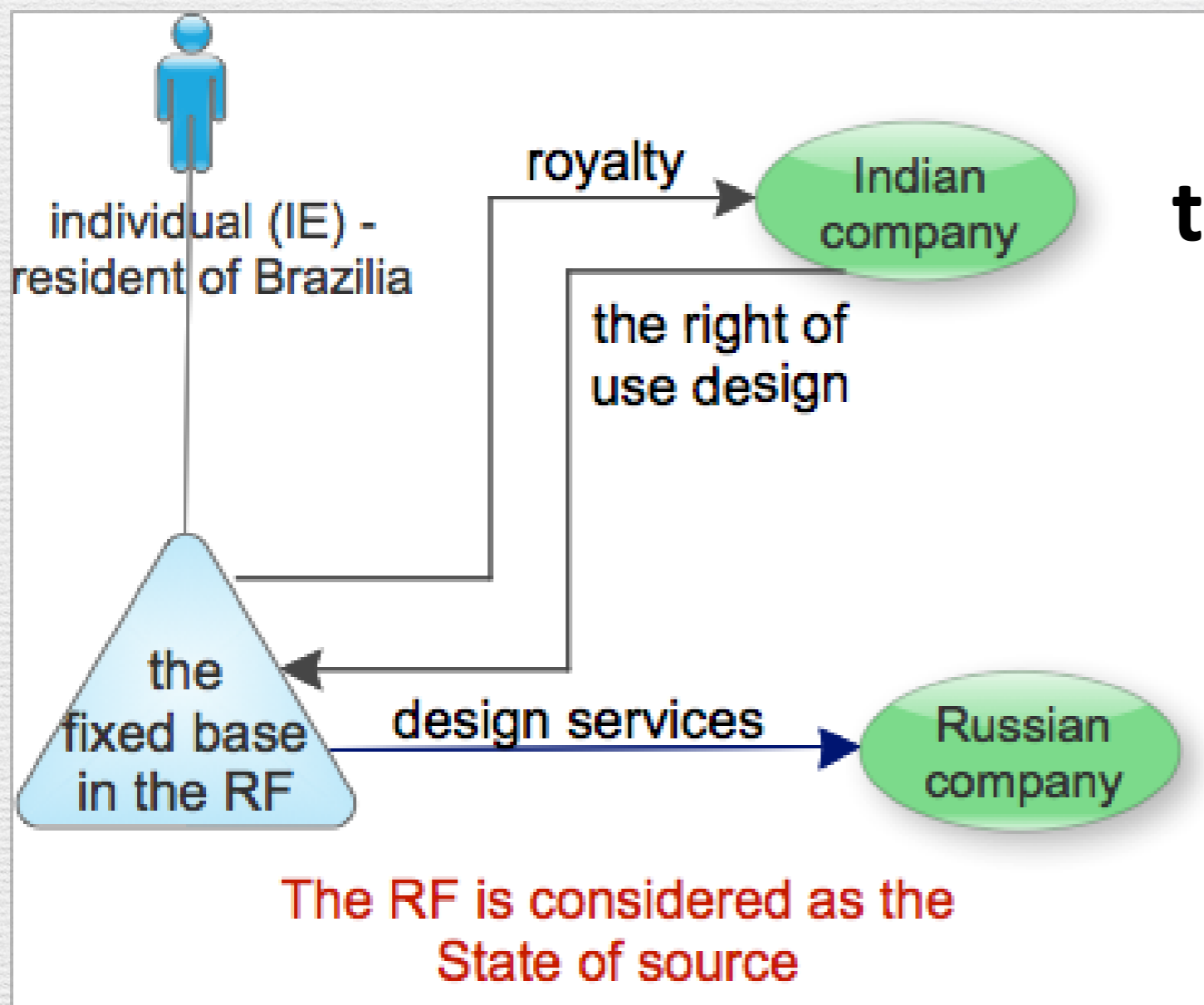


the exception - treaty between the RF and **Japan, Malta** (corresponds OECD Model) and treaty with **UAE** - doesn't include art. about royalty





# Specific rules on the identification of the source of royalties



**the exception - treaty between the RF and **Japan, Malta** (corresponds OECD Model) and treaty with **UAE** - doesn't include art. about royalty**

# Articles of Treaties, which don't contain the concept of beneficial owner of income

Article (Type of passive income)

Contracting State of the tax treaties

Dividends

Albania, Byelorussia, Mali

Interest

Cyprus, Hong Kong, China, North and South Korea, Kuwait, Luxembourg, Moldova, Singapore and the United States.

Royalty

Poland, Mongolia

# Limitation of benefits

Article (Type of passive income)

Contracting State of the tax treaties

Dividends

Brazil, Hong Kong, China, Malta

---

Interest

Kazakhstan, Brazil, Hong Kong, China, Malta and Mexico

---

Royalty

Ecuador

## Comparison of treaties the RF with China, Brazil and South Africa

Provision of Dividends	RF and China	China and Brazil	China and South Africa
Tax rate of tax of source and special terms of application	5 % rate - 25% share of capital and 80 000 euro and 10% rate	15 %, only the beneficial owner of income	5% rate - 10% share of capital and 15%
Dividends effectively connected with the PE and the FB	corresponds UN Model	corresponds UN Model	corresponds UN Model
taxation of this dividends in the State - place of the PE/ the FB	—	15 %	—
limitation of benefits	+	-	—

# Comparison of treaties the RF with China, Brazil and South Africa

Provision of Interest	RF and China	China and Brazil	China and South Africa
Tax rate of tax of source	taxation only in the state of source	15 %	10 %
Interest effectively connected with the PE and the FB	corresponds UN Model	corresponds UN Model	corresponds UN Model
Special provisions of taxation interest	—	exemption from taxation in the State of source - Government, political Institution	—
limitation of	+	-	

# Comparison of treaties the RF with China, Brazil and South Africa

Provision of Royalty	RF and China	China and Brazil	China and South Africa
Tax rate of tax of source	6 %	10 %	25 % - trade marks, 15% - another cases
Royalty effectively connected with the PE and the FB	corresponds UN Model	corresponds UN Model	corresponds UN Model
limitation of benefits	+	-	-