

Preventing the artificial avoidance of permanent establishment status

Evgeniya Ivanova,
a Master Student of Finance University, Russia



The concept of PE

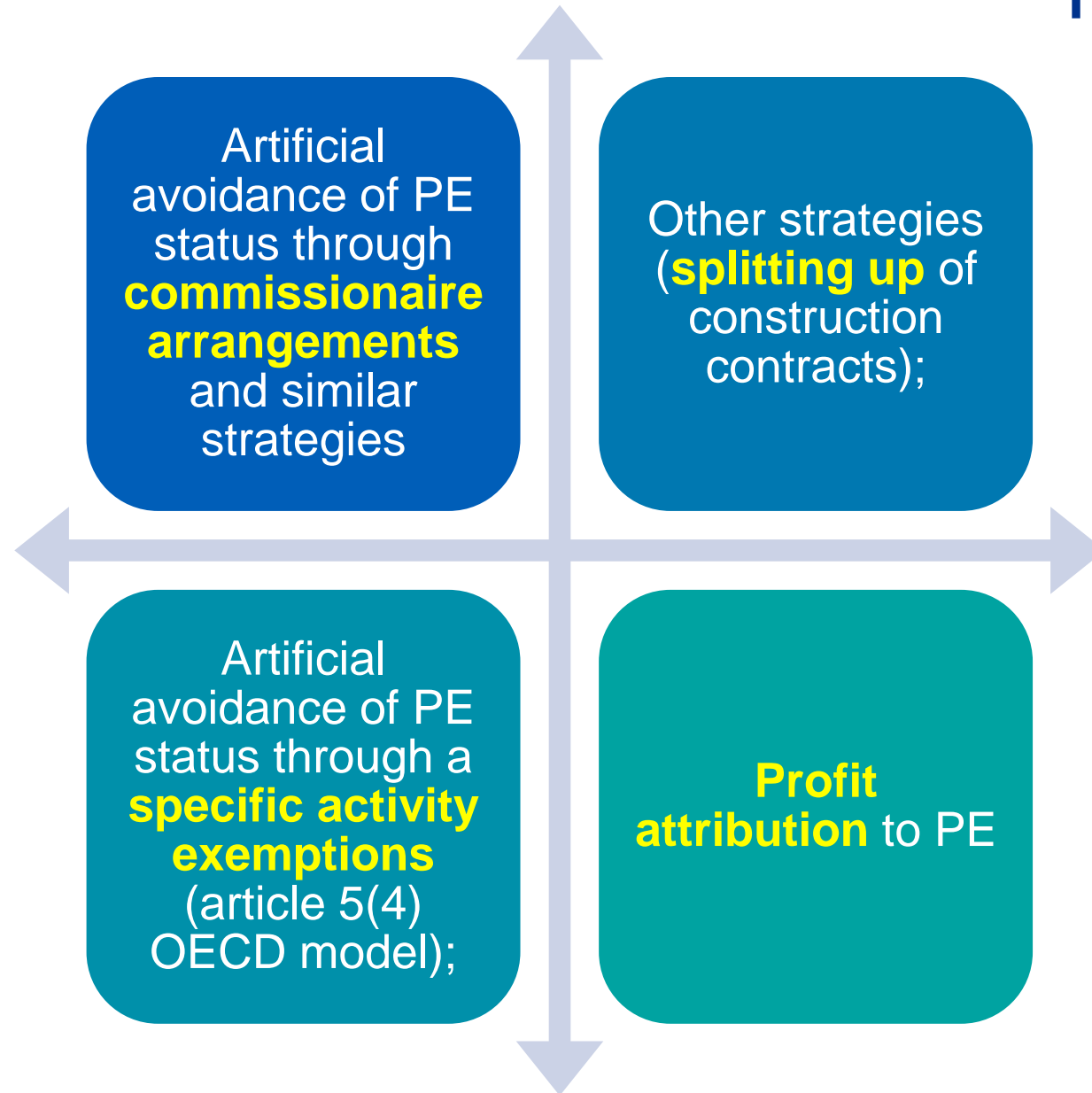
Inclusions

- ✓ Existence of a **fixed place** of business through which the business of an enterprise is wholly or partially carried on
- ✓ Existence of a **dependent agent** of the non-resident, acting on its behalf, which has and habitually exercises an authority to conclude contracts in the name of the enterprise

Exceptions

- ❑ Carrying out of **preparatory or auxiliary** activities
- ❑ Carrying out of business through the **broker, general commission agent** or any other **agent of independent status** acting in the ordinary course of its business

The problems of current concept



The key proposed changes

The problem	Target	Current concept	Amendments
Avoidance of PE status through commissionaire arrangements	Dependent agent	The DAPE will arise where an agent concludes contracts in the name of the enterprise	also contracts <ul style="list-style-type: none"> For the transfer of ownership, or the granting the right to use property of the enterprise; For the provision of services by the enterprise
		Focusing on the agent's authority to conclude contracts	also testing whether the agent <ul style="list-style-type: none"> plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification by the enterprise
	Tightening the circumstances in which an agent would be considered as "independent"	Broker, general commission agent or any other agent of independent status acting in the ordinary course of its business don't constitute the DAPE	<ul style="list-style-type: none"> If an agent acts exclusively or almost exclusively for one or more closely related enterprises it will not be an independent agent The closely related test
Specific activity exemptions	Eliminating of any bright-line exceptions	Preparatory or auxiliary safe harbor	The exclusion of certain activities will only apply where the activities are preparatory or auxiliary in relation to the business as a whole
Specific activity exemptions	Anti-fragmentation rules	-	Activities of related parties will be viewed as a whole when determining whether such activities would still fall within the "preparatory or auxiliary" exemption

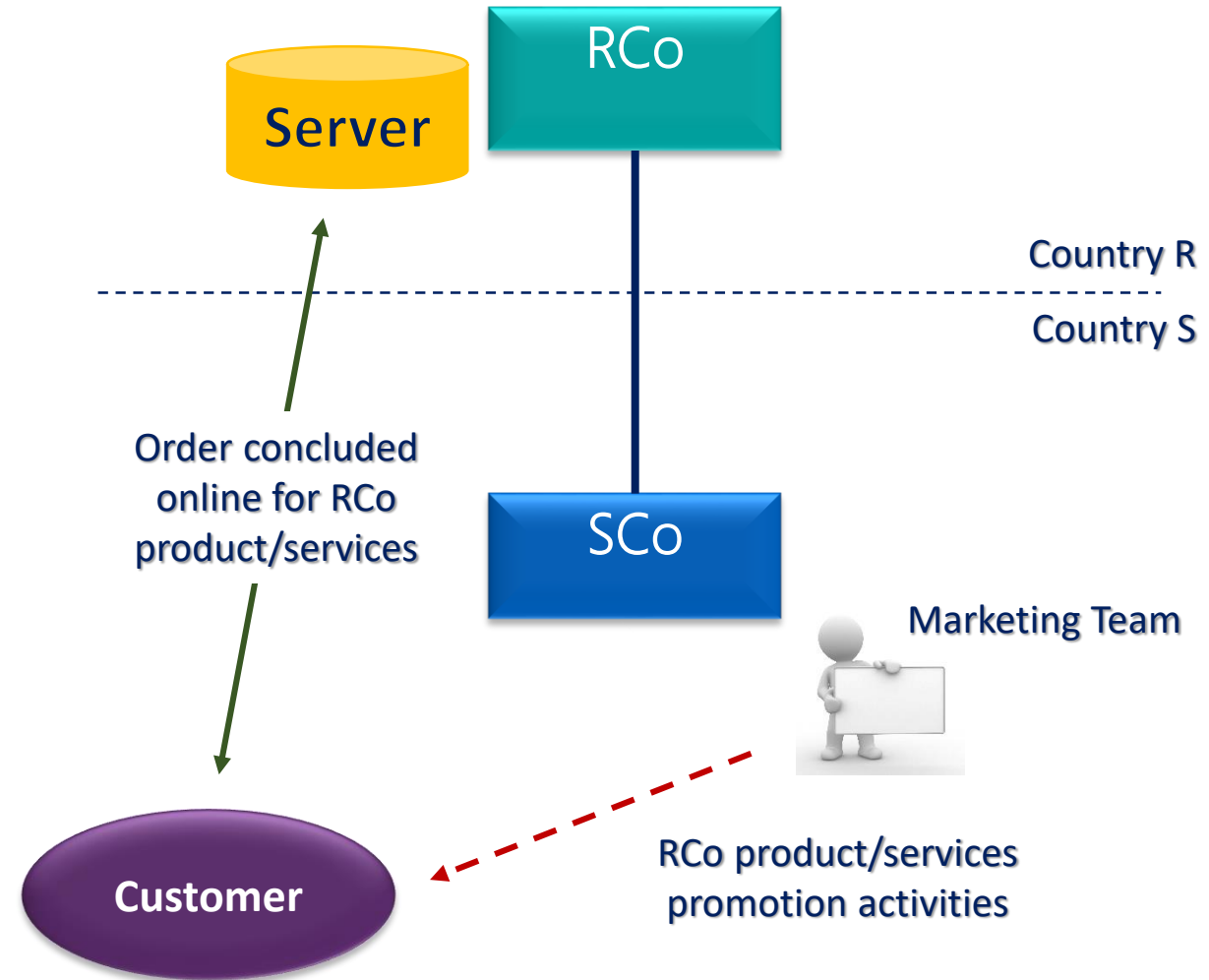
Example: Customer-Facing PE

Description

RCO (State R resident), distributes products and services through its web-sites. RCO owns SCO (State S resident).

SCO's employee convince customers to buy RCO's products and services. Their remuneration is partially based on revenues derived by RCO from holders of S's accounts.

When an account holder agrees to purchase goods promoted by SCO employee, the employee indicates the price that will be payable and that the contract must be concluded online with RCO, and explains the standard terms of RCO's contracts. The employee cannot modify these terms.



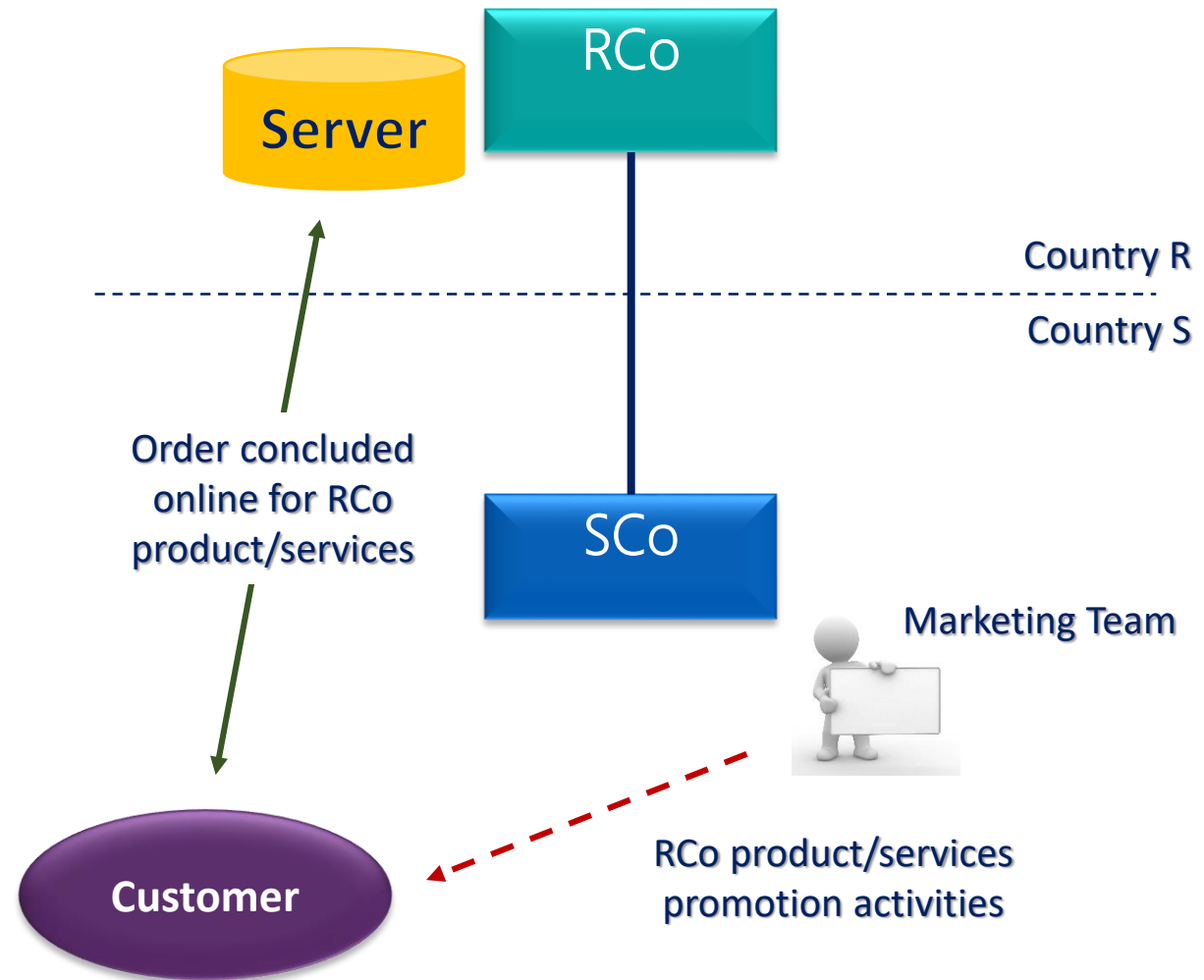
Example: Customer-Facing PE

Results

SCO's employees play the principal role leading to the conclusion of the contracts routinely approved by RCO without modification.

“The fact that SCO's employees cannot vary the terms of the contracts doesn't mean that the conclusion of the contracts is not the direct result of the activities that they perform on behalf of the enterprise, convincing the account holder to accept these standard terms being the crucial element leading to the conclusion of the contracts between the account holder and RCO”

Proposed commentary on Art 5.5 (Para 32.6)



The problems of the new concept

1

Different approaches to profit allocation in different jurisdictions



2

Increased compliance and accounting costs



3

New tax reporting obligations



4

Other taxes: bank levy, indirect taxes, withholding taxes

Implementation

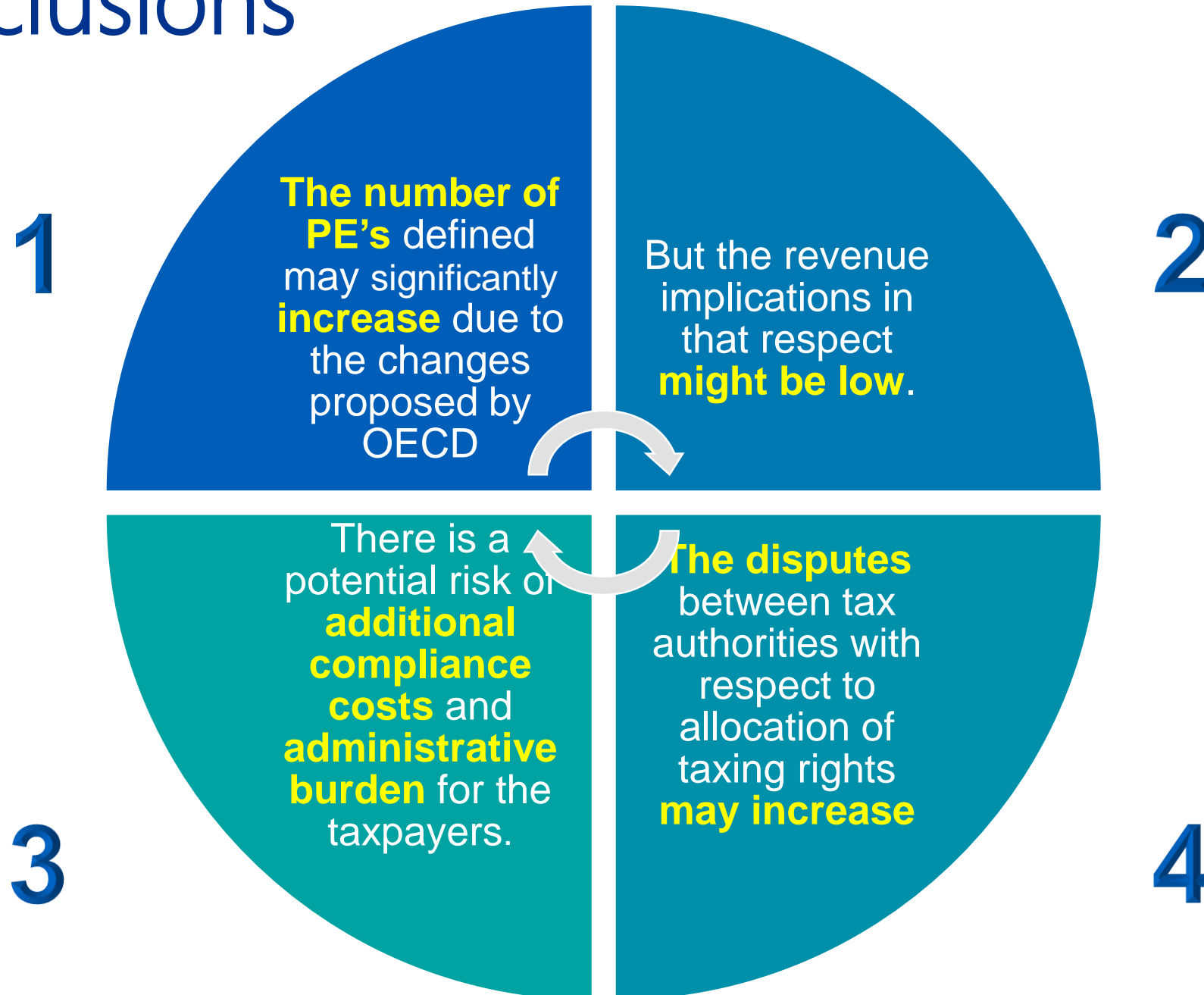
The OECD requires two options of implementing of the BEPS proposals:



Expected implementation in Russia

The PE concept is already defined in Russian law. **No further changes** are expected as a result of the Action 7 recommendations

Conclusions



Thank you