



# French-Russian DTT: possibilities for tax optimization

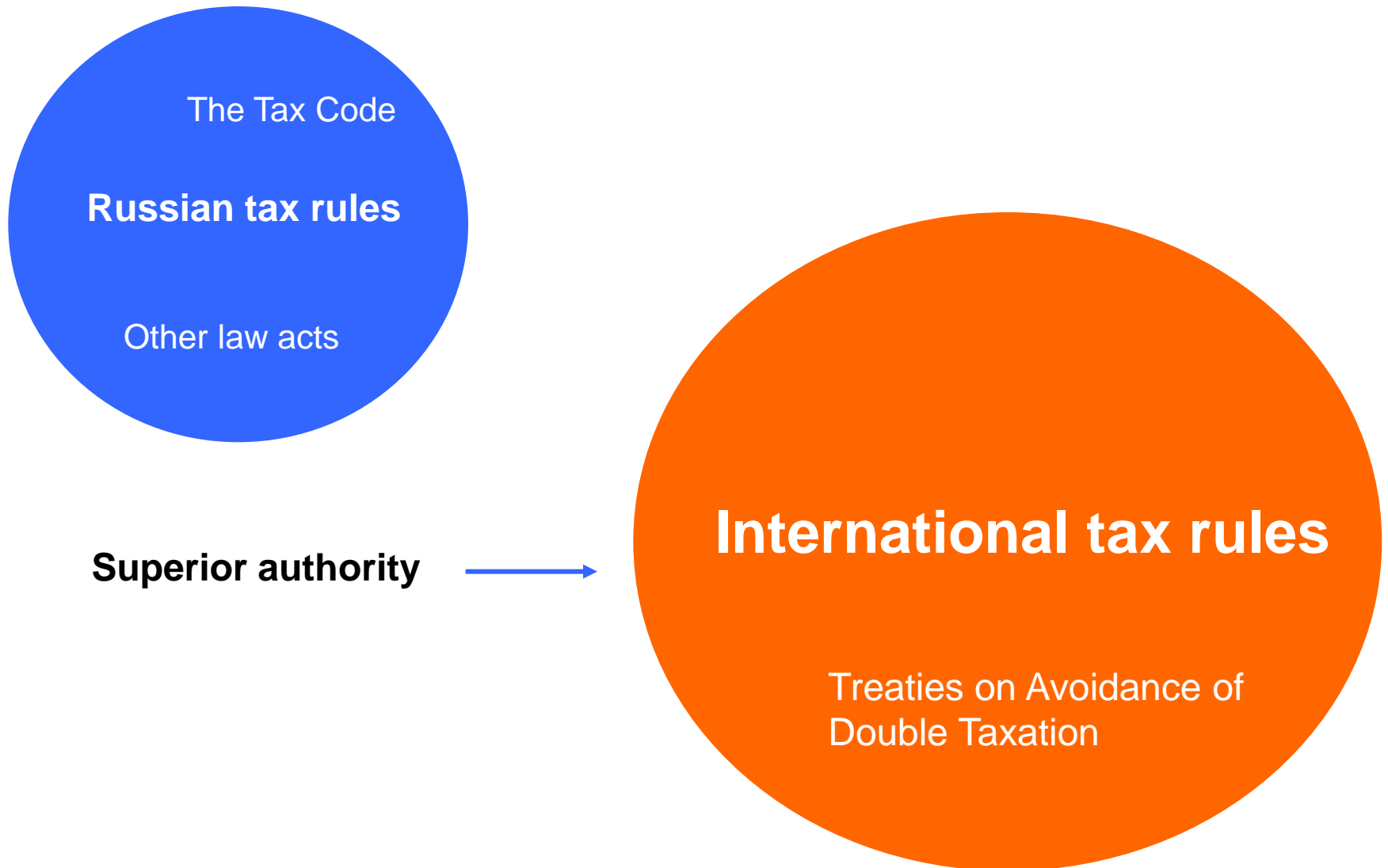


# Agenda

- International rules vs. domestic rules
- Tax optimization example under DTT
- Beneficiaries of the French-Russian DTT
- List of expenses under consideration
- VAT impact
- SWOT



# International rules vs. Domestic rules





# Tax optimization example under DTT

P&L	
Revenue	900,000
Expenses	675,000
Advertising expenses	27,000
Profit before tax	198,000

Tax calculation	Company A	Company B
Revenue	900,000	900,000
Expenses	675,000	675,000
Advertising expenses	27,000	9,000
Profit before tax	198,000	216,000
<b>Profit tax</b>	<b>39,600</b>	<b>43,200</b>
<b>VAT</b>	<b>35,640</b>	<b>38,880</b>

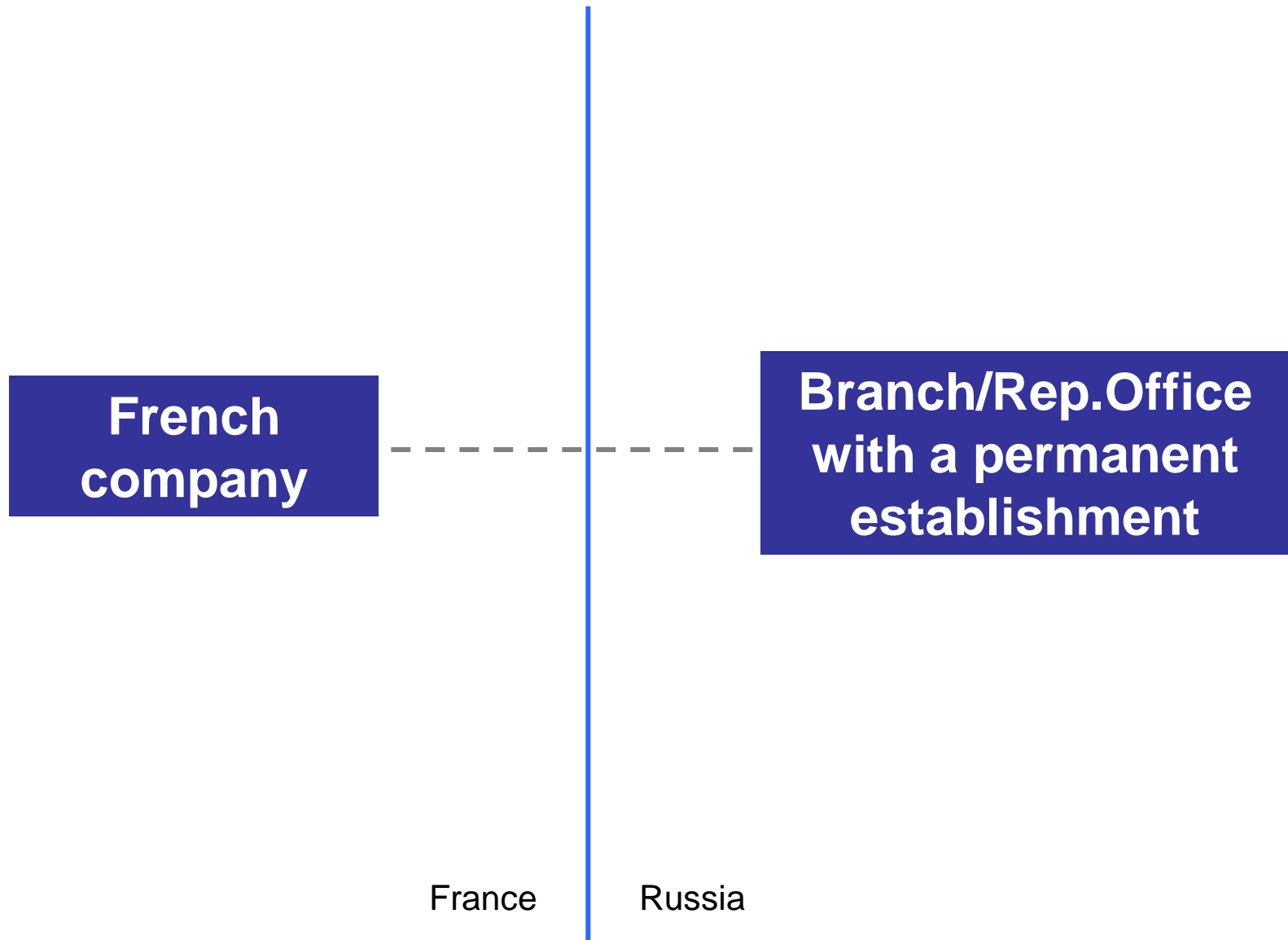


**Tax economy  
= 6,840**

**What is the difference  
between A and B?**

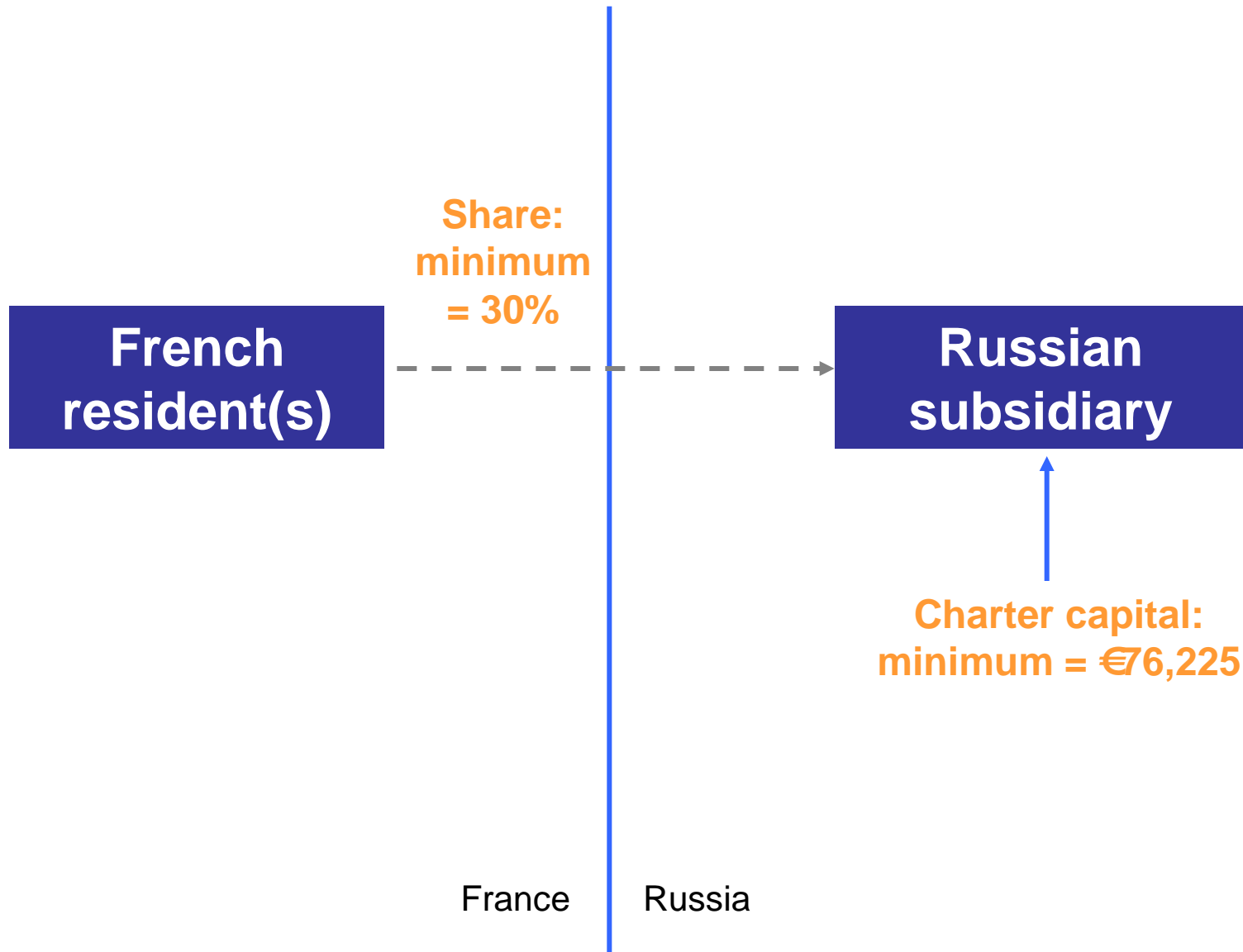


# Beneficiaries of the French-Russian DTT (1)





# Beneficiaries of the French-Russian DTT (2)





# List of expenses under consideration

**Article 4 of the Protocol:** «...the following shall be deemed deductible:

- the wage, salary and
- social contributions provided by the law of the other Contracting State and
- **other disbursements** in respect of which it bears expenses payable for provided services and other costs met by it **for the purposes of its industrial or commercial activities**».

## Pluses “+”

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- Open list of expenses
- Sole criteria: economical justification

## Minuses “-”

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- No reference to the deductible size



# Examples of expenses subject to tax optimization

**Business trip expenses**

**Advertising expenses**

**Representation expenses**

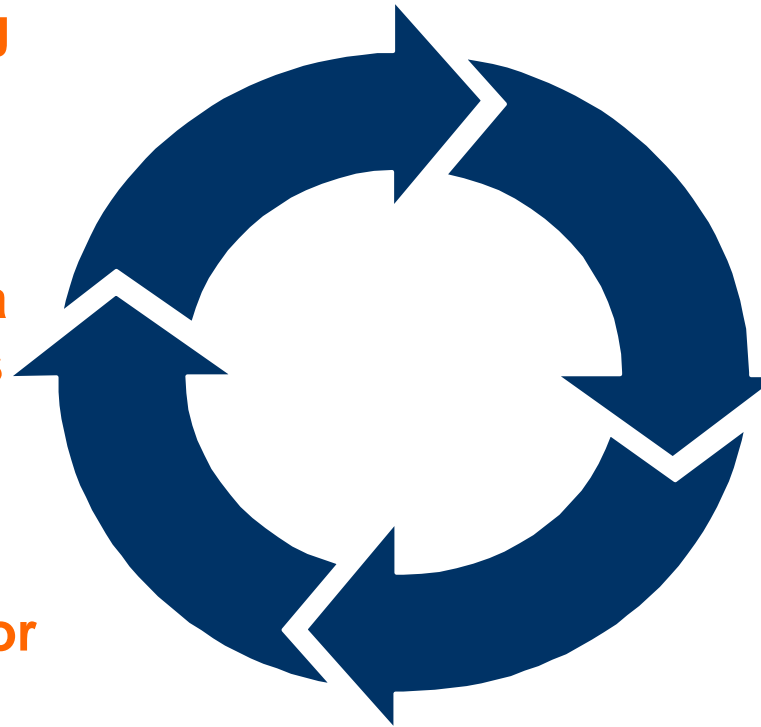
**Storage/transportation natural losses**

**Staff volunteer medical insurance**

**Cost of damaged or non-realized periodicals or books**

**Write-off of goods with a short shelf life**

**Etc.**





# VAT impact



Does the Protocol to the DTT give a right to **offset input VAT in full** in respect of expenses subject to limitation under Chapter 25?

Ministry of  
Finance

**YES**

e.g. the Letter No. 04-03-08/32 dated June 15, 2003

Courts

**YES**

- **French-Russian DTT:** Decision of the Moscow region arbitration court no. KA-A41/2940-03 of May 20, 2003 («Danone case»).
- **German-Russian DTT:** Decision of the Moscow region arbitration court no. KA-A41/5030-03 of July 29, 2003 («Pepsi case»), Decision of the Moscow region arbitration court no. KA-A40/2680-01 of June 06, 2001 («Beiersdorf case»).



# SWOT

## Strengths

- Possibility to disregard domestic rules on limitation of expenses
- Non-discrimination clause in DTT
- Favorable court practice and position of Ministry of Finance

- Profit Tax optimization
- VAT optimization



Cash flow opportunities

## Opportunities

## Weaknesses

- No mentioning of the size of deductible expenses
- Thin cap rule: applicable?
- Absence of clarity in recent position of tax authorities
- Existing favorable position on VAT is disputable

- Disputes with tax authorities due to absence of unified approach among tax inspectorates

## Threats

You are not alone





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