How should we tax digital nomads?

Master Thesis

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Table of Contents

Abstract

I sincerely thank my family and friends for their support and encouragement. Special thanks to my professor, whose guidance and insights were invaluable to completing this thesis. Thank you for your patience, wisdom, and dedication.

1. Introduction

When governments worldwide announced in March 2020 that the coronavirus had become a pandemic, no one could have anticipated the extent of its impact on our daily lives. Four years after the COVID-19 pandemic, governments worldwide have implemented various measures to combat the virus. One of these measures was the advice to work from home, reducing aggregation and making the virus more difficult to spread. This mandatory work-from-home policy quickly had significant tax implications for those doing remote work.

In addition to the work-from-home measures, there has been a notable increase in the number of employees who can work remotely. This shift towards remote work is becoming the new norm. Considering this movement, knowing all the tax implications for remote workers, many of whom are digital nomads, is crucial.

1.1 Background information on taxation of digital nomads and remote workers

A cross-border worker is an individual who performs work in one member state but resides in another and typically returns to their work state regularly.[1]A remote worker is an employee earning income from a country other than their country of residence. Both types of employees may face double taxation on their income. Double taxation occurs when both the country of residence and the country of employment seek to tax the same income. The Organization for Economic Cooperation and Development (OECD) has developed the OECD Model Tax Convention to prevent double taxation, which provides basic rules for allocating taxing rights between countries.

Mandatory remote work days affect the allocation of taxing rights under the OECD Model Tax Convention, creating disparity. This disparity can negatively affect employers and employees, such as increased tax and administrative burdens for employers. The OECD Secretariat quickly recommended interpreting international tax treaties during the COVID-19 pandemic to prevent disparities.

The ability for individuals to work remotely has presented new challenges for tax authorities on how to tax remote workers effectively. As individuals and businesses more often operate across borders, tax laws must keep pace with the evolving nature of work.[2] This problem challenges tax authorities in enforcing tax compliance and collecting revenues.

The traditional concept of a "permanent establishment" for tax purposes no longer aligns with the concept of digital nomadism. This problem presents a new challenge for tax authorities in determining these individuals' taxable presence or residency and allocating taxing rights amongst countries. Determining tax residency is often tricky for digital nomads who move frequently. Many countries have

[1] (HvJ EG, 22-09-1988, nr. 236/87 (Bergemann-arrest), ro. 11 en 12., n.d)
[2] (Strauss et al., 2020)

a threshold of physical presence, often around 183 days, to determine tax residency. Still, there is a lot of uncertainty when determining tax residency which restricts these individuals' movement to avoid becoming a tax resident.

Digital nomads and remote workers can earn income from clients or employers in different countries. Each country wants to tax the income sourced within its borders, but determining which country should tax is complicated with remote working, and services are delivered digitally.

Without having a clear taxable presence, digital nomads are subject to double taxation by paying taxes in the country where income is earned and in the country of residence or citizenship. Most countries have tax treaties to prevent double taxation, but these agreements do not consider the circumstances of digital nomads and remote workers. For example, work performed by a digital nomad in one country for a client in another, with payment received in a third country, complicates determining which country can levy taxes.

Furthermore, workers pay social security in the country where they are employed. For remote workers and digital nomads, understanding which social security system they fall under is challenging, especially if they are working while traveling across different countries. Each has its interpretations of residency and income sourcing. This lack of harmonization can lead to inconsistent tax treatment and uncertainty for digital nomads.

Current regulations can discourage employers from hiring or retaining remote workers, which might limit their career opportunities and mobility. For instance, if workers spend more than 25% of their work time in their home country, they become subject to that country's social security laws, creating an extra administrative burden for employers. Because employers don't know how to navigate, it could lead them to limit remote work opportunities for frontier workers, which affects their freedom of movement within the European Union.[3]

As a result, several countries have started exploring new tax frameworks to address the taxation of digital nomads and remote workers. These new frameworks aim to clarify the tax obligations of individuals who work across borders and may not have a fixed place of work.

In addition to the OECD's recommendations, some countries have taken unilateral actions to address the tax challenges posed by remote work. For example, Estonia has introduced a special visa for digital nomads, providing them a legal basis for staying and working in the country without being considered tax residents.[4]

[3] G. Beretta, "Work on the Move": Rethinking Taxation of Labour Income under Tax Treaties, 5 Intl. Tax Stud. 2 (2022), Journal Articles & Opinion Pieces IBFD (accessed 6 May 2024).
[4] (Estonia Digital Nomad Visa: How to Apply [4 Steps], 2024)

In the United States, the concept of "nexus" has been reexamined in the context of remote work, as traditional ways of proving physical presence no longer apply. This shift has caused new discussions on potential updates to the nexus standard for state and local taxation.[5]

The European Union has also been discussing the taxation of the digital economy and remote work to develop a unified approach to address the challenges posed by cross-border telework.[6]

Tax authorities must update their policies and regulations as the new way of working evolves to ensure fair and effective taxation of digital nomads and remote workers. Tax authorities should facilitate workforce mobility and safeguard tax revenues for the countries involved.

The research delves into the intricacies of international taxation, focusing on how source-based taxation can be applied to this contemporary work arrangement.

1.2 Research question

The research question central to my study is as follows:

How should international taxation principles be applied to digital nomads, focusing on the viability and implications of source taxation versus residency taxation?

The following sub-questions will answer the research question:

1. What tax challenges do digital nomads and remote workers face regarding source versus residence taxation?
2. How do existing international regulations address the taxation of remote workers and digital nomadism?
3. To what extent is the tax treatment of remote workers and digital nomads justified based on the current allocation rules of Article 15 of the OECD Model Tax Convention?
4. Would the source taxation principle as a basis for tax allocation provide a suitable alternative to the current allocation method of Article 15 of the OECD Model Tax Convention?

[5] (Reflections on the Cross-Border Tax Challenges of the Digital Economy, 2019)
[6] (European Commission, Directorate-General for Taxation and Customs Union, Ways to tackle cross-border tax obstacles facing individuals within the EU – Report of expert group, Publications Office, 2015, https://data.europa.eu/doi/10.2778/774727)

1.3 Research method

This research does a comparative analysis to address how digital nomads should be taxed, emphasizing source-based versus residency-based taxation systems. Specifically, the study engages with the OECD Model Tax Convention, OECD commentaries, case laws, academic literature, and a review of administrative practices from various countries.

The study outlines digital nomads' and remote workers' challenges regarding source versus residence taxation. A clear understanding of the limitations and issues associated with residency-based taxation systems is developed by assessing these practices. The study explores how existing international regulations address the taxation of digital nomadism. This study includes an in-depth analysis of tax treaties, OECD recommendations, and unilateral actions countries take to address the taxation challenges of remote work.

Furthermore, the research delves into potential solutions to establish a fair, efficient, and enforceable source-based taxation system for digital nomads. The study examines the practical implications and feasibility of implementing source-based taxation in a globally mobile workforce.

The study also provides policy recommendations for transitioning to a source-based taxation system for digital nomads. The study analyzes the implications for tax authorities, employers, and individuals in implementing a new tax framework that aligns with the evolving nature of work.

To conduct this study, a comprehensive analysis is done using international tax law, OECD commentary, EU legislation and case laws, academic literature, and a review of administrative practices from various countries. The study addresses these research questions and contributes to the ongoing taxation of digital nomads and remote workers in the international tax landscape.

Policy analysis is a crucial element of this study. Recommendations for policy changes are developed based on the critiques and findings throughout the research. This comprehensive approach also considers the administrative feasibility and the potential for international cooperation required to implement such a system.

Finally, the thesis summarizes and concludes the findings to address the research question and offer recommendations for policy reform. This thesis proposes harmonized solutions that facilitate global mobility while ensuring fair and effective taxation.

1.4 The Academic, Societal, and Practical Relevance of this Research

This thesis addresses an ongoing issue in taxation and global mobility: the taxation of digital nomads and remote workers, which has received limited attention in academic literature. This research expands the existing knowledge on cross-border tax legislation and the practical hurdles this demographic encounters.

Furthermore, this study contributes to advancing effective tax policies considering the unique circumstances of digital nomads and remote workers. Applying these policies serves as a model for other countries facing similar issues. This study's findings are informative for policymakers and regulatory bodies, spotlighting areas within the tax landscape that require adjustments to support worker mobility.

Additionally, the research offers digital nomads and remote organizations insights about compliance with emerging tax regulations tailored to their lifestyles.

By examining these modern workforce arrangements, the study will contribute to broader societal objectives of fostering flexible work environments, upholding economic rights, and streamlining transnational labor movements, thereby advancing inclusivity and innovation in the labor market.

1.5 Limitations of the Thesis

It is crucial to outline the boundaries within which the research question provides a comprehensive response to the research question. As established in earlier sections, this research is centered on the tax treatment of digital nomads and remote workers, limiting its scope to the fiscal implications of remote workers and digital nomads. The term "digital nomad" covers a broad range of workers, and due to the complexity and diversity of tax regulations on international employment, this study will often focus on the general tax treatment rather than delving into the specificities of every type of remote worker.

Furthermore, this research is limited to direct taxes, with particular attention to income tax. This thesis assumes that digital nomads and remote workers are not bound to a fixed workplace. They primarily perform their tasks digitally, enabling them to work from various locations.

Additionally, this thesis will not cover income from significant shareholdings (substantial interest) or savings and investments, as these aspects are beyond the study's primary focus.

By acknowledging these limitations, the research maintains a manageable scope. The thesis analyzes the complex tax issues affecting remote workers while offering relevant results and suggestions for the broader region's tax policy development.

1.6 Benchmark

The claim for this thesis is the assessment of taxation principles for digital nomads, determining whether the country of residence should levy taxation, the country where the income is sourced, or by citizenship. This study analyzes the tax laws affecting digital nomads, highlighting the advantages and disadvantages of the current taxation methods. Furthermore, this thesis examines what constitutes fair taxation for digital nomads, aiming to propose a more equitable framework.

By examining and comparing the laws, regulations, and enforcement mechanisms, particularly Articles 4 and 15 of the OECD Model Tax Convention, this thesis proposes possible solutions to address the challenges remote workers and digital nomads face regarding the taxation of their income. The goal is to determine whether adopting the source-based taxation principle would provide a fairer taxation framework for remote workers and digital nomads.

2. Navigating the Challenges for Digital Nomads and Remote Workers

As the work landscape undergoes rapid and unprecedented change, so must the governing taxation evolve. Additionally, nomads and remote workers find themselves at the crossroads of competing tax jurisdictions, each with its claim to their income, either based on the residence of these workers, their citizenship, or their source of income. This chapter will dissect the challenges these workers face in an environment where residence taxation no longer provides a clear and comprehensive framework. This chapter answers the following sub-question: *How do existing international regulations address the taxation of remote workers and digital nomadism?*

2.1 Defining the digital nomadism and remote work trend

We are witnessing a shift in the work environment, where technological advancements have made it possible to work remotely. At the forefront of this evolution stands digital nomadism, characterized by a combination of remote work and the freedom of global mobility.

Digital nomadism is the trend of individuals utilizing digital technologies to perform their work remotely without working from a fixed location. This way of life gives flexibility, allowing people to combine their professional life with exploring new countries and the rich experience of diverse cultures.[7]

The rise of digital nomadism owes much to several elements. Technological advancements, especially high-speed internet availability, have erased the logistical barriers to practical remote work.[8]

Such developments, alongside a reevaluation of the work-life balance and a marked preference for increased self-determination, have made digital nomadism a viable departure from the routine of stationary, office-bound jobs.[9]

Globalization also has a strong influence on making digital nomadism so popular. As the world's economies become more intertwined, individuals can engage in professional endeavors with clients, associates, and peers worldwide, thus breaking down previous limitations by physical distance.[10]

The financial motivations behind this trend are notable as well. In a world where job security can no longer be taken for granted, many are venturing into the digital marketplace to have multiple income

[7] S.V. Kostíć, In Search of the Digital Nomad – Rethinking the Taxation of Employment Income under Tax Treaties, 11 World Tax J. 2 (2019), Journal Articles & Opinion Pieces IBFD
[8] Supra note 7.
[9] W. Sutherland & M.H. Jarrahi, The Gig Economy and the Information Infrastructure: The case of the Digital Nomad Community, 1 proc. ACM Hum.- Comput. Interact. 1 (2017)
[10] Supra note 7.

streams. Digital nomadism gives financial stability and resilience, empowering people to navigate their careers independently.[11]

The growth of supportive communities, co-working establishments, and digital platforms such as YouTube, Instagram, and TikTok reinforces digital nomadism's significance. These platforms cater to those who choose to work remotely.[12]

As mentioned in Chapter 1, the COVID-19 pandemic dramatically reshaped work terrain, significantly impacting worker mobility across different sectors. As nations grappled with the health crisis, a significant push towards remote work quickly transformed living spaces into home offices.[13]

Once there weren't any travel bans anymore, workers everywhere seized the chance to migrate, seeking better living conditions and work environments despite the ongoing ebb and flow of the pandemic. Several countries rolled out special visas or temporary residence incentives to rejuvenate their suffering tourism industries specifically targeting remote workers and digital nomads.[14]

2.2 The four dimensions of labor change

2.2.1 Working from home:

Before the Industrial Revolution, people used to work from home. Working from home continued during industrialization, but changes in the business structures and the decentralization of production created a new way of working in recent decades.[15]

The International Labor Organization formally defines home-based work in its "Homework Convention." According to this convention, homework is defined as tasks performed by a homeworker at home or another location, distinctly different from the employer's site, in exchange for payment, resulting in specified products or services.[16]

Before the recent global health crisis, working from home was used occasionally; however, the global health crisis has been a catalyst pushing this trend forward. What was once a practice limited to specific worker groups in a select part of the world swiftly transitioned into an essential means of upholding workers' safety and international business operations.

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[11] G. Beretta, "Work on the Move": Rethinking Taxation of Labour Income under Tax Treaties, 5 Intl. Tax Stud. 2 (2022), Journal Articles & Opinion Pieces IBFD (accessed 12 May 2024).
[12] IBID
[13] OECD Secretariat, OECD Secretariat Analysis of Tax Treaties and the impact of the COVID-19 Crisis, OECD Paris
[14] Supra note 9.
[15] Supra note 9.
[16] International Labour Organization (ILO), C177 – Home Work Convention, 1996 (NO. 177).

The post-pandemic landscape has primarily positive responses from businesses and their staff. While some businesses contemplated a permanent remote work setup, others prefer a return to the traditional office space. The most anticipated new way of working is the hybrid model, which blends the on-site presence with remote work. This model allows employees to structure their workdays to spend three days at the office and two days working remotely, using office days for professional networking opportunities.

2.2.2 Non-standard form of employment:

Throughout the last century, governments made labor laws based on a traditional employment relationship, typically full-time work with a clear hierarchy between employer and employee. However, the distinction between employees and independent contractors is becoming less clear due to evolving economic structures influenced by globalization, technological advancements, and new business models.[17]

A notable shift has been the move away from traditional employment towards the non-standard form of employment. The term non-standard form of employment covers a range of work arrangements that share specific characteristics with self-employment but are not identical. The International Labour Organization (ILO) gives examples such as time-limited contracts, project-based roles, part-time or variable schedules, and work sourced from staffing agencies or multi-party employment setups.[18]

One of the most significant shifts in the types of employment is the rise of casual work arrangements such as short-term or sporadic engagements. These are, for example, crowd work, tasks completed via online platforms providing intellectual services such as programming or consulting. Work-on-demand via apps is also an example of gigs or the sharing economy and often involves physical tasks such as transport or home services provided via an app-based platform.[19]

These platforms such as Amazon and Uber that provide these services provide a big pool of remote workers competing on a worldwide scale. However, a pressing concern in this way of working is the classification of these workers, as countries incorrectly label them as "independent contractors" instead of "employees."[20]

Tax authorities worldwide have been discussing how to define the employment status of independent contractors. For example, the UK Supreme Court ruled in February 2021 that Uber drivers are full-time

[17] ILO, Non-standard Employment Around the World Understanding Challenges, Shaping Prospects pp. 7-42 (ILO 2016).
[18] IBID.
[19]J. Berg & V. De Stefano, Regulating work in the 'Gig Economy': https://www.eurofound.europa.eu/observatories/eurwork/industrialrelations-dictionary/crowd-employment.

[20] Supra note 7.

workers rather than self-employed contractors under national employment law.[21] Likewise, the European Commission's directive draft uses a comprehensive approach when defining platform workers, aiming to enhance conditions for these workers.[22]

2.2.3 The new nomads

The new age of digital nomads gained popularity in the 2010s by creating online communities for digital nomads. The increased shared workspace, affordable travel options, and the rise of compact mobile technology, such as a MacBook, also contributed to this new work trend.[23]These high-skilled individuals are an example of employees shifting away from fixed-place employment.

Digital nomads do not seek a permanent new home but wander the world with a temporary connection with the countries they work from. Despite not being among the ultra-wealthy, many digital nomads are financially comfortable and are highly skilled individuals. Unsurprisingly, countries are beginning to adopt e-residency programs to attract such individuals.[24] These programs allow these individuals to relocate and reside within the borders of these countries temporarily.

Countries such as Estonia[25], Croatia[26], Antigua[27], Curacao[28], Greece, Saint Lucia[29], and Dubai[30] are not using these initiatives to offer a change of scenery. Still, they also offer financial incentives like tax benefits. For instance, Croatia provides a one-year tax holiday for digital nomads. In 2021, Greece introduced a tax incentive offering a 50% reduction on local income tax for up to seven years for workers who move their tax residence there.[31]

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[21] UK: SC, 21 Feb. 2021, Uber BV and others (Appellants) v.Aslam and others (Respondents), [2021] UKSC 5.
[22] European Commission, Proposal for a Directive of the European Parliament and of the Council on Improving Working Conditions in Platform Work, COM(2021) 762 final
[23] R.A. Woldoff & R.C. Litchfield, Digital Nomads: In Search of Freedom, Community, and Meaningful Work in the New Economy (Oxford University Press 2021).
[24] Republic of Estonia E-Residency, Your Digital ID Your Company Your Freedom, Start, Run and Grow an EU Company Easily and Securely with your E-Residency Digital ID, How It Works, https://e-resident.gov.ee/
[25] Republic of Estonia, Estonia Is Launching a New Digital Nomad Visa for Remote Workers, available at https://e-resident.gov.ee/nomadvisa/
[26] Republic of Croatia, Temporary Stay of Digital Nomads, available at https://mup.gov.hr/aliens-281621/stay-and-work/temporary-stay-of-digital-nomads/286833
[27] Government of Antigua and Barbuda, Live. Work. Play. Apply for Nomad Residence in Antigua & Barbuda, available at https://antiguanomadresidence.com/
[28] Government of Curacao, @HOME in Curacao, https://athomeincuracao.com/remote-workers/
[29] Government of Saint Lucia, Apply for Saint Lucia Non-Immigrant Visa, available at http://www.govt.lc/services/apply-for-saint-lucia-non-immigrant-visa (
[30] VisitDubai, Work Remotely from Dubai, available at https://www.visitdubai.com/en/business-in-dubai/dubai-for-business/work-remotely-from-dubai
[31] GR: Law 4738/2020 (Greek Government Gazette A'207/27.10.2020, art. 11 [unofficial translation available at https://www.workfromcrete.gr/wp-content/uploads/2021/09/WorkfromCrete_Greek-National-DN-Visa-Law-4825.2021-Article-11-not-official-translation.pdf

However, considering extensive tax treaty networks, such programs complicate tax residence assessments. Only a fraction of remote workers can be qualified as digital nomads, judging by the number of countries they frequent yearly. Less than one-sixth reach the threshold of visiting at least five different countries each year.[32]

An increasing number of people agree on the importance and growth potential of the digital nomad trend due to its association with wealth and talent and the tendency for these highly skilled individuals to move from higher-tax developed regions to lower-tax, less developed countries.[33]

2.2.3 Decentralization of jobs

While digital nomads opt for a life of traveling the world, many employees enjoy the simplicity of working from the comfort of their own homes without the daily commute. The geographical disconnect that there used to be between job locations and employee residences meant either moving employees closer to work or bringing the work to the employees.[34] However, the rise of high-speed internet and videoconferencing tools like Zoom has created new opportunities during the pandemic. Despite the shift towards a "work from anywhere" model, most workers continue to live near their employers and within the same legal jurisdiction.[35]

However, businesses are considering hiring candidates worldwide due to the growing acceptance and preference for remote work. Many companies are more willing to oversee remote teams. They are lifting geographical limitations in job postings, with some specifying only broad regions like the entire EU or North America as a work base.[36]

This new reality suggests a potential shift in the long-standing belief that "talent is everywhere, but opportunity is not." International remote employment, supported by widespread telecommuting, could present a strategic advantage for companies seeking diverse talent without relocation costs or needing to establish a physical presence abroad.[37]

Workers, too, might benefit by finding employment opportunities with international firms that do not require them to move abroad. Remote working particularly appeals to those dissatisfied with their

[32] Pumble, Digital Nomad Statistics for 2023, https://pumble.com/learn/digital-nomad-visa/statistics/
[33] TSUGIO MAKIMOTO & DAVID MANNERS, DIGITAL NOMAD (1997)
34 G. Sitaraman, M. Ricks & C. Serki, Regulation and the Geography of Inequality, 70 Duke Law Journal 1, p 1778
35 R. Baldwin, The great Convergence, Information Technology and the New Globalization pp. 283-300.
[36] LinkedIn has even drafted “A Guide to Hiring and Managing Remote Teams”, available at https://business.linkedin.com/talent-solutions/resources/talent-management/hiring-and-managing-remote-teams
[37] N. Baliga, Talent is everywhere, opportunity is not, Medium, available at: https://medium.com/div-ersity/talent-is-everywhere-opportunity-is-not-e53f2fa42c97

current employment but unwilling or unable to take jobs overseas, even as there are no pandemic-related travel limitations anymore.[38]

Surveys indicate that Millennials and Gen Z are more inclined to change jobs frequently. This characteristic, part of the "YOLO economy," reflects a tendency to leave established careers for freelancing roles. The so-called Great Resignation, which was a time when there were many job departures in 2021, may also be linked to changing attitudes toward work and life balance, heightened by the possibilities of teleworking.[39]

Adopting remote work also leads to job decentralization from significant cities to areas with lower living costs or higher quality of life, a trend known as "amenity migration."[40] Knowledge workers in the U.S. have moved from costly urban centers to more affordable regions during the pandemic. Similarly, the health crisis in Italy saw workers move from wealthier northern regions to the less affluent south, reversing previous migration patterns.[41]

Ultimately, telework might serve as a policy instrument to alleviate growing geographic disparities across countries. Companies offering more opportunities to those seeking employment stand to gain significantly from "virtual immigration." Virtual immigration is when employees seek employer permission to work remotely from a country other than where their job is based or where they work.

As the virtual immigration trend develops, some businesses might consider adjusting salaries to reflect the cost of living in locations their employees choose. This trend showcases the role of teleworking in the future: it not only allows employees to enhance their work-life balance but also helps employers keep valuable talent and enables countries and regions to draw in high-quality jobs. This evolution in working styles serves the interests of employees, employers, and economies alike, creating a win-win-win situation in the global market.[42]

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[38] BCG The Network, Decoding Global Talent, Onsite andVirtual (Mar. 2021), available at https://web-assets.bcg.com/cf/76/00bdede345b09397d1269119e6f1/bcg-decoding-globaltalent-onsite-and-virtual-mar-2021-rr.pdf
[39] K. Roose, Welcome to the YOLO economy, The New York Times.
[40] H. Gosnell & J. Abras, Amenity Migration: Diverse Conceptualizations of Drivers, Socioeconomic Dimensions, and Emerging Challenges, 76 GeoJournal 4 pp 303-322.
[41] Svimez, Ricerca Svimez sul numero dei South Workers, available at: http://lnx.svimez.info/svimez/wp-content/uploads/2020/11/2020_11_16_south_working_com.pdf
42 Supra note 38.

2.3 Further tax implications of increased mobility of employees

As the increased mobility of individuals evolves, several tax implications emerge impacting various aspects of the taxation landscape. Here are some of these tax implications, discussed in detail.

2.3.1 Residency and tax liability

The shift to remote work brings complex questions about where remote workers should pay their taxes. Traditionally, individuals pay taxes to the country where they live or where they do their work. Individuals paying taxes based on where they live is called taxation based on residency. However, if an employee lives in one country and works for a company in another, things might get complicated. Things might get tricky because the remote worker might be seen as a resident in more than one place for tax purposes.[43]

For example, suppose person X lives and works remotely in country A for a company based in country B. Both countries can claim person A as a taxpayer. This could mean paying taxes twice on the same income, which is unfair to person X.

Governments use different rules to decide who is a tax resident, and these rules are not always clear for remote workers. Some countries look at residency when taxing individuals, while other countries consider where their economic interests are most vital, most of the time being the source state.[44]

2.3.2 Sourcing of Income

When people work remotely, figuring out where their income will be taxed is difficult. The main issue is whether the country the company is in, where the work is done, or the employee's home country should tax their earnings. This is what we call the sourcing of income.[45]

For example, person Y lives in country A but works online for a company in country B. Where should he pay tax on the income earned? If country A and country B want to tax person Y's income, he might end up paying double taxation.

Countries have different ways of handling this situation and don't always agree. Extensive international treaty networks address this situation, but these treaties don't always solve these problems.[46]

43 Supra note 7
44 Supra note 7
[45] I. Rovira Ferrer, A New Scenario in International Tax Law: Two Proposals to Rethink the OECD Model in Response to the Generalization of Distance Work by Employees, 15 World Tax J. 3 (2023), Journal Articles & Opinion Pieces IBFD (accessed 16 May 2024).
[46] Supra note 44.

2.3.3 Risk of being classified as a permanent establishment

Remote workers are sometimes classified as permanent establishments, which has become a concern with the rise of remote work. For example, if person X from country A works for a company in country B at home, his home office might be seen as a fixed place of business for the company. This could establish a permanent presence for the company in country A, potentially requiring it to pay taxes there as if it had a physical office or branch.[47]

The concern is that the standard definition of permanent establishment does not account for employees working in different locations from the company's headquarters. With the rise of remote working, companies are exposed to tax liabilities in countries where their employees decide to work, even if the company has no formal business presence there.[48]

This creates a complex tax landscape, where companies must navigate different international tax laws to determine whether a permanent establishment is created due to their remote workforce.[49] Without clear guidelines for remote workers and digital nomads, these individuals and the companies they work for may face unexpected tax liabilities in the countries they work in.

2.3.4 Tax treaties and relief from double taxation

Tax treaties between countries become crucial in managing the risks of double taxation when dealing with remote working. These agreements typically set out the tax rights between countries and are intended to prevent individuals from double taxation on the same income.[50]

However, with the increase in remote work, where employees may reside in one country and work for an employer in another, the application of these treaties is being tested.[51]

For instance, a remote worker residing in country A but working for a company based in country B may be liable to tax in both jurisdictions without explicit treaty provisions. Tax treaties need to address where the primary right to tax exists, whether in the country of residence or the country of the employer.

Such treaties have traditionally focused on physical presence, but as work becomes increasingly virtual, their provisions no longer align with the reality of international labor. Furthermore, in the case of dual

[47] Supra note 9.
[48] IBID
[49] IBID
[50] Residence/Citizenship by Investment Schemes, https://www.oecd.org/tax/ automatic-exchange/crs-implementation-and-assistance/residence-citizenship-by-investment/
[51] Brauner, Yariv, Taxing People, Not Residents (February 13, 2024). Available at SSRN: https://ssrn.com/abstract=4723636 or http://dx.doi.org/10.2139/ssrn.4723636

residency, tax treaties generally have tie-breaker rules to ensure that an entity is a tax resident only in one state to avoid the issue of double residency.[52]

Consequently, reviewing and revising tax treaties to accommodate the unique scenarios presented by remote workers is essential for fair and consistent tax treatment.[53]

2.3.5 Payroll withholding and compliance

The rise in remote work means that government should evaluate payroll withholding practices and reevaluate compliance regulations. As employees can work from any location, employers must account for the tax laws of multiple jurisdictions, which can vary widely.[54]

For example, an employee can work remotely in Country C. At the same time, their employer is based in Country D. The employer is responsible for understanding and adhering to the tax withholding requirements of Country C, in addition to those of Country D.

This situation is further complicated when employees work from multiple locations within a tax year, possibly altering their tax obligation within each jurisdiction. Employers must then track these changes and adjust payroll withholding to comply with local tax laws.[55]

Moreover, correct payroll withholding is not just about compliance but also the employee's financial well-being. Insufficient withholding could reduce their disposable income throughout the year.[56]

2.3.7 Tax incentives and benefits

Tax incentives and benefits are popular tools designed by various jurisdictions to attract remote workers and digital nomads as a part of strategic economic development. In response to the rise of digital nomadism, several countries and regions have introduced special tax regimes aimed at luring these mobile professionals, recognizing their potential contribution to the local economy.

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[52] Supra note 49.
[53] OECD (2020), "OECD Secretariat analysis of tax treaties and the impact of the COVID-19 crisis", OECD Policy Responses to Coronavirus (COVID-19), OECD Publishing, Paris, https://doi.org/10.1787/947dcb01-en.
[54] A.W. Ravelli & A. Strik, Will Remote Working Mark the End of Substance Requirements?, 63 Eur. Taxn. 6 (2023), Journal Articles & Opinion Pieces IBFD (accessed 16 May 2024).
[55] European Commission, Directorate-General for Taxation and Customs Union, Ways to tackle cross-border tax obstacles facing individuals within the EU – Report of expert group, Publications Office, 2015, https://data.europa.eu/doi/10.2778/774727
[56] Supra note 48.

These incentives are, for example reduced tax rates and exemptions, to provide benefits such as deductions for specific expenses related to remote work. However, with countries' varying incentives, remote workers face the complex task of understanding and navigating these tax landscapes.

For example, Krista is a remote worker who can choose to work from several potential locations, each offering different tax incentives. Her decision on where to reside and work could significantly affect her overall tax liability and the benefits she may receive.

While these incentives aim to be appealing, they also introduce complexity into the tax system, particularly regarding qualification criteria and the potential interplay with tax obligations in the remote workers' home country or the employer's country. As a result, all these incentives and the divergent approaches to taxation can result in a complex tax situation for remote workers making cross-border decisions.

2.3.8 Equitable taxation and enforcement

The principle that people should pay their fair share of tax according to their income and its enforcement takes on a new level of complexity with remote working. The flexibility afforded by remote work allows individuals to derive income from across the globe without being tied to a specific location. This raises a significant challenge for tax authorities to collect taxes effectively.[57]

The issue goes beyond just tax collection. People in similar financial situations should face similar tax burdens. However, two remote workers with similar incomes may experience different tax outcomes due to the various tax incentives and tax holidays granted by different tax jurisdictions, and their strategies for managing tax liabilities.[58]

Moreover, enforcing tax rules in remote work is full of challenges. It involves understanding national tax laws, reaching international agreements on what constitutes a remote worker's tax home, and practically tracking the international income of individuals not tied to a single place.[59]

The global workforce needs tax policies and enforcement mechanisms that can handle the unique dynamics of remote work. Tax authorities and international bodies must collaborate to create streamlined, harmonized, and transparent tax rules. This collaboration will help maintain fairness, ensuring the tax system remains fair and enforceable for everyone as work patterns change.[60]

[57] Supra note 49.
[58] IBID
[59] IBID
[60] IBID

2.4 Source taxation vs. residence taxation vs citizenship taxation

2.4.1 Historical context

Source and residence taxation concepts emerged as countries worldwide solidified their fiscal policies amidst expanding trade and international commerce. The source principle evolved from the idea that income should be taxed where earned, which aligns with the state's economic interests and provides the infrastructure and security enabling businesses to operate.[61]

The residence principle, in contrast, reflects the belief that individuals should contribute to the public finance of their home country, which provides them with various social and economic benefits.[62]

These taxation concepts became particularly significant during the Industrial Revolution and the subsequent rise of the industrial economy. This era experienced a remarkable rise in production, international trade, and cross-border investment. With this remarkable growth came new taxation challenges. Countries had to develop fair systems to tax the global activities of their citizens and companies. Industrialized countries often preferred taxation based on residency to ensure their residents' worldwide income supported domestic public spending. At the same time, resource rich countries focused on the source principle, emphasizing the need to tax income from their natural resources.[63]

These taxation principles were put in domestic tax laws and bilateral tax treaties, setting the stage for elaborating international tax norms. They were anchored in a relatively predictable economic environment with clear connections between income-generating activity, physical presence, and taxation jurisdiction. However, the advent of the digital economy and the modern era's fluid movement of capital and labor have increasingly tested these traditional principles, as mentioned earlier in this chapter.[64]

Citizenship based taxation has historical roots tracing back to the Civil War in the United States (hereinafter the U.S.). During the Civil War, the U.S. began taxing residents and citizens living abroad to ensure everyone contributed to the war effort. This practice continued, and in 1913, the Sixteenth Amendment solidified the government's power to tax all income, no matter where it was earned. For this reason, the U.S. uniquely taxes its citizens regardless of where they live.[65]

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[61] Supra note 3.

[62] Mooij, R. A. d., Klemm, A. D., & Perry, V. J. (2021). "Chapter 1 Introduction". In Corporate Income Taxes under Pressure. USA: International Monetary Fund. Retrieved May 16, 2024, from https://doi.org/10.5089/9781513511771.071.ch001

[63] Supra note 3.

[64] IBID

[65] Avi-Yonah, Reuven S., "Taxing Nomads: Reviving Citizenship-Based Taxation for the 21st Century" (2022). Law & Economics Working Papers. 237. https://repository.law.umich.edu/law_econ_current/237

2.4.2. Principles of source taxation

The principle of source taxation means that income is taxed by the country where economic activities generate that income. It acknowledges a country's right to tax profits derived from its economy. This principle is based on the idea that entities should pay taxes where they benefit from public goods, infrastructure, and services that support their business. By taxing income at the source, countries ensure they receive their share of revenue from the economic opportunities they provide.[66]

Source taxation has several benefits, including creating a direct link between where income is generated and where it is taxed. Source taxation can lead to a fairer distribution of tax burdens among states. Source taxation is especially appealing for countries with substantial foreign investments or natural resources because it ensures that foreign entities operating within their borders contribute to the state's revenue. Helping offset the costs of the infrastructure and services that support these activities.[67]

However, source-based taxation has some drawbacks for remote workers, like the risk of economic double taxation. Economic double taxation occurs when the same income is taxed in both the source country and the resident country of the taxpayer. Economic double taxation can hinder international trade and investment, distort economic decision-making, and lead to unfair tax outcomes.[68] To address double taxation, many countries have tax treaties to relieve double taxation, usually through foreign tax credits or exemptions. Despite having these mechanisms in place to avoid double taxation, the application of source taxation can still be complex due to varying definitions of source across jurisdictions.[69]

It is evident that source taxation, while aiming for fairness and revenue generation, can still create significant tax burdens for digital nomads and remote workers, mainly because they generate income in multiple countries. This underscores the need to reform the international tax system to ensure remote workers are taxed fairly.

2.4.3 Principle of residence taxation

Residence-based taxation is the idea that individuals and entities are taxed by the country where they are considered tax residents, usually determined by their home, place of management, or other permanent ties.[70] This system taxes residents on their global income, not just the income earned within that country's border. The purpose behind residence-based taxation is that taxpayers should contribute

[66] Supra note 66
[67] IBID
[68] Supra note 52.
[69] Supra note 52.
[70] Terra/Wattel European Tax Law: General topics and direct taxation, Student Edition. Douma, S., Marres, O., Vermeulen, H. & Weber, D.

to the state that provides them personal and economic benefits, such as legal protection, public services, and infrastructure, irrespective of where their income is generated.[71]

This worldwide approach ensures that individuals and businesses contribute to the public finances of their home country, theoretically boosting the overall economy they benefit from. However, taxing worldwide income can lead to juridical double taxation, especially when income is earned in countries that use source-based taxation.[72] Juridical double taxation happens when two different tax jurisdictions tax the same income or capital. Juridical double taxation can lead to a heavier tax burden on the taxpayer, discourage cross-border economic activities, and complicate international tax compliance.[73]

While this approach aims to ensure that residents contribute to the public goods and services they benefit from, it often fails to accommodate the fact that remote workers are highly mobile individuals. Digital nomads, who may not spend significant time in any single country, can be subject to multiple tax jurisdictions, leading to the risk of double taxation and substantial compliance burdens.

2.4.4. Principle of citizenship taxation

Citizenship-based taxation is a principle where individuals are taxed by their country of citizenship, regardless of where they live or where their income is earned. This approach is most notably applied in the U.S., which taxes its citizens on their worldwide income, even if they live abroad. The rationale behind citizenship-based taxation is rooted in the idea that citizens owe allegiance to their country and should contribute to its public finances, reflecting the political and social ties they maintain with their homeland.[74]

The justification for this principle is anchored in the "ability to pay" principle, which suggests that individuals should be taxed based on their capacity to contribute financially. This principle asserts that as members of a political community, citizens who can vote and participate in the democratic process should share in the fiscal responsibilities of that community. Thus, regardless of where they reside, their financial contributions support the public goods and services provided by their home country. This aligns with progressive taxation, where those with higher incomes pay more taxes because they can contribute more remarkably.[75]

The justification for this principle is also anchored in the benefit principle, which suggests that taxes should be levied on individuals based on the benefits they receive from the state. This includes access to public goods and services such as infrastructure, education, and security for residents. For non-

[71] IBID
[72] IBID
[73] IBID

[74] Supra note 69.

[75] IBID

resident citizens, the benefits are more limited, often just being limited to diplomatic protection and the right to return.[76]

However, this approach brings significant challenges for remote workers, such as potential double taxation and the administrative burden of ensuring compliance of citizens across the world. For this reason, this approach is seen as unfair taxation. One primary reason is that non-resident citizens typically do not benefit from the public services their taxes help fund. For example, they might not use their home country's infrastructure, education, or healthcare systems. The taxes imposed on these individuals are often seen as undue burdens, given that they already contribute to the public finances of their country of residence.[77]

As mentioned before, this system can lead to double taxation. The reason for potential double taxation is that individuals are taxed by their country of citizenship and their country of residence on the same income. Although tax treaties and tax credits can mitigate this issue, they do not eliminate the problem, often leading to complex and burdensome tax compliance requirements.[78]

For remote workers and digital nomads, citizenship-based taxation presents specific challenges. These individuals often have no permanent base, making it difficult to justify taxing them on their global income by their country of citizenship. As remote work is becoming more popular, the principle of citizenship-based taxation conflicts with the notion of fair taxation. Digital nomads frequently do not benefit from the public services their home country provides yet are required to pay taxes as if they do. The disconnect challenges the fairness and practicality of citizenship-based taxation regarding global mobility.[79]

2.5 Conclusion

This chapter explored the multifaceted aspects of digital nomadism and remote working, beginning with defining these terms and giving a broader understanding of their impact on modern working. Afterward the chapter delved into the four dimensions of labor change brought by the rise of remote working: flexibility, technological advancement, globalization, and changing work-life balance. These dimensions highlight the implications of remote working for both individuals and economies.

Following this, chapter 2 addressed the broader implications of remote working, such as the benefits and challenges it presents for remote workers. It underscored the importance of adapting traditional

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work models and regulations to accommodate the new dynamics introduced by remote work and digital nomadism.

Afterward, the chapter focused on the principles of taxation- residence-based, source-based, and citizenship-based taxation. Each principle was examined for its relevance and fairness in the context of remote work and digital nomadism. Residence-based taxation ensures that individuals contribute to the public goods and services they benefit from in their home country. Still, it can lead to double taxation and significant compliance burdens for those who frequently move between countries. Source-based taxation, which taxes income where the economic activities generating that income occur, presents a fairer distribution of tax obligations but also faces challenges of economic double taxation. Citizenship-based taxation, while ensuring all citizens contribute to their home country, raises fairness issues for those who do not benefit from their home country’s public services.

This chapter illustrates the complexities and challenges that remote workers and digital nomads face under the current international tax frameworks. In a later chapter, it will be examined how source-based taxation could be a solution to these problems. The aim is to explore how source-based taxation might offer a fair and practical solution to taxing remote workers and digital nomads.

3. Addressing the taxation of remote workers and digital nomads

3.1 Introduction

This chapter briefly unpacks how taxes work for income earned from remote work. Remote workers and digital nomads usually live in one place and work in another, often crossing national borders. Section 3.2 looks at the taxation principles in the case of international juridical double taxation. Next, Sections 3.3 & 3.4 detail how these taxpayers pay their fair share internationally, getting into the details of taxes when working across borders. Section 3.5 gives more insight into other tax aspects that come into play with the taxation of remote workers. Section 3.6 delves into the tax implications that employers face when employing remote workers. Finally, Section 3.7 concludes the chapter. This chapter answers the following sub-question: *How do existing international regulations address the taxation of digital nomadism?*

3.2. Taxation principles in case of international juridical double taxation

Certain tax principles restrict countries' rights to levy taxes. The tax law has two main tax principles: personal and material (or business).[80]

Personal tax principles are based on the taxpayer's circumstances.[81] A person's particular situation or characteristic, such as their residency, can dictate that a state has the authority to tax their income. When applying personal tax principles, it typically means the person will have an objective tax liability.[82] The residence-based principle is one such personal tax principle, where the right to tax is given to the state where someone has settled permanently.[83] The idea behind this principle is that residents benefit the most from the public services provided by their state of residence because of their permanent home there.[84] Another personal tax principle is based on nationality, where taxes are levied according to a person's citizenship.

[80] C. van Raad e.a., Cursus Belastingrecht (Internationaal Belastingrecht), studenteneditie 2022-2023, Deventer Kluwer 2022

[81] IBID

[82] IBID

[83] IBID

[84] IBID

While the principle of taxation based on nationality seems straightforward, it comes with significant downsides.[85] For instance, enforcing tax laws on those who live abroad can be challenging.

Additionally, people contribute to a state's public funds through nationality, even if they don't benefit from those services because they live elsewhere.[86]

On the other hand, business-related tax principles are linked to the source of income.[87] It involves determining the country of origin for the source of income based on factual circumstances. Under the source country principle, taxation is allowed on income connected to the source state.[88] This connection is defined by the taxpayers' economic activities within the state's territory. The reasoning behind the source country principle is that those earning income from a source state should contribute to the public service provided by the state where the source is located, as they benefit from these services.[89]

However, when two countries apply different tax principles, it can lead to international juridical double taxation.[90] The most common overlap of principles occurs between the residence taxation principle and the source taxation principle.[91] For example, remote workers typically deal with disputes with tax authorities between residence and work states about which should levy taxes. The residence state taxes their income based on the residence state principle, while the work state imposes taxes based on the source state principle. This creates a situation where cross-border workers face double taxation on the same income. To address this, tax treaties aim to align the national laws of treaty countries to prevent double taxation as much as possible.[92]

3.3 Tax residency and taxation of remote workers

Tax residency plays a significant role in remote work and the tax implications that follow for these individuals under the OECD Model Tax Convention. The application of double taxation treaties, as set by Article 1 of the OECD Model Tax Convention, applies only to those regarded as residents within the relevant treaty countries. For the allocation of taxing rights to either the state of residence or the work state, it is essential to establish the tax residency of a remote worker.[93]

Under Article 4 of the OECD Model Tax Convention, an individual is a resident of a contracting state if, under its national tax laws, they are subject to unlimited tax liability because of their habitual abode,

[85] Supra note 75.
[86] IBID.
[87] IBID.
[88] N.P. Schipper, De invloed van de woonplaats op de fiscale behandeling van grensoverschrijdende werknemers (Fiscale Monografieen nr. 158) (diss. Leiden) Deventer: Wolter Kluwers 2019.
[89] IBID
[90] Supra note 75.
[91]IBID
[92] IBID
[93] IBID

domicile, central of vital interests, nationality, mutual agreement, place of effective management, or any other similar criteria. This is also called the tie-breaker rule. When someone is regarded as a resident for tax purposes by a state's national tax law, they are also treated as a resident for the treaty, thus gaining access to its provisions. Consequently, a remote worker recognized as a tax resident in either the residential or the working state is also considered a resident for treaty purposes.[94]

An assessment based on individual circumstances determines whether an individual is deemed a resident of a country. For example, in The Netherlands, it is determined by the provisions of Article 4 of the General Tax Act or, in Dutch, "Algemene Wet Rijksbelastingen" (AWR).[95] This involves an open norm that needs to be substantiated with the facts and circumstances of each specific situation.[96] The Dutch Supreme Court has clarified this norm, adopting a dynamic interpretation across multiple judgments. The Court assesses whether an individual has a lasting personal association with The Netherlands, considering all case-specific facts and circumstances equally.[97] Dutch courts evaluate these relevant circumstances qualitatively, balancing objective factors such as living and employment conditions, family connections, financial status, and nationality. There must also be a subjective intention to stay in a country for a shorter or longer period.[98]

Just like The Netherlands has its assessment of recognizing individuals as residents of the country, so do other countries worldwide. Most countries use similar criteria when assessing an individual's tax residency.[99] Sometimes, due to tax laws not being similar, where one country levies tax based on citizenship, whereas the other country may levy tax based on the number of days of stay in that country tax residence, issues arise.[100]

For this reason, most of the tax treaties signed by two countries contain solutions to this issue through the application of Article 4, which contains the tie-breaker rule, where an individual is determined to be a tax resident of only one country. The tie-breaker rule's primary goal is to attribute an individual's tax residency to one country to avoid double taxation.[101]

The tie-breaker rule follows a step-by-step approach whereby each criterion found in Article 4 of the treaty is applied to resolve the tax residency. If the matter cannot be resolved via the tie-breaker rule, then the two countries' competent authorities shall resolve the matter by a mutual decision.

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94 IBID
95 IBID
96 IBID
97 J. de Blieck e.a., Fiscale Encyclopedie De Vakstudie, Vakstudie 01 – Algemeen deel, art. 4 AWR.
98 HR 21 januari 2011, ECLI:NL:HR:2011:BP1466, nr. 10/00563 (BNB 2011/98), HR 4 maart 2011,ECLI:NL:HR:2011:BP6285, nr. 10/04026 (BNB 2011/1127) en HR 12 april 2013, ECLI:NL:HR:2013:BZ6824, nr.12/02980 (BNB 2013/123).

99 The Court of Appeal of England and Wales (Civil Division) 8 July 2010, EWCA CIV778 (HM Revenua and Customs v Smallwood & Anor): Skattepligt – Dobbeltdomicil – DBO med USA
100 Supra note 75.
101 IBID

The criteria of the tie-breaker rule are as follows:

1. Tie Breaker based on Permanent Home: The remote worker is a resident for tax purposes of the country, where he has a permanent home at his disposal. The following criteria should be evaluated if the remote worker has a permanent home in both countries.[102]
2. Tie Breaker based on Centre of Vital Interests: The remote worker is a resident for tax purposes of a country where he has the most vital interest. To evaluate the vital interests, the relevant authorities look at where the individual has closer social and economic relations. If the individual has a vital interest in both countries, then criteria three shall be evaluated.[103]
3. Tie Breaker based on Habitual abode: The remote worker is a resident for tax purposes of a country where he has a more extended stay. If this criterion does not give any result, the fourth criterion will be evaluated.[104]
4. Tie Breaker based on Nationality: The remote worker is a tax resident of the country where he has his nationality.[105]
5. Other criteria: If none of the above criteria resolves the tax residency dispute, then the competent authorities should decide the dispute through a mutual agreement procedure (MAP).[106]

Thus, to determine an individual's residency, one examines their personal, economic, and social ties.[107] Having a permanent tie with the primary country of residence does not exclude the possibility of an individual maintaining an equally strong or stronger personal bond with another country.[108] Assessing where the remote worker has a permanent home is crucial in determining tax residency. Other indicators of a solid bond for a jurisdiction include where the family resides, financial ties, registration in the population registry, and personal intent.[109]

Suppose the remote worker qualifies as a resident for tax purposes under articles 1 and 4 of the OECD Model Tax Convention and domestic tax law regulations. In that case, the individual will also be considered a resident for treaty purposes.

[102] OECD Commentaries on the Articles of the Model Tax Convention – Commentary on Article 4

[103] OECD Commentaries on the Articles of the Model Tax Convention – Commentary on Article 4

[104] OECD Commentaries on the Articles of the Model Tax Convention – Commentary on Article 4

[105] OECD Commentaries on the Articles of the Model Tax Convention – Commentary on Article 4

[106] OECD Commentaries on the Articles of the Model Tax Convention – Commentary on Article 4

[107] Supra note 92.

[108] Supra note 75.

[109] OECD Commentaries on the Articles of the Model Tax Convention – Commentary on Article 4

The OECD has developed this Model Tax Convention for taxing income and capital, which states can adopt but are not obliged to do. Many treaties that aim to prevent double taxation between countries are based on the OECD Model Tax Convention. Article 15 of the OECD Model Tax Convention deals with income from employment. This article provides all other employment not described in the convention. In other words, if the income falls under the provisions of Articles 16,17,18 or 19 of the OECD Model Tax Convention, then the provisions of Article 15 of the OECD Model Tax Convention are set aside. But suppose the income doesn't fall under these articles' specific allocation rules. In that case, it is covered by the general taxing rules of Article 15 of the OECD Model Tax Convention.

3.3.2 Article 15(1) OECD Model Tax Convention

The allocation of taxing rights regarding income from employment is covered in Article 15 of the OECD Model Tax Convention. The first paragraph of Article 15 states:

'Subject to the provisions of Articles 16,18, and 19, salaries, wages, and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is exercised, such remuneration as is derived may be taxed in that other State.'

Based on the treaty, the income referred to in Article 15 refers to salaries, wages, and other remuneration. This includes all kinds of benefits received about the employment, such as stock options, the use of a house or car, healthcare or life insurance, and club memberships. The timing of the income payment or acquisition by the employee does not affect its characterization.[110]

Moreover, remuneration received by an employee after the termination of employment is deemed to have been derived by the State where the relevant employment activities were carried out.[111] The remuneration is part of the employee's employment. Therefore, the distribution of taxing rights at the time of employment should be applied.[112] Since the OECD Model Tax Convention does not have its definition of employment, all countries have their interpretation of this term. According to the general interpretation rule of Article 3 of the convention, such terms should be interpreted following the domestic law of a State.[113]

Article 15(1) states that the state of residence has the exclusive right to tax the income of a resident, aligning with the residence principle. The country of residence taxes the income unless the employment is exercised in the other contracting state, in which case that other state may tax the income derived

[110] OECD Commentaries on the Articles of the Model Tax Convention – Commentary on Article 15.
[111] IBID.
[112] IBID.
[113] Supra note 75.

from employment within its borders.[114] The remuneration must be paid to the employee in the context of their employment, which means that the distribution of taxing rights should be followed at the time of the employment.[115]

Furthermore, Article 15 of the OECD Model Tax Convention recognizes that the state of residence has the exclusive right to tax the income of a resident on its global income, which aligns with the residence principle. The main rule established by paragraph 1 for tax on employment income is that such incomes are taxable in the state of residence unless the employment is carried out in the working state. Income from activities outside the working state, such as the state of residency or a third state, is allocated to the state of residence.[116]

The exception to the main rule of Article 15(1) aligns more closely with the source taxation. To determine where the employment is exercised, one must look at where the employee is physically present when performing the work for which the employment income is paid.[117] However, the source taxation principle does not fully apply because taxing rights are only assigned to the work state if the employee is physically present. It is not sufficient for the source state to have the right to tax on the basis that the employee obtains the remuneration from the working state, even though that remuneration pertains to activities that yield a benefit in the work state.[118] If the employee is not physically present in the work state when performing the work for the employer based in that state, it is reasoned that they have less benefit from the public services of the working state. Thus, the right to tax remains with the state of residence. However, if the employee physically performs their employment (partially) in the work state, the state of residence must provide relief from double taxation.[119]

The Dutch Supreme Court guided in calculating the portion of the employee's salary that the work state is allowed to tax, which determines the residence state must be exempt.[120]

The Court ruled that if the exact portion of the employee's salary earned in the work state cannot be determined directly, such as through specific salary details, it should be calculated proportionally based on the employee's annual salary. This proportional calculation is done by multiplying the annual salary by a fraction. This fraction's numerator (top part) is the number of days the employee physically worked in the work state. The denominator (bottom part) is the total number of calendar days in the year minus weekends, agreed vacation days, public holidays, and other non-working days.[121]

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[114] IBID.
[115] IBID
[116] IBID
[117] Supra note 96.
[118] IBID
[119] IBID
[120] HR 23 september 2005, ECLI:NL:HR:2005:AP1424, nr. 40179 (BNB 2006/52),

[121] HR 23 september 2005, ECLI:NL:HR:2005:AP1424, nr. 40179 (BNB 2006/52),

According to the OECD's guidelines, sick days should be taxed in the country where the employee would have worked if they had not been sick. This means that sick days do not affect the fraction used for the calculation. This approach has been confirmed by national courts also. The OECD suggests that unused or extra vacation days should be treated similarly, but the Dutch Supreme Court has not adopted this view.[122] Instead, the ruling states that the fraction should be reduced by the agreed-upon vacation days, not the actual days taken.[123]

The Secretary of State in the Netherlands later clarified that "agreed vacation days" should mean the actual vacation days taken by the employee in that calendar year. This interpretation is also followed in applying the Decree on Double Taxation Avoidance 2001. Therefore, the work state can tax the portion of the salary corresponding to the days the employee physically worked there. For the days worked in the residence state or other countries, the residence state has the right to tax that income. This ensures that the employee is not taxed twice on the same income.[124]

3.3.3 Article 15(2) OECD Model Tax Convention

This article provides an exception to the general rule that the work state (where the employment activities physically occur) has the right to tax income from employment. If all the conditions outlined in Article 15 are met, the exclusive right to tax remains with the state of residence, even for workdays physically spent in the work state.

This exception is predicated on the notion that employees meeting these criteria have limited ties to the work state and consequently utilize fewer of that state's government-funded facilities.[125]

Because their economic and social bonds with the state of residence are more substantial, the state of residence maintains the right to tax income for workdays exercised in the work state if the following conditions are cumulatively fulfilled:

- The employee is not present in the work state for more than 183 days within any twelve months that begins or ends in the fiscal year;
- The remuneration is not paid by or on behalf of an employer who is resident or established in the work state;
- The employer's permanent establishment in the work state does not bear the remuneration.

The first condition relates to the physical presence, counting all days an employee spends in the work state, not just workdays. A day is counted if the employee is present in the work state at any time during

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[122] OECD Commentaries on the Articles of the Model Tax Convention – Commentary on Article 15

[123] HR 23 september 2005, ECLI:NL:HR:2005:AP1424, nr. 40179 (BNB 2006/52),

[124] HR 23 september 2005, ECLI:NL:HR:2005:AP1424, nr. 40179 (BNB 2006/52),
[125] Supra note 75.

the day, excluding transit days or sick days preventing the employee from returning to the state of residence.[126] Digital nomads typically do not stay more than 183 at the source state, meaning this does not apply to them, so that tax will be levied in the state of residency.

The second condition concerns the employer, with a distinction made between the formal employer (with whom the employee has a work contract) and the substantive (or actual) employer, under whose authority the employee works. For tax treaty purposes, the relationship of authority is decisive in determining the employer.[127]

The third requirement states that the employee's compensation should not be charged to a permanent establishment of the employer in the work state. This implies that, for the work state to be granted the right to tax, there must be a significant physical presence within that state.[128]

Since the conditions outlined in Article 15(2) of the OECD Model Tax Convention are cumulative, the specific amount of time spent in the work state, whether more or less than 183 days, is not the sole determining factor. However, for remote workers, frontier workers, or digital nomads employed by a company solely established in the state of residence, the criteria of Article 15(2), sub-paragraphs b and c of the Model Tax Convention are met. This results in the taxing rights for the days worked in the work state potentially being shifted to the state of residence, provided that the 183-day rule is also satisfied. If the employee spends less than 183 days in the work state, then the right to tax the income for all the workdays physically carried out in the work state is assigned to the state of residence.[129]

3.4 The application of Article 15 of the OECD Model Tax Convention on employees

When an employee who typically lives in Country X but works in Country Y chooses to work from home, meaning its residence state, this creates a different situation than previously. It is different because the workdays were (almost) exclusively spent in the work state before the change. Based on the allocation rules of Article 15 of the OECD Model Tax Convention, the home working days of these individuals influence the distribution of taxing rights. The work state has the right to tax income for days physically worked within its territory unless the conditions of Article 15(2) are met. Since home working results in the absence of physical presence in the work state, this changes the taxing rights.[130]

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[126] Supra note 96.

[127] IBID

[128] IBID

[129] IBID

[130] Supra note 103.

For a worker like, for example, employee X, home working days affect the allocation of taxing rights according to Article 15(1) of the OECD Model Tax Convention. The loss of physical presence in the work state means that the taxing rights over home working days shift to the residence state, which generally would have been the right of the work state.[131]

However, since the employer is in the work state, the cumulative conditions of Article 15(2) are not met, so the taxing rights remain with the work state.[132]

An overview of days worked can be used to determine the taxable income per country by doing a salary split. The income attributed to the work state is calculated based on proportionality. However, the situation could be different for employees who have an employer solely in the residence state. Suppose the employee decides not to work entirely remotely, meaning no longer spending more than 183 days abroad. In that case, all the cumulative requirements of Article 15(2) are met, and the taxing rights for all workdays shift entirely to the residence state.[133]

3.5 Mutual Agreement Procedure of the OECD Model Tax Convention

The resolution of tax disputes has taken place through national courts. However, when dealing with international taxation, using national courts and judicial resources does not guarantee a resolution for international double taxation, as no judge has jurisdiction in both jurisdictions involved in the dispute.[134]

For this reason, the MAP has emerged through bilateral and multilateral tax treaties as alternatives to the domestic judicial system for resolving international tax disputes. The MAP is an instrument for resolving international tax disputes whenever a dispute between countries might lead to taxation not following a tax convention or a tax treaty.[135]

The MAP of the OECD Model Tax Convention can be found in Article 25 of the OECD Model Tax Convention and is included in most bilateral tax treaties. This article aims to provide tax authorities guidelines on discussing tax-related disputes in situations where a taxpayer considers that he may not be taxed following the tax treaty provisions or when the parties do not agree on the interpretation or application of a tax treaty.[136]

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[131] IBID.

[132] IBID.

[133] G. Beretta, "Work on the Move": Rethinking Taxation of Labour Income under Tax Treaties, 5 Intl. Tax Stud..

[134] A.K.K. Chan, Application of Mutual Agreement Procedure Article under the Multilateral Instrument

[135] J. Monsenego, 2015 p.155

[136] IBID

There are several steps between initiating a mutual agreement procedure and eliminating double taxation because of a dispute. The first step is starting the procedure. To begin the procedure, the taxpayer must provide the competent tax authorities with sufficient information to deal with the case. The taxpayer must provide a letter describing the tax audit and its outcome and why they think the result does not follow the provisions of a tax treaty, arguments, and material supporting the arguments in favor of another outcome. The initiation must be done after an inevitable delay which in most cases is two or three years after the first notification of an action that may cause taxation not following a tax treaty.[137]

The second step of the procedure involved a procedure where the competent authority that receives the case shall review the objection, and if it appears that the objection is justified and cannot come to a satisfactory solution to resolve the matter by mutual agreement between the states. Again, the taxpayer is not involved in the discussions. In practice, a mutual agreement procedure has four outcomes: one of the state's cancels their primary adjustment, and country B may fully acknowledge the tax assessment issued by country A. This eliminates double taxation since the income subject to the primary adjustment is taxed only once.[138]

The third possible outcome is that the competent authorities may agree on eliminating double taxation, but the agreement may differ from the primary adjustment. Finally, the fourth possible outcome is that the competent authorities do not agree on eliminating double taxation, which leads to double taxation.

The biggest flaw of the MAP procedure is that it does not guarantee a solution to the tax dispute because the OECD Model Tax Convention is not legally binding, meaning there is no obligation under the article.[139]

3.6 OECD recommendations due to the COVID-19 pandemic

The OECD stepped in to provide clarity on how cross-border workers should be taxed in response to the COVID-19 pandemic. With travel restrictions and lockdowns forcing many people to work from places they did not plan on being, the usual tax rules suddenly did not make much sense. The OECD's guidance ensured these temporary changes did not lead to unfair tax consequences.[140]

One of the critical areas the OECD focused on was tax residency. Typically, an individual's tax residency is determined by the time they spend in a country, with many countries using a 183-day threshold. However, the pandemic stranded many people in countries unexpectedly, potentially altering their tax residency status. The OECD recommended that days spent in a country because of travel

[137] IBID

[138] J. Monsenego, 2015 p.157

[139] J. Owens, Intertax, vol 46 issue 8/9 2018, p. 631

[140] OECD Secretariat, OECD Secretariat Analysis of Tax Treaties and the impact of the COVID-19 Crisis, OECD Parijs: 21 January 2021,

restrictions, quarantine, or lockdowns should not count towards the 183-day threshold. This approach was vital to prevent individuals from becoming tax residents in countries where they were temporarily stuck, thus avoiding complicated and often unfair tax situations that could lead to double taxation.[141]

The OECD also provided clear guidance on income taxation for individuals who continued working remotely for their foreign employers while being physically present in their home countries. Usually, if someone works in a different country, their income might be subject to local taxes. However, the OECD suggested that remote work's exceptional and temporary nature due to COVID-19 should not alter the existing taxing rights under applicable tax treaties. This means that income earned during this period should still be taxed in the country where the work would typically occur. This recommendation was crucial to ensure that individuals did not face new and unexpected tax liabilities due to them having to work from home in a different jurisdiction.[142]

Moreover, the OECD addressed concerns about the creation of permanent establishments for employers. Under normal circumstances, if a business has a fixed place of business in another country, it might be deemed to have a permanent establishment there, which makes it subject to local taxes. The OECD clarified that the temporary presence of employees working remotely due to the pandemic should not lead to the creation of new permanent establishments. This means businesses would not be hit with additional tax obligations because their employees worked from home in another country.[143]

The OECD also emphasized the importance of consistently applying these recommendations across different jurisdictions. The OECD encouraged tax authorities to adopt a flexible and pragmatic approach to reduce the administrative burden on individuals and tax authorities. By recognizing the temporary and extraordinary nature of the pandemic's impact, the OECD aimed to provide clarity and certainty, helping taxpayers navigate through the pandemic without additional stress about taxation of their income on employment.[144]

The OECD's recommendation also supported the principle of fiscal neutrality. This principle ensures that tax considerations do not indirectly influence personal and business decisions. By clarifying that temporary changes in work location due to the pandemic should not impact tax obligations, the OECD helped maintain a level playing field for taxpayers worldwide, ensuring that decisions about work location were based on health and safety rather than tax implications.[145]

[141] OECD Secretariat, OECD Secretariat Analysis of Tax Treaties and the impact of the COVID-19 Crisis, OECD Parijs: 21 January 2021,
[142] OECD Secretariat, OECD Secretariat Analysis of Tax Treaties and the impact of the COVID-19 Crisis, OECD Parijs: 21 January 2021,
[143] OECD Secretariat, OECD Secretariat Analysis of Tax Treaties and the impact of the COVID-19 Crisis, OECD Parijs: 21 January 2021,
[144] OECD Secretariat, OECD Secretariat Analysis of Tax Treaties and the impact of the COVID-19 Crisis, OECD Parijs: 21 January 2021,
[145] OECD Secretariat, OECD Secretariat Analysis of Tax Treaties and the impact of the COVID-19 Crisis, OECD Parijs: 21 January 2021,

These recommendations offer essential lessons that are relevant to the upcoming chapters. These guidelines show how crucial it is for tax rules to be flexible and practical, especially during unexpected events like a global pandemic. The OECD highlights flaws in the current residency-based taxation system by suggesting that temporary remote work and extended stays should not change tax residency or create new tax issues. This is particularly relevant to Article 15 of the OECD Model Tax Convention, which bases taxing rights on where someone physically is and their residency status.

The pandemic has demonstrated that work and economic value can be added anywhere globally, not just from where someone lives. This realization supports the idea that we might need to move towards a source-based taxation system, where taxes are based on where the economic activity happens. The OECD's approach aligns with this concept, suggesting that taxing rights should be tied to where the work is done and value is created rather than where the person happens to be.

3.7 Conclusion

In conclusion, this chapter discussed complicated tax issues surrounding remote workers and digital nomads. First, we discussed the taxation principles in the case of international juridical double taxation. There is a consensus that tax should be paid primarily to the resident country unless there is a strong economic connection to the source country. This principle prevents workers from being taxed twice on the same income.

Furthermore, on tax residency, remote workers and digital nomads often find that where they are taxed can depend on where they physically perform their work. These individuals work in different countries yearly and do not follow the usual tax order. This means they do not align with the criteria set out in Article 15 of the Model Tax Convention, initially designed for traditional employment.

This chapter also discussed the circumstances in which a remote worker's home workplace could establish a permanent establishment for their employer, potentially shifting the tax obligations to the country of residence. This might lead to corporate tax obligations in that country, giving employers extra administrative burden.

Additionally, the OECD's recommendations on the impact of the COVID-19 crisis on tax treaties were incorporated. The OECD suggested that temporary remote work and extended days due to travel restrictions should not affect tax residency or create new tax liabilities. These guidelines highlighted the flaws of the current residency-based taxation system, reinforcing the need for a shift towards source-based taxation.

4. Justification of taxing remote workers based on tax residency

This chapter first evaluates the concept of tax fairness in international taxation as it applies to remote workers and digital nomads. After setting this foundation, paragraph 4.2 discusses the fiscal treatment of remote workers and digital nomads in the aftermath of the COVID-19 pandemic. This leads to a critical analysis in paragraph 4.3, which examines the taxation of remote workers and digital nomads under the existing frameworks and assesses the coherence and compatibility with the new way of working. Paragraph 4.4 evaluates the source state's justification for the physical presence criteria for taxation rights. This paragraph analyzes whether this requirement holds up to the new working patterns due to remote working and digital nomadism. At the end of paragraph 4.5, there will be a conclusion answering the sub-question: *To what extent is the tax treatment of remote workers and digital nomads justified based on the current allocation rules of Article 15 of the OECD Model Tax Convention?*

4.1 Concept of tax fairness

Fairness or justice in international tax law generally relates to the equitable distribution of taxation among countries and the imposition of tax burdens on individuals or entities by their ability to pay.[146] In the context of taxation of remote workers and digital nomads, fairness is understood through various lenses, such as the equity and equality principle, avoidance of double taxation, ability to pay, and the principle of neutrality.[147]

The principle of equality is a fundamental aspect of various international tax treaties. For example, the OECD Model Tax Convention includes a non-discrimination clause in Article 24, addressing discrimination based on nationality and residence. This clause outlines specific scenarios in which discrimination is prohibited, like differences in treatment stemming from the taxpayer's nationality.[148]

At the international level, the principle of equality is anchored in Article 26 of the International Covent on Civil and Politic Rights, which states that all individuals are equal and entitled to equal protection without discrimination. Article 14 of the European Convention on Human Rights echoes a similar sentiment in the European Union, prohibiting discrimination.[149]

[146] De Wilde, M.F. Sharing the Pie; over het belasten van multinationale ondernemingen in een globale markt. NTFR 2015/8.
[147] OECD (2014), "Fundamental principles of taxation", in Addressing the Tax Challenges of the Digital Economy, OECD Publishing, Paris. DOI: https://doi.org/10.1787/9789264218789-5-en
[148] Supra note 75.
[149] Supra note 121.

The principle of equality requires that similar cases be treated similarly and dissimilar cases be treated differently and in proportion to their dissimilarity.[150] Assessing whether legislation upholds the principle of equality involves answering the following questions:

1. Are we considering similar cases?
2. Are these supposed similar cases being treated differently?
3. Is there a justification for this differential treatment?

Initially, the focus is on determining if cases are similar. However, it is rare to find two identical cases, meaning it is necessary to analyze if the different treatments are proportional to their dissimilarity. For tax law, economically comparable cases must be treated identically.[151] If it turns out that similar cases are treated differently, the next step is to discern if there is a justifiable cause for this disparity. Legitimate and reasonable justification requires that the unequal treatment should be proportional. Thus, unequal treatment is justifiable if it is proportionate to the differences between the cases and if there is a fair and objective reason for it.[152]

A neutral tax system supports efficiency and, in turn, aids the optimal allocation of taxing rights. Under the principle of neutrality, taxpayers' choices should remain uninfluenced by tax considerations.[153] This concept acts as a derivative of the principle of equality, implying that bias towards economic decisions should be minimized. For remote workers, taxation should neither discourage nor incentivize a taxpayer.[154]

Regarding preventing double taxation, two prominent theories related to fiscal neutrality come into force: capital import neutrality and capital export neutrality. Capital import neutrality stipulates that foreign investors should be taxed like domestic investors in the country where the investment occurs, ensuring equal tax burden for all investors, regardless of residency.[155] On the other hand, capital export neutrality ensures that investors are taxed by their country of residence, regardless of where the investment is made. This results in an equal tax burden for all residents, whether investing domestically or abroad.[156]

[150] Supra note 121.
[151] IBID
[152] IBID
[153] IBID
[154] IBID
[155] IBID
[156] IBID

While these theories typically do not discuss the factor of labor, it is viewed alongside capital as a classic productive factor. Therefore, Professor Kemmeren suggests that an individual's activities should not be ignored when assessing the neutrality of tax legislation. Professor Kemmeren argues that neutrality should not be limited to capital alone and should also encompass the factor of labor.[157]

When including labor in the context of capital and labor neutrality, Professor Kemmeren proposes two definitions. Capital and labor export neutrality would mean that an income earner pays the same amount of tax regardless of whether the income is derived from domestic or foreign sources.[158] Here, the tax burden would be consistent for all individuals, regardless of their residence.[159] Capital and labor import neutrality would require that labor and capital funds from different states compete on equal footing in the labor and capital markets, irrespective of the worker's or investors' residence.[160] Thus, the tax burden would be equitable for all individuals, whether investing or working abroad.[161]

4.2 Assessing the Principle of Tax Fairness in the Taxation of Remote Workers

As discussed in paragraph 4.1, the principle of tax fairness is assessed by examining the principle of equity, neutrality, and the alignment of taxation with economic substance.[162] Tax fairness focuses on the notion that individuals should be taxed by their ability to pay and the benefits they receive from public goods and services in their country of residence.[163]

4.2.1 Equity in Taxation of Remote Workers

Equity in taxation demands that there is a reasonable nexus between the taxpayer and the taxing jurisdiction. For remote workers, physical presence may no longer serve as a reliable anchor for determining this nexus, as their work contributions and how they earn their income can occur independently of their physical presence.[164] This approach is complicated when determining which state has taxing rights, meaning the residence or work state. The state of residence may claim taxing powers based on the worker's residence, arguing that the worker benefits from the public goods and services

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157 E.C.C.M. Kemmeren, Principle of Origin in Tax Conventions: A Rethinking of Models (diss. Tilburg), Dongen: Pijnenburg Vormgevers-Uitgevers 2001,
158 IBID
159 IBID
160 IBID
161 IBID
162 F. Debelva, Fairness and International Taxation: Star-Crossed Lovers?, 10 World Tax J. 4 (2018), Journal Articles & Opinion Pieces IBFD (accessed 23 May 2024).
163 Lang, M., Pistone, P., Schuch, J., & Staringer, C. Source versus residence: Problems arising from the allocation of taxing rights in tax treaty law and possible alternatives. Alphen aan den Rijn: Kluwer Law International.
164 Brauner, Yariv, Taxing People, Not Residents (February 13, 2024). Available at SSRN: https://ssrn.com/abstract=4723636 or http://dx.doi.org/10.2139/ssrn.4723636

provided. In contrast, the work state might argue that it is entitled to tax due to the economic activities and infrastructure that support the work done by the remote worker.[165]

This raises questions about the fair distribution of tax burdens and benefits. Remote workers might generate income in one jurisdiction while residing in another. These problems are challenging the traditional concepts of source and residence taxation. The existing international tax frameworks, such as the OECD Model Tax Convention, often rely on physical presence and permanent establishment concepts that may not adequately address the nuances of remote work.[166] This can lead to scenarios where remote workers face the risk of double taxation or, often, double non-taxation, both of which conflict with the principle of equity.[167]

Furthermore, the principle of equity describes vertical and horizontal equity.[168] Vertical equity means taxpayers with more ability to pay should contribute a larger share of their income to taxation. In contrast, horizontal equity means taxpayers with similar income levels should be taxed similarly.[169] For remote workers, ensuring vertical equity means that high-income remote workers are taxed appropriately, regardless of their physical location. This requires international cooperation to establish tax rules that prevent high-income earners from shifting their residence to low-tax jurisdictions simply to reduce their tax liability.[170]

Horizontal equity, on the other hand, demands that remote workers with similar income levels but residing in different jurisdictions are subject to similar tax burdens.[171] This can be challenging due to different tax rates and systems worldwide. For instance, a remote worker in a high-tax country may pay significantly more taxes than a peer in a low-tax country despite earning the same income. This disparity can be perceived as unfair and undermine trust in the global tax system. Addressing this requires harmonizing tax rules and cooperation between countries to ensure that similar income is taxed similarly, regardless of the taxpayer's location.[172]

[165] Supra note 136.
[166] Supra note 3.
[167] IBID
[168] F. Debelva, Fairness and International Taxation: Star-Crossed Lovers?, 10 World Tax J. 4 (2018), Journal Articles & Opinion Pieces IBFD (accessed 23 May 2024).
[169] IBID
[170] Supra note 3.
[171] Supra note 141.

[172] IBID.

4.2.2 Neutrality in the Tax System

The principle of neutrality is another critical aspect of tax fairness.[173] As discussed in paragraph 4.1, this principle entails that a country's tax system should not influence personal or business decisions. The tax treatment of remote workers should not incentivize nor deter the choice to work remotely or select a particular country as a base. However, disparities in tax rates and the administrative burden of compliance across jurisdictions could inadvertently sway remote workers' choices, undermining the neutrality principle.[174]

For example, remote workers might reside in jurisdictions with favorable tax regimes, reducing their overall tax liability. This decision-making process could lead to state tax competition, where jurisdictions might lower tax rates or offer incentives to attract remote workers. While this might benefit individual taxpayers in the short term, it can erode the tax base in higher-tax jurisdictions, potentially leading to a race to the bottom effect.[175] Furthermore, businesses might structure their operations to exploit these differences, complicating the international tax landscape and increasing the risk of base erosion and profit shifting.

The principle of neutrality also ensures that tax systems do not create distortions in the labor market.[176] Taxing remote work differently from traditional office work could influence the labor market dynamics, leading to inefficiencies. For example, if remote workers face lower tax burdens, employers might prefer hiring remote workers over local employees, potentially affecting local employment rates and economic stability. If remote work is not taxed fairly, it could deter individuals from opting for it, limiting flexibility and innovation in the workforce.[177]

To maintain neutrality, it is essential to establish consistent tax rules that do not favor one form of work over another. This involves reassessing the tax treatment of remote work and ensuring that it aligns with the taxation of traditional work forms.[178]

4.2.3 Avoidance of Double Taxation and Compliance Burdens

The principle of fairness also includes the avoidance of double taxation, ensuring that remote workers are not subject to excessive compliance burdens or tax obligations in multiple jurisdictions.[179] As

[173] F. Debelva, Fairness and International Taxation: Star-Crossed Lovers?, 10 World Tax J. 4 (2018), Journal Articles & Opinion Pieces IBFD (accessed 23 May 2024).
[174] S.B. Cornielje, Beginsel van fiscale neutraliteit,
[175] Supra note 141.
[176] IBID.
[177] Supra note 3.
[178] Supra note 141.
[179] Supra note 3.

mentioned in the thesis, double taxation occurs when the same income is taxed by two different jurisdictions, which can happen if both the residence state and the work state claim taxing rights. To mitigate this, many countries have bilateral tax treaties that include provisions to prevent double taxation, typically through tax credits or exemptions. However, these treaties are often based on outdated principles that do not fully account for the complexities of remote work.[180]

Double taxation can significantly impact remote workers' net income, creating financial hardship and reducing the attractiveness of remote work.[181] For example, a remote worker residing in one country but working for an employer based in another might face tax obligations in both jurisdictions, effectively reducing their disposable income. This situation is particularly problematic for remote workers who frequently move between countries, as they may not qualify for tax residency in any of the jurisdictions they worked for. This may complicate their tax situation further.[182]

The administrative burden for remote workers can be substantial, as they may need to navigate multiple tax regimes, comply with various reporting requirements, and understand the complexities of international tax treaties. This complexity can lead to unintentional non-compliance and increased costs for taxpayers and tax authorities. Furthermore, the lack of standardized rules can lead to uncertainties and disputes between taxpayers and tax authorities, undermining the predictability and fairness of the tax system. Simplifying tax rules and creating clear guidelines for remote workers can help alleviate these burdens and promote voluntary compliance.[183]

4.2.4 Equality in Taxation of Remote Workers

For remote workers, the first step is to determine whether they are in a similar position to traditional employees working at the office. On the surface, remote workers perform similar tasks, generate income, and contribute economically like their office-based colleagues. Therefore, economically comparable cases must be treated identically under equality.[184]

However, differences in location and the nature of their work arrangements lead to different tax treatments. For example, as mentioned before, remote workers might reside in countries with different tax regimes, cost of living, and access to public services. These differences can justify some variation in tax treatment. However, the key is to ensure that the differential treatment is proportional and based on objective criteria.[185]

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[180] IBID.
[181] Supra note 3.
[182] IBID.
[183] Supra note 145.
[184] IBID.
[185] IBID.

In chapter 3 we analyzed that Article 15 of the OECD Model Tax Convention deals with the taxation of income from employment. This article provides that salaries, wages, and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that state unless the employment is exercised in the other Contracting State. If the employment is exercised, such remuneration may be taxed in another state.[186]

For remote workers, Article 15 poses a challenge. This article focuses on where traditional employment is exercised, typically the physical location of the work. This location can vary for remote workers, often changing or spanning multiple jurisdictions.[187] Applying Article 15 of the Model Tax Convention strictly based on physical presence leads to unequal treatment of remote workers compared to traditional workers who work in a single location. Take, for example, a software developer working from home in Portugal for a company based in Germany. This remote worker contributes just as much to the company as a colleague working from the German office.

Both groups benefit from public infrastructure and services, although in different ways. Office-based workers use the roads, public transport, and other facilities in their workplace's country, while remote workers might benefit indirectly, through the company's resources and the economic environment. So, economically speaking, remote and office-based workers can be considered similar.[188]

To justify any differential treatment under the principle of equality, the treatment must be proportional to the differences between the cases, and there must be a fair and objective reason for it.[189] However, the current approach of Article 15 does not align taxing rights with economic substance. The current approach treats remote workers differently despite their economic contributions to their employer. Thus, it is not proportional, violating the principle of equality.[190]

Article 15 of the Model Tax Convention is based on the principle that taxation is justified if there is an economic link between the work state and the employee's income.[191] This principle made sense when work was always only done physically in the work state. But modern technology has changed this. Employees can maintain economic ties with the work state even if they are physically elsewhere.[192]

Furthermore, the administrative burden that remote workers deal with is also disproportionate. The complexity and potential double taxation these workers face create unequal treatment compared to traditional workers, who typically only file taxes in one place.

[186] IBID
[187] N.P. Schipper, De invloed van de woonplaats op de fiscale behandeling van grensoverschrijdende werknemers (Fiscale Monografieën nr. 158) (diss. Leiden), Deventer: Wolters Kluwer 2019,
[188] Supra note 145.
[189] Supra note 145.
[190] Supra note 145.
[191] Supra note 3.
[192] Supra note 137.

4.3 Conclusion

This chapter explored the justifiability of Article 15 of the OECD Model Tax Convention for remote workers and digital nomads. It is becoming clear that as the world adapts to the new ways of working, our tax legislation is falling short due to the traditional belief that taxation of income from employment should be based on physical presence.

The principle of tax fairness is fundamental in the tax landscape. This principle demands that employees in similar situations be treated equally. Remote workers and digital nomads, who often perform the same tasks as traditional office workers, face different tax treatments. This discrepancy is unfair and a breach of the principle of horizontal equity—the principle of horizontal equity states that people with similar incomes should pay similar taxes. The principle of vertical equity is also compromised because high earners can move around to exploit favorable tax laws, reducing their tax contributions.

This chapter also discusses the principle of neutrality. A neutral tax system is essential to ensure that personal or business decisions are made for the right reason, not just to minimize tax contributions. However, current tax legislation encourages remote workers to choose their work situations based on tax benefits rather than what is best for their job ambitions or personal lives. This leads to harmful tax competition among countries and distorts the labor market.

One of the biggest challenges for remote workers is the risk of double taxation, which means paying taxes in their home country and the country where they work. The existing tax treaties and Article 15 of the OECD Model Tax Convention do not adequately address this issue, leading to financial strain and compliance burdens. These complications can discourage remote workers from working remotely, limiting innovation in the workforce.

Remote workers and office workers should be treated the same for tax purposes. However, Article 15 of the OECD Model Tax Convention relies on physical presence to determine tax residence. This approach to determining tax residence for remote workers results in different treatments not justified by economic realities. Equality in taxation means that any difference in treatment should be fair, objective, and proportional – standards that are not currently met.

In summary, how Article 15 of the OECD Model Tax Convention applies to tax remote workers and digital nomads is outdated and unfair. It does not reflect the economic realities of modern work, where physical presence is often less important than the work itself. International standards for taxing remote workers and digital nomads should evolve to create a fair and efficient tax system.

5. Source taxation as an alternative to Article 15 of the OECD Model Tax Convention

5.1 Introduction

This chapter explores whether source taxation is a suitable alternative to the current allocation method of Article 15 of the OECD Model Tax Convention. The potential benefits and challenges of shifting from residence-based taxation to source-based taxation are discussed, with later solutions to facilitate this transition are proposed. This chapter answers the following sub-question: *Would the source taxation principle as a basis for tax allocation provide a suitable alternative to the current allocation method of Article 15 of the OECD Model Tax Convention?*

5.2 Digital economy

The digital economy brings challenges not anticipated when the current tax laws were created. Consequently, there is global attention on how digitalization impacts taxation.[193]

In 2013, the OECD launched the Base Erosion and Profit Shifting (hereinafter: BEPS) project, which outlined fifteen action points to address profit shifting and base erosion by multinational enterprises.[194] Action Point 1, which was named: 'Addressing the tax challenges of the digital economy, focused on addressing the tax challenges that came with the rise of the digital economy. In 2019, a work program under BEPS 2.0 was published to tackle these issues, consisting of two pillars.[195]

The first pillar aims to achieve a more balanced allocation of taxing rights on corporate profits among states. The digital economy allows businesses to provide services or deliver goods in states without physical presence, preventing them from being taxed in those user or market jurisdictions.[196] The OECD proposed three models to address these challenges: user participation, marketing intangibles, and significant economic presence.[197]

The second pillar is the Global Anti-Base Erosion (hereinafter: GloBE) Proposal, which introduces a global tax minimum. More than 140 countries have signed up to the GloBE tax deal. The tax treaty imposes a minimum rate of 15% on the profits of multinationals. On 1 January 2024, the GloBE came into force, a significant step forward in international cooperation on the taxation of multinational enterprises.[198]

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193 C. van Raad e.a., Cursus Belastingrecht (Internationaal Belastingrecht), studenteneditie 2022-2023,
194 BEPS 2015 - Final reports
195 Supra note 164.
196 IBID
197 IBID
198 OECD, Summary: Economic Impact Assessment of the Global Minimum Tax (January 2024)

Given the scope of this research, we will focus on the significant economic presence model proposed under Pillar One.

5.2.1 Significant economic presence

According to the BEPS action plan, a foreign company will have a taxable presence in a state if it has a significant economic presence there. This presence is determined based on various factors indicating some economic presence with the state via digital means.[199] Possible indicators are user-based indicators, the volume of digital information obtained from the state, billing in local currency, and conducting structural marketing and promotional activities. [200]

The significant economic presence features the 'fractional apportionment' method to allocate profits between countries using a source-based tax. This method first determines the profits to be divided, selects appropriate allocation keys, and then applies these to distribute the profits to the states.[201]

The BEPS action plan 1 moves from the notion of physical presence as a basis for determining tax residency, instead looking at where the company adds the most economic value.[202]

The idea behind allocating taxes based on significant economic presence for companies using digital technologies without physical presence is that these companies add value in that state. This justifies a source-based tax since they add value to their business in that state.[203] There must be a link between the activities and the significant economic presence that generates profit.[204]

This approach aligns with the source state principle, which proposes that the person (company) benefiting from the income also benefits from public services provided by the state where the source is located. Because of digitalization, the company's physical presence in that state is unnecessary.

Although this approach targets the taxation of profits of multinationals with a digital presence in a state where they are not physically present, this approach can be extended to the taxation of employment income for remote workers.

[199] R.A. Bosman, 'Digitale economie en Global Anti-Base Erosion: nieuwe BEPS-voorstellen met brede impact', NTFR Beschouwingen 2019/29, nummer 7-8.

[200] R.A. Bosman, 'Digitale economie en Global Anti-Base Erosion: nieuwe BEPS-voorstellen met brede impact', NTFR Beschouwingen 2019/29, nummer 7-8.

[201] OECD, Programme of Work to Develop a Consensus Solution to the Tax Challenges Arising from the Digitalisation of the Economy, OECD/G20 Inclusive Framework on BEPS, OECD, Paris

[202] OECD, Programme of Work to Develop a Consensus Solution to the Tax Challenges Arising from the Digitalisation of the Economy, OECD/G20 Inclusive Framework on BEPS, OECD, Paris

[203] M.F. de Wilde & C. Wisman, 'OESO-consultatie digitale economie: 'grondslagherverdeling' en 'ik belast wat jij niet doet'?, NL Fiscaal Wetenschappelijk 2019/0001.

[204] Supra note 173.

5.3 Introduction of source-based taxation on individuals

Eliminating residence-based taxation would require some adjustments to the current approach to source taxation. Firstly, to maintain the regime's integrity, each type of income must be attributed to a specific jurisdiction. This would ensure that individual taxpayers have no residual income that is not taxed anywhere. As a result, the issues of double taxation or double non-taxation would become irrelevant, along with the need for measures to relieve double taxation.[205]

Furthermore, income could be partially taxed by multiple states, each applying tax rates and administrative rules as they currently do. This means different jurisdictions might tax the same income at different levels.[206] Also, having a universal, unified method for accounting and sourcing income would facilitate the transition to this new taxation method.[207] While this would ideally be established through a multilateral agreement, it could be implemented bilaterally between states or unilaterally by individual countries.[208]

Taxing individuals based on the source of their income existed long before the establishment of the international tax regime, alongside the concept of residence-based taxation. Principles of territoriality and sovereignty influenced source-based taxation during the 19th and early 20th centuries.[209]

The justification for source taxation was the benefit theory, which links taxing rights to the taxpayer's benefits from the state. This theory contrasts the ability-to-pay theory, which supports taxing individuals based on their capacity to pay and is often associated with residence taxation.[210]

The benefit theory faced lots of criticism in the past, but the idea behind it remained influential, particularly in states that continued to tax income based on its source.[211] Some scholars have attempted to modernize the benefit theory, arguing that it justifies taxation by the source state but does not dictate the tax rate. However, this approach is limited because the benefit theory focuses on state-provided benefits rather than a taxpayer's connection to the state.[212]

The primary critique of source taxation is the concept of the source itself. Critics argue that the term is ambiguous, incoherent, and arbitrary, making it an inadequate basis for income taxation. They argue that the source lacks economic meaning and that specific source rules are either economically irrelevant

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205 Brauner, Yariv, Taxing People, Not Residents (February 13, 2024). Available at SSRN: https://ssrn.com/abstract=4723636 or http://dx.doi.org/10.2139/ssrn.4723636
206 IBID
207 IBID
208 IBID
209 IBID
210 Johannes Becker & Joachim Englisch, Taxing Where Value Is Created: What's User Involvement Got to Do with It, 47 INTERTAX
211 Supra note 176.
212 IBID

or harmful to individual states and the global economy.[213] These critics, mostly the wealthiest countries and the OECD, made efforts to prioritize residence taxation over source taxation. Despite these efforts, source taxation has remained an essential component of tax systems.[214]

The logic behind exclusive source taxation of remote workers is that if we eliminate residence-based taxation since this approach does not tax remote workers fairly, source taxation remains the only viable framework within the current international tax system. The fairness and legitimacy of source taxation are the main reasons to support this reform.[215]

From a conceptual standpoint, taxing individuals' income based on its connection with the jurisdiction's territory has been integral to modern income tax systems.[216] Despite some criticisms of the benefit theory, the idea that a state has the right to tax income related to its territory is fundamental and widely accepted.

This principle supports the idea that the source state has the primary right to tax income, providing a universal framework for income allocation among states. Because it is universally understood and accepted, source taxation has a level of international legitimacy that other tax bases do not. This legitimacy feeds a perception of fairness, which is crucial for maintaining the stability of the international tax regime.[217]

This perception of fairness in source taxation is strong because of historical assaults from the wealthiest nations. These countries have often voted against source taxation, concentrating on global wealth and pushing their agendas.[218] However, globalization and recent geopolitical shifts have reduced the dominance of these wealthy countries, making it harder for them to prevent reforms that address the unfair distribution of the tax base. This change in the global landscape creates an opportunity to make tax reforms politically possible.[219]

The most essential factor of source taxation is the stability of the international tax regime. The legitimacy benefits of source taxation offer the best chance to keep this stability.[220] For this reason, some level of international coordination is necessary to prevent a race to the bottom in tax rates. This need for coordination is not new and mirrors current tax challenges.

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213 Brauner, Yariv, Taxing People, Not Residents (February 13, 2024). Available at SSRN: https://ssrn.com/abstract=4723636 or http://dx.doi.org/10.2139/ssrn.4723636
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220 Brauner, Yariv, Taxing People, Not Residents (February 13, 2024). Available at SSRN: https://ssrn.com/abstract=4723636 or http://dx.doi.org/10.2139/ssrn.4723636

5.4. Fairness of source-based taxation

As discussed earlier, shifting to source-based taxation changes how remote workers are taxed on their income compared to the current system under Article 15 of the OECD Model Tax Convention. Under source-based taxation, a work state can claim taxing rights if there is a direct link between the income-generating activities and the work state without requiring the employee to be physically present. The term fairness does not have a legal definition. It is a subjective term that can be interpreted differently amond people. However, Kaufman, Hassemer, and Neuman say that fairness corresponds to the sensation of all rational and fair-thinking persons.[221] To determine if this method provides a fairer distribution of taxing rights for remote workers' income, we will assess whether it meets the principles of equality and neutrality. Given that fair taxation is associated with these principles.[222]

The principle of equality demands that similar situations be treated equally. For example, if two situations are alike, we must examine whether they are being treated differently and whether any differences are justified.[223] If Employee A and Employee B are in similar situations, based on the current taxing system, these individuals might be taxed differently simply based on their physical locations. This contradicts the principle of equality. With source-based taxation, both employees are taxed the same way because their work generates value in the same place, for example, in the Netherlands, regardless of where they are physically located. This approach ensures they are treated equally, which makes it fair.[224]

Moreover, source-based taxation aligns with the objectives of Article 15 and the underlying tax principles, such as the benefit principle and the ability-to-pay principle. According to this principle, taxpayers should contribute to the public expenses according to their economic reality.[225] Both employees benefit from the infrastructure and services in the work state, so it makes sense for them to pay taxes there. Even if they are working remotely, their economic activities are still tied to the work state digitally and economically. This ensures that the tax system reflects the reality of remote work and digital nomadism, making it fairer and more equitable.

A tax allocation based on the source principle also ensures that the employee's place of residence does not influence their choice to work remotely or on-site, thereby adhering to the principle of neutrality.[226]

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[221] Kaufman, Hassemer, & Neuman. (2010) Einführung in Rechtsphilosophie und Rechtstheorie der Gegenwart. Heidelberg: C.F. Muller.

[222] OECD (2014), "Fundamental principles of taxation", in Addressing the Tax Challenges of the Digital Economy, OECD Publishing, Paris. DOI: https://doi.org/10.1787/9789264218789-5-en

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Focusing on the economic presence will focus on where the value of the work is created and no longer on where the employee is physically located. Furthermore, the source-based tax system meets capital and labor import neutrality criteria. If substantial professional activities are not performed in another state, the worker cannot be considered a competitor in that labor market.[227]

In my opinion, the source principle should take precedence over the residence principle because it leads to fairer taxation in today's world. Unlike the current allocation under Article 15 of the OECD Model Tax Convention, the source-based allocation rules ensure a fair distribution of taxing rights for remote workers. I believe the source principle is a suitable alternative as it aligns with the rationale behind Article 15 and achieves a fairer tax distribution that accommodates the needs of the modern world taxation of remote workers.

5.5 Reforming source-based taxation

One significant advantage of taxing individuals based solely on source is its compatibility with existing legislation. Although such a reform would be substantial; it still needs some changes to withstand domestic tax practices and treaties. Some revisions are inevitable, such as updating source rules.[228] Here, we will analyze a reform proposed by Professor Brauner.

At a minimum, a reform would need to replace the direct effects of residence taxation. This includes allocating non-sourced income to specific jurisdictions, addressing double non-taxation, and allowing states to maintain their preferred redistribution rights through income taxes. This requires revising existing source rules or adopting formulary apportionment of individual income, which aligns with Action Point 1 of the BEPS report. Furthermore, rules would be necessary to prevent artificial allocation or apportionment of income to a jurisdiction, possibly through minimal rate requirements.[229]

The most challenging aspect for some states might be maintaining their redistribution levels. A straightforward solution would be proportional apportionment, where tax calculations apply proportionally based on the percentage of income earned in each jurisdiction. For example, if Kate earns 50% of her income in a jurisdiction, all relevant calculations, such as exemptions, credits, and tax brackets, will apply at 50% at all levels. Other methods are also possible, but the relevant states should negotiate specifics.[230]

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[228] OECD (2014), "Fundamental principles of taxation", in Addressing the Tax Challenges of the Digital Economy, OECD Publishing, Paris. DOI: https://doi.org/10.1787/9789264218789-5-en

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[230] Tax Notes Staff, The OECD Tax Plan's Pillar 1 Amount B: Disagreements and Divides, Forbes,

In cases where not all states agree to reform, a simple response would be to reallocate the income proportionally among participating states, excluding non-compliant states.[231]

These changes should not be too disruptive to the current international tax system, which is founded on principles of reciprocity and competition. States would honor each other's exclusive source taxation rights, reciprocating only when others do not comply. Competition for investment would become more effective and fairer, as inappropriate residence schemes and non or double taxation would become irrelevant under exclusive source taxation.[232] Thus, removing residence taxation could allow the basic source rules to be adjusted more effectively to the realities of the 21st century.

Reforming the current source rules involves tackling three main issues. First, the reform must ensure that all income is accounted for, eliminating any stateless income. Second, the source of income must be genuinely linked to a specific location to prevent manipulation. Third, we must reassess the existing rules to ensure they are robust and effective.[233]

To address the first issue, the term income tax must be clarified. Income tax can be seen as a personal tax imposed on income. Instead, it is viewed as the source for individual consumption or the fruits of individual effort or production. Focusing on consumption, a destination-based tax would be appropriate, strengthening the residence's role in source decisions and maintaining formal source rules for investment income. Focusing on production aligns with recent trends supporting value creation as the link between income and jurisdiction. Professor Kemmeren's origin-based taxation applies less formal source rules for active income.[234]

A consensus on one approach is unlikely, so that a mixed approach might be more practical. The source rules could be refined to base investment income on consumption and active income on production. However, this solution has challenges, especially with income types like royalties, which are hard to classify and allocate.[235]

Another approach is to align the purpose of different source rules with their connection with the jurisdictions. This method could lead to different interpretations by various states, reflecting the ongoing dilemma between consumption and production locations. While this approach is articulated differently, it ultimately faces the same challenges.[236]

A 50/50 split between the place of production and consumption is recommended as a fair compromise. The United States uses this method for certain types of income. This solution would involve a two-

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[231] Supra note 192.
[232] Brauner, Yariv, Taxing People, Not Residents (February 13, 2024). Available at SSRN: https://ssrn.com/abstract=4723636 or http://dx.doi.org/10.2139/ssrn.4723636
[233] IBID
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pronged system by applying existing source rules and using a 50/50 allocation for cases where straightforward classification is difficult. An example of a problematic classification is remote services and digitally generated income.[237]

Despite these reforms, States might still engage in harmful tax competition for remote working. Formulary taxation could offer an alternative to traditional source rules. A conservative path could be effective if revised to prevent elective income allocation to favorable jurisdictions. Effective dispute-resolution mechanisms are essential for this approach to work.[238]

Formulary taxation can address the issues of classification and manipulation more effectively. For example, the complexities of classifying dividends and interest can be reduced by relying on a formulary approach, ensuring a fair distribution of tax liabilities. Agreed-upon formulas provide transparency and reduce opportunities for tax avoidance, enhancing the overall fairness and stability of the tax system.[239]

I align with the reform proposal of Professor Brauner for several compelling reasons. Reforming the existing source rules and considering formulary taxation to accommodate the taxation of remote workers offer a promising step forward.

Firstly, it ensures an equitable distribution of tax liabilities by aligning tax obligations with where economic activities take place. This means jurisdictions contributing to an individual's or company's income receive their rightful share of tax revenues. Unlike the traditional system, this approach recognizes the value creation process, making it a fairer way to tax remote workers.

Moreover, this solution addresses tax evasion and avoidance effectively. Current tax laws allow digital nomads and remote workers to exploit outdated physical presence criteria to minimize or evade taxes, for example, by choosing to work for countries that offer digital nomad visas where their income is barely or often not taxed. By updating these rules to reflect the realities of modern work practices, the proposed reforms close these loopholes and ensure that remote workers also pay their fair share. This also allows for tax transparency and a fair tax system where all income generated is subject to taxation. In my opinion, this reform is also fair because it provides clear and uniform guidelines, making it easier for individuals (remote workers) and businesses to understand and comply with their tax obligations.

5.6 Conclusion

This chapter explored how source-based taxation could be an alternative to the current method under Article 15 of the OECD Model Tax Convention. The need for this analysis comes from the growing

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[239] IBID

challenges of the digital economy and changes in how people work, which make traditional tax methods less effective.

First, the problems with the existing system under Article 15 were examined, mainly its focus on physical presence to determine tax liability. This approach does not align with the modern work environment where people can create economic value without being physically present in the taxing country. This mismatch results in unfair tax burdens and administrative issues for remote workers and digital nomads, who often deal with double taxation or the risk of not being taxed.

Furthermore, the principles of source taxation were analyzed, showing how they align better with the economic value generated by workers in a particular location. The OECD's BEPS project, especially Action Point 1, emphasizes the need for tax systems to adapt to the digital economy. The concept of significant economic presence, proposed under BEPS Pillar One, offers a robust framework for rethinking tax allocation. This approach focuses on where economic value is created rather than where the worker is physically located, providing a more accurate and fairer basis for taxation.

This chapter also covered the importance of international cooperation to prevent harmful tax competition and ensure a fair distribution of tax rights. While shifting to a source-based taxation model has challenges, it also offers significant benefits regarding the international tax system's fairness, legitimacy, and stability. This approach could alleviate the administrative load on taxpayers and tax authorities and promote a more equitable distribution of tax revenues among countries.

In conclusion, moving to a source-based taxation system, despite requiring substantial reforms and international collaboration, presents a viable and necessary alternative to the current method under Article 15 of the OECD Model Tax Convention. This change is crucial to address the digital economy's tax challenges and ensure a fair and efficient tax system that fits modern work practices.

6. Conclusion

6.1 Summary

This thesis has investigated how international taxation principles should be applied to remote workers and digital nomads, explicitly examining the viability and implications of source taxation versus residence taxation. The primary focus was assessing whether source-based taxation could be a more suitable alternative to the current residency-based method outlined in Article 15 of the OECD Model Tax Convention.

The thesis began with an overview of key terms and the rise of remote work and digital nomadism, a growing trend due to the COVID-19 pandemic. The first chapter introduced the existing residence and source taxation tax principles, highlighting their limitations when applied to remote workers and digital nomads.

The thesis also explored the challenges remote workers and digital nomads face, such as double taxation and administrative burdens. Traditional concepts of tax residency and permanent establishment often fall short in modern work arrangements, leading to legal uncertainties and the risk of double taxation.

The principle of tax fairness in international taxation was examined, particularly for remote workers and digital nomads. The current tax treatments under Articles 4 and 15 of the OECD Model Tax Convention create obstacles by relying on physical presence to determine tax residency.

A critique of the current frameworks for taxing remote workers based on tax residency revealed that physical presence is no longer a suitable criterion for tax liability. Alternative principles that could address the taxation of remote workers were also explored.

Lastly, the potential of source-based taxation as an alternative to the current method under Articles 4 and 15 was analyzed. The benefits and challenges of moving from residency-based to source-based taxation were discussed, especially in the context of the digital economy. A proposed framework for source-based taxation was presented as a fairer and more efficient solution for taxing remote workers and digital nomads.

6.2 Conclusion

The research question addressed in this thesis was: "How should international taxation principles be applied to digital nomads, focusing on the viability and implications of source taxation versus residency taxation?"

The way people work has dramatically changed due to the digital revolution and globalization, which led to the rise of digital nomadism and remote workers.

This shift has posed new challenges for international tax systems, which traditionally rely on physical presence and permanent establishment. This thesis examined these challenges, particularly within the OECD Model Tax Convention framework, and questioned whether the current residence-based tax system under Articles 4 and 15 is sufficient. The findings in the thesis suggest a strong need for reform towards a source-based taxation system that aligns better with the modern way of working.

One of the main findings is that traditional tax principles of remote workers and digital nomads, such as Articles 4 and 15 of the OECD Model Tax Convention, rely heavily on physical presence. This idea no longer fits the digital economy. These systems were built on the idea that tax obligations are tied to a specific location. While this worked in the past, it does not suit the modern world where digital nomads and remote workers can perform their tasks worldwide. These workers often deal with complex tax regulations from multiple countries, leading to double taxation and a heavy administrative burden.

Another key finding of the thesis is that fairness is crucial in any tax system. People in similar economic situations should be treated equally. However, the research shows that the current framework under Articles 4 and 15 of the OECD Model Tax Convention often results in unfair treatment for remote workers. Despite doing the same jobs as their office-bound colleagues, these workers face different tax rules just because they are mobile. This creates an unfair situation and does not recognize the significant contributions of remote workers to their employers and the economy.

Moreover, tax residency rules also present significant challenges for remote workers. Traditional rules are based on the notion that employees work in one place for a long time, which does not match the lifestyle of digital nomads. This misalignment causes legal uncertainties and makes it hard for remote workers to comply with tax laws. The administrative burden of navigating multiple tax systems can lead to unintentional mistakes and potential penalties. Digital nomads often find themselves in a situation where they are not considered residents for tax purposes in any country. This uncertainty can also lead to governments missing out on potential tax revenues.

This thesis explored a solution to this problem: source-based taxation through the concept of significant economic presence. This approach shifts the focus from physical presence to where economic value is created. It offers a fairer and more practical basis for taxation in the digital economy. By aligning tax obligations with economic activities rather than physical location, source-based taxation can solve the residency problem faced by remote workers and digital nomads.

Significant economic presence looks at where customers are, digital engagement, and the economic impact within a jurisdiction. This method ensures that income is taxed where economic activity happens, providing a more accurate picture of economic reality. However, implementing this shift requires international cooperation and clear guidelines to ensure consistency.

In conclusion, allocating taxing rights over employment income from remote work is a fair and suitable alternative to the current unjust taxing system under Article 15 of the OECD Model Tax Convention. With the rise of digitalization and increased remote work, an employee's physical presence has become less significant. As a result, Article 15 has become outdated and no longer aligns with its original goals and tax principles. By basing Article 15 on the source principle, I believe we can achieve a higher level of fairness and meet the objectives of Article 15 once again.

6.3 Recommendations

I believe that by altering the underlying tax principles of Article 15 of the OECD Model Tax Convention, we can achieve a greater degree of fairness without compromising the existing principles of tax allocation. When altering the provision, we should use the term 'contractor' and include primary taxing rights for the residence state while allowing source taxation if the contractor is present in the source state for more than 65 days or if the remuneration is borne by a permanent establishment or fixed base in the source state. The reason for a lower threshold is that digital nomads are highly mobile and do not typically stay in one country for an extended period. Therefore, the 183-day threshold no longer applies to digital nomads and remote workers.

Additionally, introducing specific guidance on the taxation of digital nomads, like those for frontier workers during the COVID-19 pandemic, would provide a more precise taxation guideline based on their new and unique circumstances.

Adopting source taxation principles can also help address the taxation of remote workers and digital nomads. This would ensure that Article 15 of the OECD Model Tax Convention no longer influences the choice between working from home or on-site, guaranteeing fiscal neutrality. By basing the allocation system on the source of the income or the location where the added value of the work is created, the current unfairness in Article 15 of the OECD Model Tax Convention would be eliminated, making it future-proof for digital changes.

However, the source taxation principle needs some adaptations to address the taxation of remote workers. The criterion of physical presence should be reevaluated, given that digital nomads are highly mobile. For this reason, I recommend that we focus on where the economic activities are effectively carried out (significant economic presence) because it can better facilitate the high mobility of remote workers and digital nomads.

Furthermore, adopting the formulary apportionment presented by Professor Brauner will also provide a systematic way to allocate income across different jurisdictions based on a set formula. This formula considers factors such as the proportion of work performed, the number of clients, and the revenue generated in each jurisdiction. For example, if a digital nomad generates income by working in multiple countries, the income would be divided among countries based on the formula. This method ensures that the allocation of taxing rights of digital nomads, which are highly mobile, is done effectively. Therefore, enhancing tax fairness by aligning tax obligations with economic realities, closing loopholes for tax evasion, keeping tax competition under control, and reflecting modern work practices.

Countries should also continue developing digital nomad visa programs but align these visas with the recommendations in this thesis. By aligning the visa program with these recommendations, they will guarantee that remote workers and digital nomads can continue to work abroad while continuing to guarantee that these individuals are keeping up with their tax obligations and not turning their countries into tax havens.

Reforming the tax system to reflect the digital economy creates a fairer tax system to tax remote workers and digital nomads. A fairer tax system would reduce the risk of double taxation and legal uncertainties, promote neutrality, and facilitate remote working. The new system would support broader economic development and provide necessary public investment by ensuring that tax revenues are distributed fairly.

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