FACULDADE DE DIREITO
UNIVERSIDADE NOVA DE LISBOA

**Irina Branco da Silva**

# COMPETE NOT COOPERATE

## Dematerialization of residence nexus under economic competition in the EU

*Example of e-residency programme of Estonia*

A thesis submitted in partial fulfillment
of the requirements for the degree of
Master of Law in International and European Law

Supervisor:
Rita Calçada Pires, PhD - Professor at the Law School of the New University of Lisbon

June 2018

FACULDADE DE DIREITO
UNIVERSIDADE NOVA DE LISBOA

**Irina Branco da Silva**

# COMPETE NOT COOPERATE

## Dematerialization of residence nexus under economic competition in the EU

*Example of e-residency programme of Estonia*

A thesis submitted in partial fulfillment
of the requirements for the degree of
Master of Law in International and European Law

Supervisor:
Rita Calçada Pires, PhD - Professor at the Law School of the New University of Lisbon

June 2018

# RESEARCH ETHICS DECLARATION

The present work is an individual endeavour of the author. It is based on information gathered from various public access sources that are duly referenced: at first, when the citation occurs in the text and then the source is also listed under Bibliography section.

**This thesis contains 157 320 characters with spaces and footnotes.**

# DECLARAÇÃO DE COMPROMISSO ÉTICO

O trabalho apresentado e um esforço individual da autoria própria. A análise é baseada sobre informações adquiridas das fontes do acesso público que foram devidamente identificadas inicialmente nas referências de rodapé e depois também na secção bibliográfica.

**A tese ocupa 157 320 caracteres incluindo espaços e notas de rodapé.**

# ACKNOWLEDGEMENTS

Writing this thesis has proved to be a challenging and at the same time joyous experience – challenging, because it became obvious rather quickly that in the process of sifting through the information gathered on the topic, the angle of the investigation was constantly shifting and the preliminary ideas and beliefs were continuously morphed to accommodate each additional morsel of data. However, this realization is exactly what made this experience also joyous, because there is a very specific pleasure to be derived from the process of gathering, systemizing and analyzing various types of information (as overwhelming as it can be for a neophyte investigator) through which the ideas crystallize and merge to almost imperceptibly reveal the logic and even "inner beauty" of the researched topic. Admitting that the title of this work was changed more than a dozen of times and the total number of written pages could have rivaled that of Leo Tolstoy's War and Peace, it is with great pleasure and a slight hesitation that I present it to the illustrious jury, alas, unknown to me at this point in time.

It is undeniable that this work benefitted greatly from the supervision of the knowledgeable, kind, wise and patient Rita Calçada Pires, who endured and encouraged the ever-changing unfolding of the research path. Not only was she involved in the creation of this work for the entire duration of the investigation, but her example of well-structured and thorough organization of information demonstrated through the International Tax Law classes that I attended as a Master's student, served as inspiration for the work organization during the data gathering and processing phases.

On a more personal note I would like to acknowledge my love and appreciation for another very patient and well-organized person, who unflinchingly endured this investigation (even though, it has to be noted, suffering a significant blow to the general quality of his life) – my wonderful husband Pedro, whose support, love and generosity made this experience possible.

Many other people and organizations were the encouragers and enablers of this work – from the Nova Law School and its wonderful staff, who were always there

to answer any scientific, technical or administrative questions; to Distinguished Visiting Professor Jeremy Sarkin, who generously shared his vast knowledge, the materials and his valuable time to discuss the methodology and practical organization of scientific research at the earlier stages of this enterprise. A special thank you also goes to Ana Carrapato – my guardian-angel and colleague at the research centre CRIA at the Department of Social Sciences and Humanities of the New University of Lisbon, and Francisco Freire – the principal investigator of the CAPSAHARA project[1] that I work for, who both were more than accommodating and superlatively humane while dealing with my juggling the superposing responsibilities in the project and deadlines close to the end of the Master's thesis delivery period.

My amazing parents, of course, are also to be thanked, however, given the word count limitations I would not be able to express the entirety of my gratitude, love and appreciation for them in an adequate manner.

[1] The project is funded by the European Research Council's Starting Grant N716467 and hosted by CRIA and FCSH.

## LINGUISTIC CHOICES AND ATTRIBUTION:

**1. Language:** Despite the fact that this thesis is written in English the quotations are formatted according to the Portuguese Norms NP405-1 and NP405-4, conforming to the university regulations. First reference is made in full, while the consequent ones only mention the author, first words of the title and the number of the page(s). The orthography is that of the British English; however, the author admits being heavily influenced stylistically by the American version of the language, which will most likely become obvious**.** The title page is translated into English for the sake of the coherent language use, while the declaration of academic integrity and the abstract are in both English and Portuguese.

**2. Point of view and voice:** throughout the work, with the exception of the acknowledgements part, there has been used the third person point of view and passive voice, even though it is not a personal stylistic preference of the author. The rationale behind such a choice is to limit personal emotional involvement in the researched subject, which could be triggered by using first person pronouns in active voice.

**3. Choice of non-academic sources:** Statistical data and a part of general information are gathered through reliable online sources, such as official websites of the governments and the EU institutions, as well as those of reputable international organizations (e.g. OECD, IMF, NATO etc.). For the convenience of the readers of the digital copy when possible a direct link to the materials is provided in footnotes, streamlining the verification process. For the academic articles without direct link, the abstract link is provided instead.

**4. Attribution given to the author of a second-level source:** The author of this thesis made a conscious decision to “quote a quote” when applicable, i.e., the first attribution is given to the author of the work in which the information regarding another academic work was initially found (as In AUTHOR, *…*), even if it was possible to consult the work in question. It feels like the right thing to do, as sometimes without such guidance some valuable sources of information might have not been discovered. However, when such second-level source is not quoted in the body of the first mentioned work, but only listed in its bibliography section, no specific attribution to the author of the first work is given. When more information than covered by the aforementioned first work was later used from that second-level source found through that work, the following attribution is given directly to the original (i.e. the second-level) source.

**5. Foreign language terms:** when a term or expression used in the text in language other than English (including Latin), it is in *italic*. The meaning, if not in common usage or easily understood from the context is explained in references.

**6. Use of abbreviations:** The first use of abbreviation is usually follows in the brackets after the full name of specific terms, names of organizations and other etc. Consequently in the text only abbreviation is used.

# LIST OF ABBREVIATIONS

| | |
|---|---|
| **CIT** | Corporate Income Tax |
| **CBI/RBI** | Citizenship/Residence by Investment |
| **CCCTB** | Common Consolidated Corporate Tax Base |
| **CIT** | Corporate Income Tax |
| **CPS** | Cyber-Physical Systems |
| **DTAA** | Double Tax Avoidance Agreement |
| **eID** | Electronic Identity |
| **FDI** | Foreign Direct Investment |
| **GDP** | Gross Domestic Product |
| **HNW** | High Net Worth |
| **IIP** | Immigrant Investor Programme |
| ***infra*** | in the following text |
| **MAP** | Mutual Agreement Procedure |
| **MNE** | Multinational Enterprise |
| **MS** | Member State |
| **OECD** | Organisation for Economic Cooperation and Development |
| **p. (*pl*.pp.)** | page(s) |
| **para (*pl.* paras)** | paragraph(s) |
| ***passim*** | throughout the text |
| **PE** | Permanent Establishment |
| **PoEM** | Place of Effective Management |
| **PPP** | Public-Private Partnership |
| ***supra*** | abovementioned |
| **TEU** | Treaty of the European Union |
| **TFEU** | Treaty of the Functioning of the European Union |
| **UN** | United Nations |

# ABSTRACT

Under the conditions of growing economic pressure accentuated by the ageing of European population in conjunction with low fertility rates, the Member States face an “existential dilemma” - to continue fostering humanistic approach and uphold the European values through closer cooperation in economic, mobility and tax matters imperative for the functioning of the single market in the increasingly globalized world, or to engage in “soft wars” of competition for taxpayers, skilled workforce and innovative start-ups. Within the scarcity mentality of zero-sum game, the competition seems a rational choice of a sovereign state that becomes more and more “entrepreneurial”. Indeed, by offering competitive tax rates and beneficial regimes or even political membership in return for a lump-sum donation or generous participation in local economy, employed by various immigrant investor programmes (IIPs), the states are capable to attract investments and high-net worth individuals (HNW). However, drawing on a large body of academic research, this thesis presents arguments that such strategies are shortsighted, as the investments and donations are mostly a one-off deal and the pool of the high-net worth individuals is small by comparison with the rest of the population in need of extra funding from the welfare state. Another consideration of such competitive strategies is the risk of the hollowing-out of the notion of citizenship and political membership in course of such competitive practices and the consequential danger that it holds for the democratic societies, especially in smaller countries. This work analyses the role and development of residence nexus in the governmental instruments of economic competition within the EU and argues that the innovative public administration programme of e-residency pioneered by Estonia as a welcome addition to, if not a desirable substitution for, such instruments under the current social and economic state of European affairs.

***Key words: residence nexus, harmful tax practices, RBI/CBI, IIP, e-residency, public sector innovation, “country-as-a-service”.***

# RESUMO

Os Estados Membros, sob as condições da crescente pressão económica acentuada pelo envelhecimento e pelas baixas taxas de fertilidade da população Europeia, enfrentam um dilema "existencial": ou continuarem a promover a abordagem humanista e sustentar os valores europeus através de uma cooperação mais aprofundada nas matérias de economia, mobilidade e fiscalização que são fulcrais para o funcionamento do mercado único europeu num mundo exponencialmente globalizado; ou adotarem uma política da "soft wars" – de competição e concorrência pelos contribuintes, trabalhadores altamente qualificados e empresas inovadoras. Dentro de a mentalidade de escassez e um jogo de soma nula, para um estado soberano e cada vez mais empreendedor a competição parece a ser uma escolha racional. Em oferecer as taxas de fiscalização favoráveis, regimes beneficiais ou até filiação política contra uma contribuição pecuniária ou um significativo investimento na economia local – as práticas enquadradas nos vários programas de "investidores imigrantes" – os países conseguem atrair capitais e indivíduos com elevado património líquido. No entanto, alicerçando-se num conjunto das publicações académicas, a tese defende que estas estratégias são míopes desde que as contribuições monetárias sejam pontuais e o leque dos candidatos abastados é pequeno em comparação com o resto da população que necessita os fundos suplementares do estado-providência. Uma consideração adicional acerca dos programas competitivos é um risco de esvaziamento da noção de cidadania e de filiação politica que ameaça especialmente os países mais pequenos. Este trabalho analisa o papel e o desenvolvimento do nexo da residência nos instrumentos governamentais da concorrência económica na EU e argumenta que o programa-inovador da administração publica da Estónia sob nome de "e-residency" é uma bem-vinda adição, se não for substituição, aos programas instrumentalizadas pelos vários estados membros no atual contexto económico e social europeu.

***Palavras-chave: nexo de residência, práticas fiscais prejudiciais, RBI/CBI, IIP, e-residency, inovação do sector público, "estado-como-serviço".***

# INTRODUCTION

*"Legislation should create a market that ensures minimum standards, but policymakers must not fall into the trap of preventing innovation because of unsubstantiated worries or obscure fears. The mindset of politicians is the key to innovation".*

Materials of the conference ***Embedding Digital Into Societal Challenges***, Brussels, 2017[2]

*"The art of taxation consists in so plucking the goose as to obtain the largest amount of feathers with the least amount of hissing."*

Attributed to Jean-Baptiste Colbert, French statesman, Minister of Finances under Louis XIV (1665- 1683).[3]

[2] Embedding digital into societal challenges - A conference took place in Brussels during the Estonian Presidency of the EU Council, the programme can be found here - https://www.eu2017.ee/sites/default/files/2017-12/ETAG_detailne_programm.pdf

[3] This phrase can be found in many taxation dedicated texts, e.g. ROTHBAND, Murray N. – Economic Thought before Adam Smith: An Austrian Perspective on the history of Economic thought, Vol. 1, Auburn, Alabama: Ludwig von Mises Institute, 2006. Available online: https://mises.org/library/jean-baptiste-colbert-and-louis-xiv

Another source is STIGLITZ, J - On Liberty, the Right to Know, and Public Discourse: The Role of Transparency in Public Life. Oxford Amnesty Lecture, Oxford, 1999. This reference appear in MOURÃO, Paulo – Fiscal Illusion Causes Fiscal Delusions – Please be Careful! Interntional Conference on Global Security, Safety and Sustainability. Global Security, Safety, and Sustainablity, ICGS3, 2010, pp. 232-237.

The closest direct source can be that of the digital French Language Corpus – Trésor de la Langue Française Informatisé – under definition of verb "***plumer***" at 2, b): 1581, *plumer l'oye sans la faire crier* «faire des exactions sans qu'il y ait des plaintes» (Froumenteau, *Le Secret des finances de France,* III, 67); (Which can be translated as following: *pluck the goose without making it hiss* «impose taxes without causing complaints»). Can be seen here : http://stella.atilf.fr/Dendien/scripts/tlfiv5/visusel.exe?12;s=818895015;r=1;nat=;sol=1;

It is commonly observed that the independent states around the world are increasingly involved in international trade and cross-border financial transactions, exchanging goods, services and capitals, including human capital, at ever growing speed.[4] Sustained economic growth is topping every state government's list of priorities.[5] However, the economic, political and social makes and current situations of those states vary greatly, and so do their strategies for optimizing those situations, while ensuring that policy making stays within the constraints of international regulations. The national economy is understandably a salient focus of such optimization strategies, even more so since the developed countries around the world are faced with various challenges, including the ageing of population[6], which shifts the costs of the welfare state to the shoulders of fewer and fewer active workers. One of the major concerns of the welfare economies is securing sufficient public revenues that would provide for the wheels of the social security systems "go round and round". As the majority of public expenditure is funded by government's collected taxes, the strategies aimed at broadening the tax base and increasing taxes are a logical solution for increased expenditure. However, as it follows from the epigraph attributed to Jean-Baptiste Colbert, it was noted already at least several centuries ago that the "feathers-to-hissing" ratio of those measures is an important consideration when it comes down to their implementation. From the rational choice/action theory perspective[7] that states that any rational decision maker seeks to maximize their profit/utility while minimizing costs/inconvenience,[8] a desire to find (read "tax") a larger "goose", so-to-speak, makes perfect sense, therefore it is not a surprise

[4] Among many other works: MATTEIS, Alessandro de – International Trade and Economic Growth in a Global Environment. Journal of International Development. 16, 2004, pp. 575-588.
[5] See, for example, PHILLIPS, Peter C.B.; DONGGYU, Sul – Economic transition and growth. Journal of Applied Econometrics, 24, 2009, pp. 1153 – 1185.
Together with other two pillars of sustainability – environmental protection and social equity – the OECD names the economic development as indicator of policy performance. In OECD – Policy Performance and Governance Capacities in the OECD and EU: Sustainable Governance Indicators 2017. Bertelmann Stiftung, 2017, p. 7, *passim*.
[6] More about this and other societal challenges can be found at the official EU website's page Societal Challenges page at the European Commission (in English) http://ec.europa.eu/programmes/horizon2020/en/h2020-section/societal-challenges
[7] Both names are used to designate the belief that an agent or an actor makes the choice after thorough considerations of costs and benefits of their actions and weighing their consequences.
[8] For a well-written account of role of rational choice in international relations see, for example, GUZMAN, Andrew – How International Law Works: A Rational Choice Theory. Oxford: Oxford University Press, 2008.

that various states around the world start to compete for the well-off prospective tax-payers.

Some of the tax collection optimization strategies employ rather radical solutions that might even move them into the category of stratagems, as many members of the international community are not ready to acquiesce to such policies as, for example, the infamous residency and citizenship by investment and immigrant investor programmes (RBI, CBI, IIPs). Cyprus, Malta and several other states created special political-economic instruments that allow wealthy individuals from around the world acquire a national citizenship or a residence permit that can lead to citizenship in exchange for pecuniary contributions, investments and participation in local job markets. According to the provisions of Article 20 of the TEU[9] the European Union extends its citizenship to all nationals of Member States, meaning that it includes those who acquired the nationality not through naturalization process but by investment. Following the complaints by several Member States, the European Parliament debated starting dialogues regarding the rule of law situation.[10] But despite these protests the programmes that allow surpassing the national naturalization paths are still a part the MOs of more than dozen EU countries, with more of those being put into use with each year.[11]

Unambiguously conceived with an impact on the local economy in mind, those programmes are built on the different forms of community membership and give access not only to the special fiscal regimes and entry conditions, but also to the privileges that such membership provides. Be it residency or citizenship delivered in exchange for investment, transfer of capital or donation to the national institution, it is a variation of acquisition of the membership – or naturalization process and as such could be seen as a special case of immigration.

[9] Treaty on European Union (a.k.a. Maastricht Treaty first singed in 1992, later amended) together with Treaty on the Functioning of the European Union (TFEU, a.k.a. Treaty of Rome first signed in 1957, amended since) make up the constitutional legislation of the European Union.

[10] http://www.europarl.europa.eu/news/en/press-room/20171110IPR87818/malta-s-rule-of-law-needs-close-monitoring

[11] Just recently in 2018 Italy announced a flat rate tax for “super-rich” new residents. More information can be found at the Ministry of Economy and Finance’s site (available in English): http://www.agenziaentrate.gov.it/wps/content/Nsilib/NSE/Individuals/TaxRegime+NewResidents+individuals/?page=individuals

Why is this recent surge in offering citizenship and with it the access to the European Union to wealthy individuals? – one may ask. One of the possible explanations is the looming Brexit. The Great Britain had its own investment-friendly regime – a non-domiciled status[12] – that provided wealthy individuals with fiscal residence in London offering a very modest flat tax of £65 000 GBP on income abroad. With Brexit the situation is changing and this benefit will no longer be applicable to the long-term residents (15 year and more). Other countries of the EU might be chasing after those "feathers to pluck" from high-net-worth (HNW) individuals, offering them tax advantages in exchange of relocating their "fiscal business".

The logic of chasing after the HNWs no longer able to benefit from some tax advantageous regimes and poaching new wealthy potential tax payers by offering a "better deal" is a current logic of scarcity of resources (the tax payers in our example) coupled with the first law of classical thermodynamics – the amount of energy (or "money", or "collectable taxes") added to one place, had to be subtracted from some other place, as in classical physics the closed system's energy is constant. However, even if virtually all countries are engaged in one or another form of tax competition (at times borderline harmful), some approaches are more virtual than others and not based on the scarcity logic. Such is the case of the Estonian electronic residency, with which public administration takes an innovative "virtual turn", trying to leverage costs and benefits not only for this small Baltic country, but also for the prospective "geese". The e-residency programme, even if alluding to residence *per se*, does not provide physical access to the country or the EU, instead it grants a remote low-cost (in comparison with amounts of required investments in other programmes) access to Estonian streamlined digital public administration and private services, and to the EU market. With help of these services an e-resident of Estonia can remotely register a company, open a bank account in an Estonian bank or a virtual financial entity, or file and pay incurred taxes – to name just a few options from the list that gets longer and longer with more participants joining this innovative public-private partnership. In contrast to citizenship/residence by investment programmes, this

[12] The definition of domicile according to British regulation is "the country one's father considered his permanent home when one was born": https://www.gov.uk/tax-foreign-income/non-domiciled-residents

solution does not evoke the “genuine link” consideration, as it offers a virtual alternative to political membership. This allows safeguarding the primacy of substance over form and even if Estonia engages, by establishing the electronic residency programme, in the economic/tax competition with other countries, it targets different actors and rather just seeks to influence the moods and actions of rational economic agents while benefitting national economy in a transparent way, which permits it to avoid the suspicion in harmful tax competition practices. This work will present and defend the dematerialized residence as a viable alternative to immigrant investor programmes.

The thesis employs an interdisciplinary socio-economic approach to legal methodology within the constructivist philosophical paradigm. Apart from the descriptive, it uses historic, comparative, and interpretative analysis of mixed data, such as national and international legislative acts, economic reports and surveys, statistics from national and international governmental bodies and NGO’s, and, for the most part, recent academic literature from the areas of legal, political, economic and interdisciplinary studies, providing empiric examples, when necessary, by citing publications in the press and online media.

The work is organized in four parts. Part one sets the scene by providing the definitions and general description of the background and the essence of the situation of competition for taxpayers in the European Member States. Part two analyses the role of the residence nexus in various citizenship/residence by investment programmes and beneficial resident regimes implemented by the Member States in effort to improve tax revenues and stimulate local economy by attracting financial capital into country. It covers several cases from the EU countries with tax advantages tailored to capture human capital. The summarising the entire conversation conclusion points out the risks posed by the commodification of political membership under conditions of economic competition. Part three is entirely dedicated to the electronic residency of Estonia and argues that this innovative approach, even though is specifically designed to fit the needs of this rather small and still developing country with its modest share of natural resources, brings to the table some interesting solutions overcoming the scarcity mindset and creating additional tax revenues, local jobs and even future potential HNW taxpayers almost “out of ether” without jeopardizing the national political membership value. This part concludes with an analysis of the potential benefits and necessary pre-conditions for the implementation of an electronic residency programme elsewhere, contributing to the practical applicability of the work. The general discussion and conclusions give brief overview of the covered topics and point out one last time the solution-oriented nature and potential benefits that the virtualization of nexus of residence is capable to bring about, while paying attention to possible pitfalls and areas that might require further investigation.

# PART I: DELINEATION OF THE SCOPE OF THE RESEARCH. TAXATION. BACKGROUND OF THE EU STATES' COMPETITION FOR RESIDENTS

Not attempting to provide a holistic overview of the place of the residence nexus in the subject of economic competition or international taxation, this part only delineates the interconnected areas of political, social and economic activities that influence the development of the role of residence in the international fiscal regulations.

## 1.1 Scope of research

The economic and tax competition, though it exists around the globe, plays specific role in the dynamics of the relations between the European Union Member States that have been challenged by the impending Brexit and the rise of populist and nationalist movements throughout the EU. The unfortunate growing distance between the EU countries could be exemplified by the increasingly alarming political changes in Hungary, Austria or Poland that all seem to steer towards more closed and exclusive national regulations, in contrast to the diachronic development of the global vision of the EU as an increasingly open and inclusive political and geographic space that encourages all kinds of cooperation and mobility. The balance between the economic growth and immigration regulations becomes the main concern of many European countries, as they struggle to maintain their welfare levels facing the decreasing pool of workforce due to emigration and population ageing. Taking for the starting point the significant level of coherence among the EU Member States due to strict membership conditions,[13] which still leaves enough room for asymmetric competition, the research will be limited to the European Union and will discuss various mechanisms of tax and economic competition between the Member States.

[13] European Commission - European Neighbourhood Policy and Enlargement Negotiations: Conditions for Membership. Available at: https://ec.europa.eu/neighbourhood-enlargement/policy/conditions-membership_en

## 1.2 Concepts and definitions

In order to be able to compare the instruments employed by the Member States in their attempt to attract future residents that will bring with them their capitals and skills, it is first necessary to understand the logic behind them. For this reason the first part will outline the notions of state's right to tax, fiscal policy and sovereignty, jurisdiction and slightly expand on the residence- and source-based taxation.

### 1.2.1 Taxation: State's right to tax

Taxes – "a charge (...) imposed by the government on persons, entities, transactions, or property to yield public revenue" [14] – could be seen as a membership "fee" for the belonging to a community, paid against the right to enjoy the freedoms, protection and infrastructure provided by the governments of a nation/state/country, aligning in this way with the concept of "social contract" formulated by such philosophers as John Locke, Jean-Jacques Rousseau, Thomas Hobbes and John Rawls.[15] Resisting the temptation to elaborate on social philosophy of state, society and public administration, it seems appropriate to provide some basic theoretical framing for the fuller presentation of the context of international taxation. In broad strokes the idea of social contract implies that human beings, that are naturally and universally endowed with equal fundamental rights and freedoms by the mere fact of being born in this world and tend to live in groups - societies[16], might choose (and the vast majority does) to relinquish some of those freedoms and rights to social institutions such as governments, which are in their turns are the products of collective intentionality[17]

[14] Idem, p. 1594.
[15] John Locke "Second Treatise of Government (1689); Jean-Jacques Rousseau "Du contrat social" (1762), Thomas Hobbes "Leviathan" (1651), John Rawls "Theory of Justice" (1971) and "Justice as Fairness" (1985)
[16] Confirming the Aristotelian idea of "homo politicus" a human being a "social (or political) animal" in need of others, as is expressed in his work Nicomachean Ethics, book I. See, for example, ARISTOTLE – Nicomachean Ethics. REEVE, C.D.C (transl.) Indianapolis/Cambridge: Hackett Publishing Company, Inc., p. 168.
[17] See SEARLE, John – The Construction of Social Reality. London: Allen Lane, The Penguin Press, 1995, *passim.*

designed to facilitate collective existence, providing security, safety and other public services for the benefits of the common good.[18]

The re-distribution of income is often cited as one of the objectives of the taxation as well, as it supposedly (at least the progressive types of it) alleviates inequality among the population groups of different level of income[19], however, as it is increasingly being pointed out, the taxation system does not operate in the vacuum and cannot be evaluated in disjunction from the overall economic strategy of the state and governmental spending structures and therefore it is extremely hard to tell if it achieves its goal. [20]

In order to impose tax on an individual, the country or jurisdiction has to prove an established tie to the income or capital of that person. The right to tax is based on either sourcing or benefit theory[21]. The sourcing theory of taxation states that the tax should be paid at the source of income or gain. The benefit theory claims that taxes should go to the jurisdiction where the most of the benefit was derived from. Usually the fact of actually residing on the territory of a country for over 183 days is a heuristic tool for tax residency basis[22].

### 1.2.2 Taxing Competitively

[18] Common good is another philosophic notion that has been debated since Plato and Socrates. For more detailed account of the history of the idea of common good in international relations see, for example, MANSBRIDGE, Jane - Common Good. In LAFOLETTE, Hugh (ed.) – International Encyclopedia of Ethics. New Jersey: Blackwell Publishing Ltd., Vol.2. 2013, pp. 913-926.

[19] See, for example, SUGIN, Linda – Theories of Distributive Justice and Limitations on Taxation: What Rawls Deamands from Tax Systems. Fordham Law Review, 72:5, 2004.

[20] For a full overview of the problem of distribution objective in taxation one could get acquainted with the views of the authors presented in PAUL, Ellen Frankel; MILLER, Fred D., Jr., PAUL, Jeffrey (eds.) – Taxation, Economic Prosperity and Distributive Justice. Cambridge: Cambridge University Press, 2006.
The capabilities approach defended by Amartya Sen[20] is one of the attempts to address the problem of equality from the beyond-distribution logic. See more on this topic in SEN, Amartya – The Idea of Justice. Cambridge, Massachusetts: The Belknap Press of HUP, 2009.

[21] Among others this division is defended by SLEMROD, Joel – The consequences of taxation. in PAUL, Ellen et al (eds.), – Taxation, Economic Prosperity ..., pp.73-74.

[22] The details of tax residence requirements are usually reflected in national tax laws and Double Taxation Avoidance Agreements between jurisdictions. Both UN and OECD provide model conventions with a list of tie-breakers for tax residence considerations.

In the competitive environment, the countries interested in attracting investments and taxpayers of certain income and value for local economy have to navigate the labyrinth of source-benefit tax types in relation to individuals and legal entities and adjust those of the tax regimes that have most impact on the area of economy the country is interested in investing into. For example, in current strategies to attract specific groups of taxable residents, the states are following the logic of residence-based right to tax, and in the instruments that are aimed to attract capitals they are following the logic of source-based right to tax. The tax oversight institutions such as Organization for Economic Cooperation and Development (OECD) and the United Nations[23] (UN) are attempting to create a balanced approach between two types of taxation which are affecting differently in asymmetric initial conditions with lesser developed countries benefitting from the source-based taxation (as they mostly import capitals they need for economic stimulation) and the more developed countries that usually are exporters of capitals and are benefitting from the residence-based taxation principles. In the EU the best practices of taxation gathered under an umbrella term of "good tax governance" resulting in the promotion of the idea of fair tax competition (in contrast to the OECD's "harmful tax practices"[24]) that outlines which principles are considered "fair play" ensuring a certain level of cooperation in tax matters, including high levels of transparency and information exchange.[25]

| | **Origin (where X comes from)** | **Reception (where X is used)** |
|---|---|---|
| | **Source principle** – taxed where gained (employed, invested) (non-resident local income of source jurisdiction – | **Residence** principle – recipient lives and uses X in the taxing jurisdiction. |

[23] The UN Committee of Experts on International Cooperation in Tax Matters in particular. More info can be found here: https://www.un.org/esa/ffd/tax/
[24] See OECD – Harmful Tax Practices – 2017 Progress Report on Preferential Regimes. Avialable online at: https://www.oecd-ilibrary.org/taxation/harmful-tax-practices-2017-progress-report-on-preferential-regimes_9789264283954-en
[25] HJI PANAYI, Christiana – The Europeanization of Good Tax Governance (August 19, 2018). Yearbook of European Law, 36:1, 2017, pp. 442-495. Available online at: https://ssrn.com/abstract=3105350

| | | |
|---|---|---|
| **Income tax** | exemption (source tax principle) or credit (reception tax principle) in residence country)<br>**Withholding tax rates** – source principle – incentive for capital inflow from "non-residents" – also bank secrecy law to protect foreign investors.<br><br>**Labour income** – long-term – source of income. | (world-wide income taxation of residents).<br>Capital, dividend, interest income – (mostly) **credit method** (taxation at residence country rate) – difficult to enforce for underreporting.<br><br>**Temporary labour income** (under 6 months) – residency of the worker with tax credit in source country.<br>– risks: illegal avoidance by underreporting. |
| **Corporate tax** | **Domestic source** of resident and non-resident companies<br>**Tax arbitrage:** shifting to low-tax jurisdictions profit generating activities or book profits.<br>**FDI**: moving production to low-tax countries.<br>**Transfer pricing, thin capitalization** – expenses to deduct in high-tax and profits in low-tax jurisdictions. | **World-wide income** of domestic resident companies.<br>Double taxation – mostly credit (up to domestic rate), but in the EU many give exemptions. |
| **Consumption tax** | **Origin principle** – taxed where X comes from (the exporter) (e.g.: The EU VAT on goods, except cars) | **Destination principle** – Recipient, consumer (importer) pays tax for X. (e.g.: GATT Art.III, TFEU art |

| | | |
|---|---|---|
| | | 110,111; The EU VAT on (digital) services) |
| **Relocation of assets** | Relocation of tax claims | |
| **Relocation of tax payer** | | Relocation of tax claims |

**Table 1. Principles of source and residence in different forms of taxation and their relations to relocation of assets and tax payer.** *Author's synthesis based on various sources from bibliography section.*

The proponents of tax competition are often arguing that it influences positively governmental efficiency, forcing public administration to improve business infrastructure, allocate resources strategically, cut non-productive outlays of public funds and optimize its policies. HAN, PIERETTI and ZOU[26] argue that tax competition can improve infrastructural competitiveness of asymmetric countries, given the disparity is not too great and the capital is mobile. However, the asymmetric starting points of competing jurisdictions more often than not stifle potential improvement at times leaving the government worse off as a result of the competing environment.[27] Echoing this opinion, PETER DIETSCH[28] doubts the ability of tax competition to help efficiently allocate resources and control government waste finding such claims largely unfounded. Returning to the arguments *supra* regarding the efficiency of redistribution objectives of taxation, there are also those who consider that it falls short of achieving meaningful results in redistribution under the conditions of tax competition, because with taxes "put on the market", the treaty shopping inevitably fragmentizes fiscal norms. This fragmentation and "marketization" of international taxation undermines the legitimacy of states to impose tax. An in its turn the fragmentation and

[26] HAN, Yutao; PIERETTI, Patrice; ZOU, Benteng – Does Tax Competition Increase Infrastructural Disparity Among Jurisdictions? Review of International Economics, 26:1, pp. 20-36, 2018. Available online at: https://ssrn.com/abstract=3098548

[27] CAI, Hongbin; TREISMAN, Daniel – Decentralization, globalization and public policy. American Economic Review, 95:3, 2005, pp. 817-830.

[28] DIETSCH, Peter – Catching Capital: The Ethics of Tax Competition. New York: Oxford University Press, 2015.

marketization of sovereignty "erodes states' monopoly over coercive powers as well as their ability to give expression to the collective will of their constituents".[29]

It should be also mentioned that the redistributive goals that taxation seeks to achieve can come about not only thanks to transfer and tax policies, but also via labour regulations, such as limiting retirement age and minimum wages, gender and affirmative action policies etc.[30], but such specific analysis is beyond the scope of the current work.

### 1.2.3 Fiscal policy

Tax regulations are a part of a country's fiscal policy, which in its turn can be defined as "government intervention in the economy through manipulation of government revenues and disbursements, for the purpose of influencing the course of the economy."[31] State attempts to influence the economy through policies, whose aim is to optimize the allocation of resources, (the alleged) distribution of income and stability.[32] When countries engage in tax competition they are employing strategic expansionary fiscal policy – increase in government spending and tax cuts which objective is to provide fiscal stimulus.[33] The fiscal theory is closely related to macroeconomics and operates with such notions as aggregate product and income. It is also out of scope of the current work to give a detailed account of fiscal theory, but it is useful to point out that the main four indicators in fiscal theory is consumption (a sum of consumers' expenditures), investment, government expenditures and foreign trade (imports and exports).[34] The early theories were influenced by Keynes' theory of income determination[35]

[29] DAGAN, Tsilly - International Tax Policy: Between Competition and Cooperation, Cambridge Law Series, Cambridge University Press, Clays: St Ives plc, 2018, p. 10.
[30] KYRIACOU, Andreas P; MUINELO-GALLO, Leonel; ROCA-SAGALÉS, Oriol – Redistributive efficiency in 28 developed economies. Journal of European Social Policy. 2017,
[31] NAGHSHPOUR, Shahdad – Fiscal Policy within the IS-LM Framework. In ROMERO, Philip J.; EDWARDS, Jeffrey A. (Ed.) Economics Collection, New York: Business Expert Press, 2014, p. 4.
[32] ZIELNIEWICZ, Agata – The Swiss "success Story" of Sustainable Public Finance: Debt Restrictions and Budgeting Processes in the Swiss Confederation. In MORRISON, F.L. (ed.), *Fiscal Rules - Limits on Governmental Deficits and Debt*, Ius Comparatum - Global Studies in Comparative Law 20, Cham: Springer International Publishing, 2016, p. 268.
[33] DEARDORFF, Alan V – Terms of Trade: Glossary of International Economics. New Jerseay at al.:World Scientific Publishing Co. Pte. Ltd., pp. 97, 107
[34] NAGHSHPOUR, Shahdad – Fiscal Policy..., p. 5.
[35] Johan Maynard Keynes published The General Theory of Employment, Interest, and Money in 1936.

and the aim of early fiscal policies was alleviating the "business cycles" consequences, when overproduction and/or under-consumption lead to economic disequilibrium. The government was seen as a plausible intervener in the capitalist system to regulate economic misbalance when "the invisible hand fails".[36]

The optimal tax theory is a search for the most efficient equity-efficiency trade off in fiscal policy. A plethora of eminent international experts have written extensively on prospective optimal taxation model, however, as the IMF former director VITO TANZI put it, "no system ... gets the approval of the majority of tax specialists".[37] One of the reasons for it is that fiscal regulations are ultimately aimed to influence the economy and in the economy it is very hard, almost impossible to predict the outcome of an action based on previous experience because of the constant dynamic change of the involved parties and their relations, as well as an array of externalities.[38] Another factor that makes the optimisation of the taxation difficult for open economies is the incompleteness of the information regarding the elasticity or sensitivity of the tax base[39] – the mobility of capital, labour and property – the usual "taxables".

### 1.2.4. Jurisdiction vs. sovereignty

In public international law a jurisdiction "is concerned with (...) the function and regulating and delimiting the respective competences of States."[40] According to Black's Law Dictionary, jurisdiction is a "government's general power to exercise authority over all persons and things within its territory". [41] In regard to taxation

[36] Reference to Adam Smith's ideas of socially beneficial redistribution of resources as a result of capitalist self-interested actions in NAGHSHPOUR, Shahdad – Fiscal Policy within the IS-LM Framework. In ROMERO, Philip J.; EDWARDS, Jeffrey A. (Ed.) Economics Collection, New York: Business Expert Press, 2014, p. 7.
[37] TANZI, Vito – Foreword: Common Pressures to Reform European Tax Systems. In BERNARDI, Luigi; PROFETA, Paola (eds.) – Tax Systems and Tax Reforms in Europe. London: Routledge, 2004.
[38] See, for example, NAGHSHPOUR, Shahdad – Fiscal Policy ..., p. 114.
[39] For a thorough account of the competition under incomplete information see BECKER, Johannes; DAVIES, Ronald B. – Learning to Tax: Interjurisdictional Tax Competition Under Incomplete Information. CESifo Working Paper Series, 6699, 2017. Available online at: https://ssrn.com/abstract=3075759
[40] MANN, F. A. – The doctrine of jurisdiction in international law. 111, RCADI, Brill, 1964, p.15.
[41] GARNER, Bryan A. (ed.) - Black's Law Dictionary. Abridged. 9th edition. St Paul, MN: West Publishing Co., 2009, p. 927.

"jurisdiction" is usually a metonym for country as the power to tax is established through national legislation.

The "jurisdiction", however, is different from the "sovereignty", the latter being "the supreme political authority of an independent state", [42] but at the same time the two co-exist within the same territorial limits. The power to tax has to do with fiscal sovereignty – however, as it is often happens in international affairs, there is no single rule on how those sovereignties are supposed to co-relate in cases when the territorial belonging of the individual in question is unclear due to connection to multiple sovereign states.[43] In practice such relations are regulated by treaties and agreements to avoid double taxation and are decided, in theory, on the case by case basis. Within the EU the equal treatment based on the grounds of non-discrimination enshrined in the Articles 18 and 19 of the Treaty of Functioning of the European Union (TFEU)[44]. However, the same non-discrimination principle together with the EU citizenship institute led to effective challenge of the Member States sovereignty in tax matters, as due to established single market with its competition rules and provisions for free mobility of services, capitals, goods and people the non-discrimination in taxation matters gave rise to some legal claims.[45]

Interestingly, the taxation and the citizenship are two areas that Member States insist on having primacy of sovereignty over, and these two are also closely intertwined and instrumentalized in economic competition game as it will be demonstrated *infra*.

## 1.3 Background of competition for residents

It was already mentioned that the current European demographic situation is challenging and it puts strain on the welfare state, which is one of the achievements of the modern democratic society in the EU. Understandingly, the governments search to expand their tax bases and find additional incomes for

[42] Idem, p. 1524.
[43] The EU provides this information to prospective relocating workers on its Work and Retirement pages on the website Your Europe: https://europa.eu/youreurope/citizens/work/taxes/index_en.htm
[44] Treaty on Functioning of the European Union (also the Treaty of Rome). Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012E/TXT
[45] PARKER, Owen – Commercializing Citizenship in Crisis EU: The Case of Immigration Investor Programmes. Journal of Common Market Studies, 55:2, 2017, p. 6.

public expenditure needs. The deterring factor, however, is the high mobility of the capital. The states increasingly are interested in applying more residence-based tax regulations to capital, as if taxed under source-based rule it can escape taxation by relocating abroad if the tax rate there is more advantageous.[46] This high mobility of the capitals forces the jurisdictions to carve special beneficial treatment mechanisms, such as lowering taxes on capitals, providing exemptions for foreign direct investments (FDI) and implementing special tax rulings or "sweetheart deals" in dealings with multinational entreprises (MNEs). "In conditions of tax competition, tax policies almost inevitably become marketized", reminds us DAGAN.[47]

### 1.3.1 Social welfare and societal challenges

As stated earlier, the revenues from taxes are aimed to sustain the national governments and governmental structures that provide public services for the common good of the members of society. Under provisions of the Article 9 of the TFEU the specific attention among other things is given to "adequate social protection" and "protection of human health", as well as employment, education and professional training. This preoccupation with social well-being of the community members is the core characteristic of the welfare state, which redistributes the governmental taxation revenues to the institutions that oversee social protection – low-income aid and health-related subsidies and pensions and directly to community members as unemployment and child-care benefits.[48]

Both The European Commission and the OECD are pointing out the growing speed at which our societies currently face challenges in the area of demographics, energy, environment, social institutions, economy and

[46] E.g..: EGGERT, W.; KOLMAR, M. – Residence-Based Capital Taxation in a Small Opean Economy: Why Information is Voluntarily Exchanged and Why it is Not. International Tax and Public Finance, 9, 2002, pp. 465-482.
[47] DAGAN, Tsilly - International Tax Policy: Between Competition and Cooperation, Cambridge Law Series, Cambridge University Press, Clays: St Ives plc, 2018, p. 2.
[48] CLEMENTS, Benedict; MPOOIJ, Ruud de; GUPTA, Sanjeev; KEEN, Michael (eds. ) – Inequality and Fiscal Policy, IMF, 2015, p. 47.

production[49]. The OECD lists "megatrends"[50] that impact significantly our lives, such as pronounced ageing of the population of the developed countries and growing fiscal pressure on governments, economic shift towards corporations, NGO's and megacities powered by "flow of goods, services, investment, people and ideas (...) enabled by widespread adoption of digital technologies", but "also geopolitical instability, possible armed conflict and new barriers to trade" and "global competition for talent and resources"[51]. The impact of digital technologies continues to grow, role of developers increases and new low-entry markets continue to emerge, disrupting labour markets: "one in ten jobs in OECD countries at high risk of being automated" by 2040.[52]

These developments bring also challenges related to taxation, for example, the interim report of OECD of Tax Challenges Arising from Digitalisation[53] finds the BEPS measures inadequate to alleviate the shortcomings of existing fiscal systems as novel digitalized business MOs challenge the notions of residency, permanent establishment and other tie-breakers used in traditional international taxation. This report also sheds light on growing discrepancies in the approaches to international taxation by different governments – from those who find existing methods adequate for the future to those who call for specifically designed targeted measures to address the growing levels of digitalization of various types of businesses.

According to the Eurostat data, the EU Member States spend approximately half of the collected tax money on general governmental services, such as defence and security, public safety, economic affairs, environmental protection, health, education, recreation and social protection.[54] These numbers, however, are expected to grow in the nearest future due to low birth rates and extended life

---

[49] Adapted from the Societal Challenges page at the European Commission official website (in English) http://ec.europa.eu/programmes/horizon2020/en/h2020-section/societal-challenges
[50] OECD Science, Technology and Innovation Outlook 2016, OECD – summary can be found here: https://www.oecd-ilibrary.org/sites/sti_in_outlook-2016-en/index.html?itemId=/content/publication/sti_in_outlook-2016-en
[51] Idem, *passim*.
[52] Ibidem.
[53] Can be found here: https://www.oecd.org/tax/tax-challenges-arising-from-digitalisation-interim-report-9789264293083-en.htm
[54] The latest update can be found here: http://appsso.eurostat.ec.europa.eu/nui/submitViewTableAction.do

expectancy, which shift the ratio between the working and economically inactive population (children, elderly, incapacitated and students) towards the latter. If currently on average there are almost 58% of active population aged 15 and up and 42% of inactive population in the same group, in the next 50 years the inactive population is thought to reach 78%.[55] Given this shift in age dependency ratio, the welfare state in its current form is under significant risk, as more and more pensions and health-related benefits are to be demanded in the future with less people participating in labour market, making contributions to the social security and pension funds.

### 1.3.2 Public expenditure, public debt and its relation to public services

When government revenues do not cover its expenditures occurs public deficit and sovereign debt increases. There is a negative correlation between sovereign debt and provision of public services, as governments have to spend increasing part of their revenues on servicing their debts instead of on public services and goods, as well as trying to decrease the debt amounts.[56] Despite legal limitations and caps that exist to control the amounts of governmental deficits and debts, majority of the states of the European Union are well above the threshold of the 60% of GDP level, with only a few countries below the European Commission recommendation[57].

[55] Can be seen here: http://ec.europa.eu/eurostat/data/database?node_code=proj Go to "Population projections at national level".
[56] ZIELNIEWICZ, Agata – The Swiss "success Story" ..., p. 268.
[57] OECD, General government debt (indicator). 2018. Available online at: https://data.oecd.org/gga/general-government-debt.htm

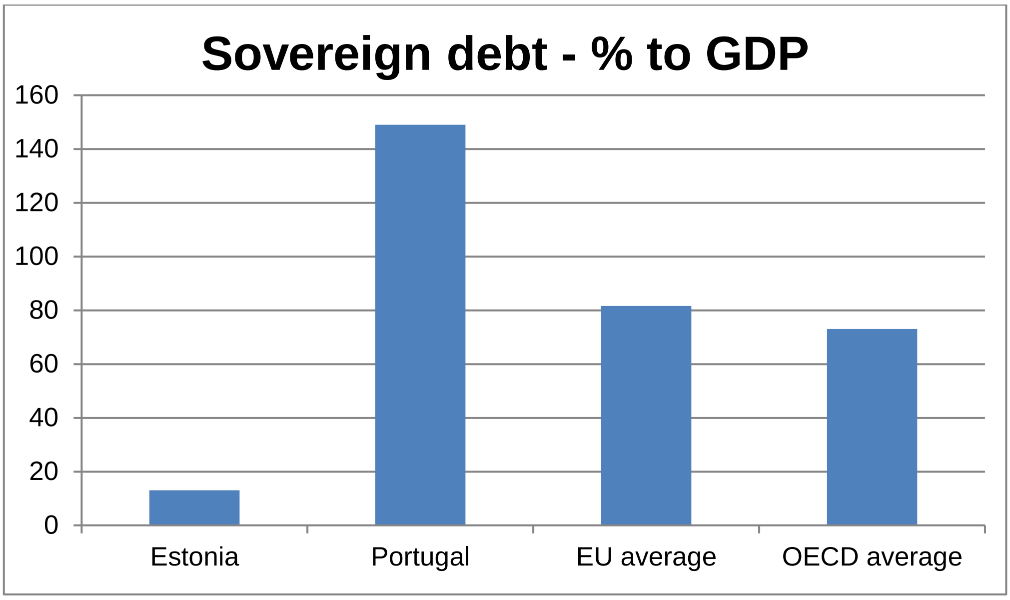


Figure 1. Public debt as percent of GDP. *Author's work based on various sources.*[58]

Even though debt and deficit are generally technical economic terms and might be neutral[59] signifying just an obligation of payment and a prevalence of expenditure over revenue respectively, it has been noted by several authors that claim that governmental deficit and debt are negatively affect the quality and quantity of public goods and services, underlining the importance for the state's ability to provide a sufficient level of public services of keeping public debt low.[60] However, depending on the level of development of economy, it might be focussed on accruing capital and attracting investment. And here the investment-friendly policies come in play, some of which could be well below the neutrality principle.

---

[58] Data used: https://data.oecd.org/gga/general-government-debt.htm OECD (2018), General government debt (indicator). doi: 10.1787/a0528cc2-en (Accessed on 14 May 2018) http://ec.europa.eu/eurostat/statistics-explained/index.php/Government_finance_statistics (Data extracted on 23.04.2018.)and OECD warns rising debt will hit rich countries budgets Financial Tribune February 25, 2018. Can be found here: https://financialtribune.com/articles/world-economy/82463/oecd-warns-rising-debt-will-hit-rich-countries-budgets

[59] See, for example, MORISSON, Fred L. – Fiscal Rules: Legal Limits on Governmental Deficit and Debt. General Report. In MORISSON, Fred L. (ed.) – Fiscal Rules—Limits on Governmental Deficits and Debt. Ius Comparatum – Global Studies in Comparative Law Series, Vol. 20. Switzerland: Springer International Publishing AG, 2016, pp. 5-6.

[60] Reference to MUSGRAVE, Richard A. – The Theory of Public finance: A Study in Public Economy, New York, 1959., in the above reference. In ZIELNIEWICZ, Agata – Swiss "Success Story" …, p. 268

## Conclusion to part I

Membership in the EU became synonymous of three things: democracy, economic openness and welfare state. [61] The currently observed dichotomy in between the Member States regarding the competition and cooperation in economic, tax and mobility matters pushes them to seek solutions and strategies that would be at the same time competitive and cooperative. In the conditions of the European single market and increased mobility in between the Member States and from the outside, the states are in dare need to address the issues of economic viability of traditional public institutions. Facing population ageing, dwindling labour markets and growing need for social security contributions, states are employing pre-existing and newly created financial, economic and tax instruments in order to retain and attract capital and residents.

The ethics of such programmes is beyond the scope of the present work, but the dubious foundation of such investment policies is rather obvious, given that nation-states have reason to value their sovereign identity, but are forced or chose to “devalue” it by making it available for a fee and not through a process of naturalization, which implies knowledge of and respect for the national attributes of power – constitution and legal make up, language, culture. The population’s backlash against such forms of acquired membership is therefore logical, and that is why the investor programmes are often presented to local population as means to improve economy and, consequentially, the well-being of local population. Investments, capital and created jobs generate tax revenues for the countries, which in its turn should lead to increased public spending, notably in areas of social welfare, health and other benefits.

[61] See, for example, GLATZER, Miguel – Tax Reform, Income Inequality and the Welfare State: The Case of Portugal. In LEAMAN, Jeremy; WARIS, Attiya – Tax Justice and the Political Economy of Global Capitalism, 1945 to the Present. USA: Berghahn Books, 2013, p.60-61.

# PART II: INSTRUMENTALIZATION OF THE RESIDENCE NEXUS

One of the intra-state competition instruments is the Immigrant Investor Programmes (IIPs). Currently the states are creating mechanisms to attract wealthy individuals for three main reasons – to receive capital, "generate investment and create more jobs".[62] These attempts often mean that the political membership becomes instrumental in hands of political and economic elites that are succumbing to the logic of market and competition and applying it "to all spheres of human existence."[63] Commercialization of community membership or acquisition of membership in exchange for money has been known from the Ancient Rome times[64]. However, the tailoring of the state policies in order to manipulate the quality and quantity of the country's population in the modern history did not originate in Europe. Canada was one of the first countries to adapt its immigration policy to attract investments and skilled labour still in late 1960's by introducing point systems to measure the "desirability" of an immigrant for the Canadian economy and job market.[65] Migration accounts for the main factor of population growth in developed countries that year after year repeatedly demonstrate low birth rates.[66] Taking in consideration demographic challenges posed by the population's ageing and low natural population growth, immigration

---

[62] SHORT, John Rennie – Attracting wealth: crafting immigration policy to attract the rich. Chapter 18 in HAY, Iain; BEAVERSTOCK, Jonathan V. (eds.) – Handbook on Wealth and the Super-Rich. Cheltenham, UK; Northampton, MA, USA: Edward Elgar Publishing, 2016, p. 364.

[63] Mavelli speaks of the "state", but the notion of political membership fits as it is defined by the state. MAVELLI, Luca – Citizenship for Sale and the Neoliberal Political Economy of Belonging. International Studies Quarterly, upcoming, published online May 16, 2018. Available online at: https://academic.oup.com/isq/advance-article/doi/10.1093/isq/sqy004/4996972?searchresult=1 Similar arguments can be found in PARKER, O. – Commercializing Citizenship in Crisis EU, p. 5.

[64] DZANKIC, Jelena – Immigrant Investor Programmes in the European Union (EU). Journal of Contemporary European Studies, 26, 2018:1, p.64 (pp.64-80).

[65] SHORT, John Rennie – Attracting wealth: crafting immigration policy to attract the rich. Chapter 18 in HAY, Iain; BEAVERSTOCK, Jonathan V. (eds.) – Handbook on Wealth and the Super-Rich. Cheltenham, UK; Northampton, MA, USA: Edward Elgar Publishing, 2016, p.365.

[66] VAN DALEN; Hendrik P.; HENKENS, Kène – Longing for the Good Life: Understanding Emigration from a High-Income country. Population and Development Review, 33:1, 2007, pp. 37-65. Also corroborated by the EUROSTAT data that can be seen here: http://ec.europa.eu/eurostat/statistics-explained/index.php?title=File:Population_change_by_component_(annual_crude_rates),_EU-28,_1960-2016_(per_1_000_persons).png For the country by country report see: http://ec.europa.eu/eurostat/statistics-explained/index.php?title=File:Contribution_of_natural_change_and_net_migration_(and_statistical_adjustment)_to_population_change,_2016.png

is to a degree welcomed, however, facing government deficits and consequential welfare state erosion, governments are tailoring their immigration policies to selectively sift through the mobile labour force and create the conditions for retaining the most skilled. In addition to high-income knowledge intensive labour, countries now compete for the high net-worth individuals (HNW) too. According to BARBULESCU[67], there is an increased evidence of global opening of “mobility corridors for the ultra-rich”.[68] Affluent individuals – even if low in numbers by comparison with the rest of the society – play an important role in the international capital flows and this role was for the long time underestimated and the “wealth elites were mostly ignored, left to their own devices”.[69] However, from the tax collecting authority point of view as long as not involved in criminal activities and otherwise fitting the description of what Kurt Farrugia, a spokesperson for the Prime Minister of Malta Joseph Muscat, calls “the quality persons”[70], they are understandably highly desirable tax residents for any jurisdiction.

This competitive taxation programmes usually involve investments in economy and real estate on behalf of the HNW individual in exchange for receiving an official affiliation with the country that provides beneficial tax treatment or other valuable asset for the affluent person. The property investment is considered a “mainstream investment class” of high-net-worth individuals.[71] The usual real estate markets that especially attract this kind of investors are the “high liquidity” places that can offer a quick reselling of property shall the opportunity or need arise. However, apart from the traditional luxury destination and megacities such as London, Zurich, St. Barths, New York, Courchevel or Singapore,[72] an increasingly significant effort has been made by an array of the EU countries to attract to their shores real estate buyers in exchange for beneficial tax provisions or even residency and citizenship in the country of investment. Which puts the

[67] Quoted by Mavelli as in reference 85 above, p.1.
[68] BARBULESCU, Roxana – Global Mobility Corridors for the Ultra-Rich. The Neoliberal Transformation of Citizenship. In SHACHAR, Ayelet; BAUBOK, Rainer (eds.) – Should Citizenship be for Sale? EUI Working Paper RSCAS 2014/01, European University Institute, Robert Schuman Centre for Advanced Studies, European union Democracy Observatory on Citizenship, pp. 15-16.
[69] FERNANDEZ, Rodrigo et al. - London and New York ..., pp. 2443-2461.
[70] COOPER, Harry – Malta slammed for cash-for-passport program: The super-rich are using the option to buy access to the EU and beyond. Politico (online), 08/17/2016. Available at: https://www.politico.eu/article/malta-cash-for-passports-program-individual-investor-programme/
[71] FERNANDEZ, Rodrigo et al. - London and New York ..., p. 2444.
[72] Idem, pp. 2444-2445.

EU in a rather ethically ambiguous but rationally perfectly reasonable situation: while regulating immigration in order to deal with the influx of refugees and economic migrants from the outside of the EU, countries carve intricate tax benefits and entry facilitating instruments in order to attract more "desirable" foreigners.

As the high-net-worth individuals bear "disproportionate economic significance"[73] in the society and therefore are likely to affect the economies they choose to participate in – the belief (or realization) that many of these people are in constant search for the safe and stable jurisdiction to keep or put to work their fortunes encourages many countries to create specific mechanisms to facilitate prospective relocation of such people. The measures are usually a mix of fiscal, immigration and real estate/banking regulations, aimed at ease of entry and advantageous tax regimes. Those programmes for the EU countries are usually focussed on third-countries nationals[74], as the EU citizens already have access to mobility and can change residence at will "by default". While the programmes have similar objectives, as we will see their requirements differ depending the initial situation of the host country. Some investment schemes are aimed at regular full-time residents (the vast majority of countries around the world have one or another form of such programme), while others are less demanding in regard to physical presence on the territory  One of the mechanisms is the Residency by Investment (RBI) or Citizenship by Investment (CBI) programmes, sometimes implemented under the name of Immigrant Investor Programmes (IIPs).[75]

[73] SANANDAJI, Tino – The international mobility of billionaires. Small Business Economics. New York: Springer, 42:2, 2014, pp. 329-338.
[74] PARKER, Owen – Commercializing Citizenship in Crisis EU: The Case of Immigration Investor Programmes. Journal of Common Market Studies, 55:2, 2017, pp. 332.
[75] SHORT, John Rennie – Attracting wealth: crafting immigration policy to attract the rich. Chapter 18 in HAY, Iain; BEAVERSTOCK, Jonathan V. (eds.) – Handbook on Wealth and the Super-Rich. Cheltenham, UK; Northampton, MA, USA: Edward Elgar Publishing, 2016, pp. 363-380.

## 2.1. Residency/Citizenship by Investment Programmes[76]

The recent case of the commodititification of political membership (and the residence is often seen as a broadening of the citizenship/nationality notion for the tax reasons[77]) was acutely demonstrated by infamous example of Malta's Individual Investor programme[78] that gave access to the European Union to wealthy investors via nationality acquisition. The Maltese programme generated at least 200 million Euro for Malta in the first two years. The citizenship was granted in exchange for about 800 000 Euro "donated" to the national development fund and invested in government stocks and bonds. In addition, the prospective Maltese citizens had to establish the "residency link" to the country by owning at least 350 000 Euro worth piece of real estate for at least a year or rent for a minimum annual rent of 16 000 Euro.

Malta's example is not unique – several other countries are offering citizenship: Bulgaria, Cyprus and Romania, for example, all have citizenship by investment programmes and Hungary just recently paused a permanent residence by investment programme that was aimed mostly at Chinese immigrant investors, but it is expected to resume after the 2018 parliamentary elections[79].

By looking at the comparative table of legal foundations and prerequisites by the country it becomes obvious that the physical presence requirements are minimal in case of such programmes, with the exception for the Bulgaria and Hungary, which set a 6 month rule.

[76] To designate such programmes terms "residency by investment", "citizenship by investment", "immigrant investor programme" and their abbreviations (RBY, CBI and IIPs) are used interchangeably. Where it is important to distinguish between such terms, the necessary explanation is provided.

[77] See, for example, AVI-YOHAN, Reuven S. – International Tax as International Law: An Analysis of the Interntional Tax Regime. Cambridge Tax Law Series. Cambridge et al.: Cambridge Unviersity press, 2007, pp.22-25 or GAISBAUER, Helmut P. et al. (eds.) - Philosophical Explorations of Justice and Taxation: National and Global Issues, Ius Gentium, Comparative Perspectives on Law and Justice, Vol. 40, Cham: Springer International Publishing, 2015, p. 6.

[78] As an example can seen: https://www.politico.eu/article/malta-cash-for-passports-program-individual-investor-programme/

[79] The elections took place on 8 April, 2018. At the time of writing – June 2018 – the programme has not been accepting applications yet. More on Hungarian "golden visa" programme can be found at the official website of the OCCRP – investigative reporting platform uniting more than 40 non-profit investigative centers around the world. Can be found here: https://www.occrp.org/en/goldforvisas/from-china-to-hungary-in-hope-and-fear

| *Country* | *Legal basis* | *Investment* | *Presence* | *Status* |
|---|---|---|---|---|
| *Bulgaria* | Citizenship Law, 16 February, 2013, art. 14 | 1.04 mln€ FDI or .52 mln€ special project from Investment Promotion Act | 1 year permanent residence, 6 months and 1 day physical presence | Citizenship |
| *Cyprus* | 19.03.2014 Decision of Council of Ministers; Art. 111A(2) of Civil Registry and Migration Law 2002-2013. | 5 mln€ FDI;<br><br>2.5 mln€ joint FDI of minimum 12.5 mln €;loss 3 miln€ (bailout), 0.5 mln in real estate plus VAT. | 1 visit for biometric data, permanent residence permit. | Citizenship |
| | Art. 6(2) of Aliens and Immigration Regulations. | for 0.3€ and 0.03 mln€ deposit plus yearly income of 0.03mln€ | 1 day presence | Permanent residence |
| *Hungary* | Investment Immigration Programme suspended 31.03.2017 | 0.3 mln€ in 5 year securities or treasury bonds | 6 months/ year. Notifications of longer absences. | Permanent residence |
| *Malta* | An Act to Amend the Maltese Citizenship Act, Cap 188. | 1.15 mln€ - 0.65 mln donation, 0.35 mln real estate, 0.15 mln investment in bonds or special projects. | 1 year effective residence with not regulated physical presence | Citizenship |
| *Romania* | Art. 8.2(d) of Romania Citizenship Act, May 2009 | 1mln € | 4 years residence, over 6 months physical presence | Citizenship |

*Table 2. Citizenship and permanent residence by investment programmes in the EU. Source: Dzankic, Jelena (2018)*[80]

[80] DZANKIC, Jelena – Immigrant Investor Programmes in the European Union (EU). Journal of Contemporary European Studies, 26:1, 2018, p. 70.

## 2.2 Specific beneficial residence regimes

It has also been pointed out that during the period of 2010-2015 the majority of the countries that introduced investor-resident schemes were those hardly hit by the financial crisis – heavily indebted before or becoming so in its wake – Greece, Latvia, Spain, Cyprus, Bulgaria, Portugal.[81] There is also a noticeable correlation between the sectors of the national market that experience difficulties and the investor programmes – the countries with drop in property prices, encourage property investments etc.[82] Cyprus started its programme as an amend for foreign investors losing large sums of money as a result of the crash of the banking sector and its following the bail-out.

### 2.2.1 Case of Switzerland

Switzerland offers a less traditional tax regime – a “lump-asum” lifestyle tax – for a first time resident or the one returning after at least a 10 years long absence. Such individuals, in case they are not employed and are not planning to execute a gainful activity in Switzerland, are able to benefit from the expenditure-based (“lump-sum”) taxation with the federal minimum of 400 000 CHF (varies by canton). However, the surrogate tax base agreed upon with the local tax authorities must pass the assessment test – the value of tax cannot be lower than it would be for the total of local income (from real estate, securities of local companies, locally issued pensions, royalties, etc.) and foreign-income under the double taxation avoidance treaty. Applicable on the federal level and individually in cantons, this taxation scheme is especially wide-spread in French speaking part. Not all communities are accepting such residents, for example, Zurich had to abandon the regime in 2009 as it was considered discriminatory against the Swiss citizens. The cantons that abolished lump-sum taxation mechanisms will still allow the federal level lump-sum taxation. In exceptional cases when it is in the “the preponderant cantonal fiscal interest” the non-EU nationals under 55 with no ties to Switzerland would be given a residence permit on the basis of such

---

[81] PARKER, Commercializing Citizenship..., p. 7.
[82] Parker names Spain, Latvia, Portugal and Greece, Ibidem.

lifestyle taxation regime.[83] There is a requirement for the intention of a certain physical presence – 6 months – but in reality “

### 2.2.2 Case of Italy

Italy just recently in December 2017 in addition to its regular residence by investment programme started offering a territorial regime which would allow a high-net worth individual benefit from a flat yearly tax of 100, 000 Euro (plus 25, 000 Euro for a family member, if applicable) and have his or her world-wide income exempt from Italian taxation for 15 years. The physical presence, however, is required and the relocation is one of the pre-requisites. The world-wide income taxation used to be a jurisdiction’s default taxation regime for residents, but with increased mobility and in the spirit of competition, more and more jurisdictions find it beneficial to offer exclusions from this rule when potential impact of added value to the economy of the country is at stake.

### 2.2.3 Case of Portugal

By approving the Decree-Law nº 249/2009, of the 23rd of September, Portugal introduced a non-habitual resident regime in 2009. Excessively bureaucratic application process was eventually simplified in 2012 and since then a newly established Portuguese tax resident, who did not have this status for at least 5 previous year, can enjoy a beneficial regime having an attractive flat 20% tax on high value added professional labour income in Portugal, being exempt from the foreign income taxation for 10 years. Peculiarities of the Double Taxation Avoidance Agreement even allows foreign retirees to experience the pleasures of double non-taxation, as in many countries pensions income of non-resident is not taxed, so by being a non-habitual resident in Portugal, a person will not be taxed on his or her pension income in both countries.[84]

[83] KPMG – Lump-sum Taxation – and interesting alternative: International Private Client Services. KPMG AG, 2016. Avaialble online at: https://assets.kpmg.com/content/dam/kpmg/pdf/2016/06/ch-lump-sum-taxation-en.pdf

[84] DELOITTE – Non-habitual residentes: Portuguese special tax regime for inbounds. 2018. Available online at: https://www2.deloitte.com/content/dam/Deloitte/pt/Documents/tax/NHR/EN-NHR-flyer-pensioners2018.pdf

## 2. 3. Regular residence by investment programmes (with full physical presence)

Offer temporary but renewable residence permit potentially leading to naturalization in case of compliance with the requirement for physical presence (except the Greece's case). Also sometimes known as "Golden Visa" programmes, such mechanisms do not grant automatic full citizenship and free movement rights, but still allow unrestricted travel within the Schengen area for a certain period each year. The investment for that is lower than for citizenship – from 250 000 Euro in cases of Latvia and Greece, for example. Another point to make – some of those programmes often do not require extended stays. Portugal, for example, demands 14 days every 2 years, or a week per year.

| Country | Legal basis | Investment | Physical presence |
|---|---|---|---|
| Bulgaria | Arts. 24 (19), (20) of Law on Foreigners | 0.31 mln€ real estate or shares, or 0.127 in poorer regions and 5 jobs. | 6 months and 1 day |
| Croatia | Aliens Act, Arts. 76-78. | Trade company owner of 0.0132 mln € or investing 0.0264 mln plus 3 jobs both cases. | Over 6 months |
| Czech Republic | Act on the Residence of Foreign Nationals, sec. 31. | Limited company with min. Capital 7300 € plus 50 times monthly minimum subsistence capital. | 6 months and 1 day |
| Estonia | Aliens Act, Art. 192. | 0.065 mln € | 183 days |
| France | Decree 2009-114, 11 Sept, 2009. | 10mln € and 50 jobs | over 6 months |
| Greece | Art. 20 of Law No 4251 on Immigration and Social Integration Code. | 0.25 mln € in real estate | no requirement for physical presence, but cannot apply for citizenship |

| | | | |
|---|---|---|---|
| Latvia | Section 23 of Immigration Law | 0.035 mln investment in a company that pays min. 0.04 mln in tax; or 0.15 in a company that employs at least 50 people; or 0.25 mln in real estate, or 0.28mln in Latvian credit liabilities, or 0.25mln deposit in local bank. | 6 consecutive months |
| Lithuania | Art. 45 of Law on Legal Status of Aliens | Company of min. 0.028 mln € plus 0.014 mln capital | Over 6 months |
| Netherlands | Decree of Sept. 23, 2013 on Modern Migration Act | 1.25 mln € investment in local company | Over 6 months |
| Portugal | | 1mln € and 10 jobs | |

*Table 3. Temporary Residence by Investment programmes in the EU. Source: Dzankic, Jelena (2018)*[85]

Even though they are making perfect rational sense from the economic perspective, the programmes aimed at attracting to the jurisdiction the high-net-worth individuals in exchange for political membership raise some brows around the European Union, as many countries are opposing to the instrumental use of political membership, with no "political, social, moral and affective ties", that hollows the meaning of the citizenship and turns the population from "stakeholders" into "stockholders"[86] of the governments.

### 2.4 Temporary Residency Schemes: Competition for (Taxable) Human Capital, Short-Term Skilled Foreign Labour

Tax benefits for temporary high-skilled workers have as an objective to attract qualified foreign work force in the knowledge-intense areas of development and

[85] Dzankic, J. – Immigrant Investor..., p. 7-9.
[86] Mavelli quoting Baubôck.
BAUBÔCK, Rainer – What is Wrong With Selling Citizenship? It Corrupts Democracy! In SHACHAR, Ayelet; BAUBÔCK, Rainer (eds.) - Should Citizenship be for Sale? EUI Working Paper RSCAS 2014/ 01, European University Institute, Robert Schuman Centre for Advanced Studies, European Union Democracy Observatory on Citizenship, pp. 19-22.

research. The benefits are usually designed for several years and it allows those who so desires to acquire permanent residency and then citizenship in the country of employment. Countries compete for highly skilled labour force for various reasons – there is a belief that it positively impacts knowledge-intensive economic sectors, plus these types of workers less compete for public services with local population, better integrate in the labour market and better assimilate into host society.[87] This tendency of labour mobility is beneficial for developed high-income countries and detrimental to the economies and developmental perspectives of the developing low-income countries, which in return feel urgency to invest in higher education.[88]

### 2.4.1 Case of Netherlands

Dutch beneficial tax regime (also known under the name of "30% ruling" and "expat deal") for foreign-hired employees on temporary contracts in professions of specific expertise valuable for Dutch job market (e.g. executives and academia employees). This regime, however is conditional to living more than 150 km away from the borders of Netherlands prior to employment. The gross salary amount is cut by 30% to calculate the taxable base. Used to be valid for duration of 8 years, but was changed to 5 years starting 2019. Partial non-resident taxpayer status and untaxed reimbursement of the extraterritorial costs[89]

### 2.4.2 Case of Norway

Norway is a high-income high-tax Nordic country that has an extensive social protection plan and obligatory 2% pension fund for employees. In order to attract temporary foreign labour to this beautiful but climatically harsh country, it currently is considering a proposal to cut the statutory tax rates for short-term low and

---

[87] DOCQUIER, Frédéric; MACHADO, Joêl – Global Competition for Attracting Talents and the World Economy. The World Economy, 39:4, 2016, pp. 530-542.
[88] DOCQUIER, Frédéric; MACHADO, Joêl – Global Competition …, p. 541.
[89] Dutch Tax Authorities website : https://www.belastingdienst.nl/wps/wcm/connect/bldcontenten/belastingdienst/individuals/living_and_working/working_in_another_country_temporarily/you_are_coming_to_work_in_the_netherlands/30_facility_for_incoming_employees/30_facility_for_incoming_employeeshttps://www.belastingdienst.nl/wps/wcm/connect/bldcontenten/belastingdienst/individuals/living_and_working/working_in_another_country_temporarily/you_are_coming_to_work_in_the_netherlands/partial_non_resident_taxpayer_status/

medium income employees to 25%. Some parliamentary fractions even ask for lower rates – as little as 22% - but others fear that if this reform will take place, short-term foreign workers will have competitive advantage by comparison with local work-force.[90]

## Conclusion to part II

The tax competition has stopped to be a question of tax havens and even if the digitalization and technical progress made tax havens more accessible to regular public,[91] the business-minded people are avoiding openly uncooperative jurisdiction in fear for their reputation and, consequentially, profits. It is believed instead that the wealthy individuals are on the constant lookout for the "safe haven" for their fortunes – places with political stability, low crime rates, low financial transparency and low income taxes.[92] The businesses can in addition be interested in low corporate tax and the opportune for the type of business labour market.[93] The jurisdictions around the world and in the EU are adapting to the demand for tax competitive stable business environments by developing tax and economic strategies aimed to attract prospective investors, high-net-worth residents and highly skilled "added value" professionals. While some countries find ways to benefit from increased mobility of capital and labour, others are on the receiving end of the competition strategies of their neighbours. For example, the highly skilled labour emigration is thought especially negatively affect lesser-developed countries, lowering their per capita income and increasing inequality in income distribution.[94] Under the conditions of tax competition the state becomes "a recruiter of investments and residents across the globe".[95] Existing

[90] Torngy Hassas (translation to russian by Ksenia Hinderson), Nettavisen/По-русски. The taxes of short-term employees will be cut. (Сократят налоги для иностранцев, прибывающих в страну на короткий срок.) https://www.nettavisen.no/russisk/---------/3423488688.html Russian translation of the original article in Norwegian from here: https://www.nettavisen.no/na24/gir-skattelette-til-utlendinger-pa-korte-kontrakter/3423488202.html

[91] SOLTYSINSKI, Stanislaw – Global Tax Competition and Tax Cooperation, in STRAUS, J (ed.) – The role of Law and Ethics in the Globalized Economy, Berlin, Heidelberg: Springer-Verlag, 2009, p.84.

[92] SHORT, John Rennie – Attracting wealth..., p. 364.

[93] Idem, p. 365.

[94] DOCQUIER, Frédéric; MACHADO, Joêl – Global Competition for Attracting Talents and the World Economy. The World Economy, 39:4, 2016, p. 541.

[95] DAGAN,Tsilly – International Tax Policy..., p. 6.

asymmetry in the initial conditions in the EU countries explains that that the tools employed for this objective vary from country to country and from government to government. The social and economic conditions play their role in the choice of the economic competition strategies, be it beneficial tax regimes, investment programmes or foreign high-skilled labour centred provisions.

# PART III: E-RESIDENCY OF ESTONIA

## 3.1 Dematerialization of Nexus

The connection between the state and a person residing in it for a period of time or permanently is the main justification for the state's right to tax and for the clarification of situations of potential double taxation that a person leadings a "multi-locational" lifestyle. In the Model Tax Convention on Income and on Capital of the OECD[96], the article 4 dedicated to such connection and to events and circumstances that could be interpreted as its breakage – also known as "tie-breaker rules". Commonly admitted connections are, for example, a permanent home, a centre of vital interests, habitual abode or nationality. When none of these connections is clear, the states have to decide the tax obligations of the natural or legal person through the mutual agreement procedure. The next, fifth, article of the Model Tax Convention is dedicated to establishing the connection rules for businesses by introducing the markers of a permanent establishment (PE). These markers habitually are a fixed place of business or services of a dependent agent. Without getting into the specifics of the definition of residency and permanent establishment, it is important to emphasize that these two connections to the state are the reasons why the state can claim jurisdictional power over the income, capital, real estate, profits, turnover, sales, or other assets of a natural or legal person or enterprise. However, with the development of internet and progressive digitization of virtually all spheres of economic activities, the connections become more difficult to pinpoint

### 3.1.1. Virtual nexuses

The challenges that the relentless development of the digital market and e-commerce pose to international taxation have already lead to the proposals of virtualisation of the permanent establishment.[97] It is within the logic of the benefit

[96] A copy can be found here: https://www.oecd.org/ctp/treaties/model-tax-convention-on-income-and-on-capital-condensed-version-20745419.htm

[97] A long-term strategy for addressing the taxation of e-commerce: EU digital services tax proposal in European Commission COM(2018) 148 final - Proposal for a council Directive on the

theory that if a "significant digital presence" allows a company to derive value from a certain market, the jurisdiction of that market should have the right to tax it as the source of the digital company's profits, even if there is no pure physical presence in that jurisdiction. Countries around the world already have begun to address the issue of digital commerce and the businesses that are fully or mostly internet-based. For example, a virtual nexus has been in use in Saudi Arabia from 2015 by under the name "virtual service PE"[98]. There are also an electronic (virtual) permanent establishment, a virtual agency PE and virtual fixed-place of business PE among the options under consideration in the OECD's working papers, but various concerns regarding their certainty and simplicity as well as effectiveness and fairness principles are still being addressed.[99]

The EU is still debating the tax reform in order to address the digital commerce appropriately, but the Commission presented an interim proposal of a turnover tax (3%) for the digital national markets of the Member States from the e-commerce activities as a temporary solution.[100] It came of no surprise that the more tax competitive smaller jurisdictions, such as Luxembourg, Ireland that host an array of large digital corporations were opposing the move, but in the end of May 2018 even some larger economies such as Nordic countries disapproved of

---

common system of a digital services tax on revenues resulting from the provision of certain digital services (SWD(2018)81 – SWD/2018)82) Available online at: https://ec.europa.eu/taxation_customs/sites/taxation/files/proposal_common_system_digital_services_tax_21032018_en.pdf
An interesting critique of this solution give BECKER, Johannes; ENGLISCH, Joachim - EU Digital Services Tax: A Populist and Flawed Proposal, Kluwer International Tax Blog, March 16, 2018, available online at: http://kluwertaxblog.com/2018/03/16/eu-digital-services-tax-populist-flawed-propos al/

[98] Ernst and Young (EY) - Saudi Arabian tax authorities introduce Virtual Service PE concept. Available online at: https://webforms.ey.com/Publication/vwLUAssets/Saudi_Arabian_tax_authorities_introduce_Virtual_Service_PE_concept/$File/2015G_CM5642_Saudi%20Arabian%20tax%20authorities%20introduce%20Virtual%20Service%20PE%20concept.pdf

[99] OECD – Are the Current Treaty Rules for Taxing Business Profits Appropriate for E-Commerce? Final Report. CTPA, pp. 65-69.
Also materials of the conference Current Issues in European Tax Law that took place in September, 2017 in Tallinn during Estonian Presidency at the Council of the EU.

[100] European Commission COM(2018) 148 final - Proposal for a council Directive on the common system of a digital services tax on revenues resulting from the provision of certain digital services (SWD(2018)81 – SWD/2018)82) Available online at: https://ec.europa.eu/taxation_customs/sites/taxation/files/proposal_common_system_digital_services_tax_21032018_en.pdf
OECD that published its "Tax Challenges Arising from Digitalization" (available online at: https://www.oecd.org/tax/tax-challenges-arising-from-digitalisation-interim-report-9789264293083-en.htm) just a week before the EU proposal, warned against hastily action expecting it to cause serious market distortion and increased business costs.

the suggested measures, reasoning that tax on turnover should not replace taxation of profits and that such unilateral move could lead to unnecessary complication of the tax regulations of the digital economic activities and cause tensions between otherwise cooperating in tax matters jurisdictions.[101]

### 3.1.2. Fictitious nexuses

As it was demonstrated in the *supra* examples, the attempts to establish a non-material nexus have been made. In taxation there are other cases of unorthodox approach to the notion of residence, as in case of fictitious residence,[102] for instance – as it applies to cross-border commuters, who work in one jurisdiction, but reside and pay taxes in another, which is often economically more advantageous. In case an individual derives the majority of his or her income in the first jurisdiction, he or she will be considered a resident[103], even if the domicile, centre of vital interests, permanent home, habitual abode or nationality – all of the Art. 4 tie-breakers of a standard convention for the avoidance of double taxation agreements – are in the second jurisdiction. From a broader perspective, PARKER[104] talks about "juridically dispersed" subjects by analogy with legal entities that could be "juridically present" in a jurisdiction even being physically absent, the individuals are increasingly are given similar opportunity through fictional juridical location, which potentially enables them to participate in tax arbitrage.

## 3.2. Electronic residence

[101] EURONEWS – Nordic Countries oppose EU plans for digital tax on firms' turnover. Can be seen here: http://www.euronews.com/2018/06/01/nordic-countries-oppose-eu-plans-for-digital-tax-on-firms-turnover

[102] Another example of "fiction" in international taxation could be **fictitious profits** – a "guesstimates" used in calculating tax credits and exemptions.

[103] Official European site under Income Tax Abroad provides some information here. https://europa.eu/youreurope/citizens/work/taxes/income-taxes-abroad/index_en.htm

[104] Parker, Owen – Commercializing Citizenship in Crisis EU...p. 5, citing PALAN, R. – Tax Havens and the Commercialization of State Sovereignty. International Organization, 56:1, 2002, pp. 170-172.

This project was called a "cyberdream"[105] and the "Estonia's gift to the world"[106]. Started in December 2014, the e-residency programme has recruited already over 39 000 e-residents[107].

From a strictly legal perspective an "e-resident" is a foreigner, non-resident, granted a form of Estonian eID through which he or she receives access to the national platform of electronic services, which includes public and private providers. The e-residents' ID has no photo and is not a travel document; however the biometric data of the holder is stored in the system. Also, in order to qualify for e-residency a natural person undergoes an extensive background check.[108] One of the main attractions of the e-residency for the users of this innovative regime is the possibility to register a business, which under national legislation falls under Estonian jurisdiction. In a way, an e-residency blurs the distinctions between resident and non-resident, because it creates both.

The application process can be done remotely, and only the fact of receiving of the physical card – that requires the biometric data of the holder to be collected – needs personal presence of the applicant. The issuing of the card usually would take place in one of the foreign representations of Estonia, in the country itself, or at the dedicated e-resident centres.[109] This electronic identity is similar to Estonian electronic identity with exception that it is not a travel document, meaning it has no photo and cannot serve as an identity proof when crossing borders. The eID of electronic residents issued based on data from a valid national identification document. Estonian government conducts background check of the applicant and, in case of approval of the application, issues a government-backed eID, by which it guarantees the following:

---

105 SÄRAV and KERIKMÄE, 2016, p.57.

106 One of the sources – a video where a project director Kaspar KORJUS delivers a homonymous keynote speech at the The Blockchain Future of Trust Summit 2017, September 28, Hall of Knights, The Hague, The Netherlands, can be seen here: https://www.youtube.com/watch?v=7hoAQ8EWd2g

107 As of June 2018. Regularly updated statistics can be seen on the project's online dashboard that can be found under this link: https://app.cyfe.com/dashboards/195223/5587fe4e52036102283711615553

108 KORJUS et al, Estonian e-residency: benefits.., p. 4.

109 The first one will be open soon in South Korea, but it definitely will not be the only e-residency center. https://medium.com/e-residency-blog/the-first-e-residency-centre-will-open-in-south-korea-1ea330fcfcc9

- The name of e-resident is the name “stated on an authorised national identity document”,[110]
- The date of birth of e-resident is the date “stated on an authorised national identity document”,[111]
- E-resident “is not listed in international felony databases” and this is re-confirmed annually.[112]

Estonia is a modestly sized Baltic country that regained its independence from the Soviet Union in 1991 and on the 24th of February of 2018 became a centenarian. However, one should not be misled by the small, by comparison with the vast majority of other EU Member States, age and size of the country and disregard its achievements. Estonia is utterly competitive and proudly claims a position of a leader in several areas, digital society building being one of them[113]. The e-residency programme was conceived as a logical continuation of the development of e-services of the country – from the beginning of the e-Governance in 1997 to use of digital IDs in 2001 to implementation of blockchain technology in 2008.[114] As if the e-residency programme did not sound revolutionary enough – Estonia currently is the only country that grants access to its e-governmental services to non-resident foreigners – it might also be worth mentioning that Estonia as well pioneers the idea of “data embassies”[115] and there are plans to implement at some point in time a local cryptocurrency.[116] Now, against that backdrop it might already look quite nonchalantly that Estonia still back in 2013 jotted in its Digital Agenda 2020 an ambitious goal to become

[110] KORJUS et al., Estonian e-residency: Redifining… Appendix, p.15.
[111] ibidem
[112] Ibidem.
[113] The official website of the e-Estonia confirming such claim can be found here - https://e-estonia.com/
[114] Ibidem, under “Success Stories”. More on each of the cited items, plus many additional ones are on the next page - https://e-estonia.com/solutions/
[115] The digital embassy is storing the back-up of the digital state on servers of selected countries. More about it on the official webside of the country – e-Estonia – here: https://e-estonia.com/estonia-to-open-the-worlds-first-data-embassy-in-luxembourg/
[116] Article named “Estcoin? The country is “open to challenges” on the same official e-Estonia site -https://e-estonia.com/davos-e-services-global-cryptochallenges/

for global e-services the likes of what Switzerland has managed to become for global banking[117].

The idea of "country-as-a-service" or CaaS[118], is a calque from the "software-as-a-service" notion, or SaaS, which is the idea of having a product (a software, for example), and license it to the end user based on a subscription model[119]. Indeed the ideas have a lot in common – in case of e-residency the product is the country's (e-Estonia) panoply of e-services, however, it should be noted that not all of them are available to holders of e-residency[120].

In Estonia the governmental databases are not stored in a central location, but instead various separated databases are connected by a special interoperability layer called the X-Road (est. "*X-Tee*"). The X-Road provides the access of authorized users to the minimal necessary information (for example, when checking for the age limit permissions of an eID user, the request on behalf of the authority can be only worded as "is this person already N years old" and not as "what is the date of birth of this person").[121] A person, with the help of his or her digital ID, can later connect to the governmental site and verify who, when and for what reason accessed his or her information and, in case of alleged unlawful use, eve file a complaint bringing the matter to court.[122] This specificity of State-Citizen relation was once neatly summed up as follows:

---

[117] Ministry of Economic Affairs and Communications of Estonia, Digital Agenda 2020 for Estonia, p. 2. Available online at: https://www.mkm.ee/sites/default/files/digital_agenda_2020_estonia_engf.pdf
More information and download link is available from the European Commission site https://ec.europa.eu/digital-single-market/en/country-information-estonia

[118] The term and abbreviation appear in Kotka et al. – Estonian e-Residency: Benefits..., p. 14.

[119] The popular online services like Dropbox, Gmail, Google Apps or Microsoft Office 365 are all examples of the SaaS model.

[120] As e-residency doesn't create a full political membership the governmental services that Estonia offers to its citizens and permanent and temporary residents are not available to e-residents.

[121] More information regarding X-Road functioning and purpose can be found here - https://www.ria.ee/en/introduction-of-xroad.html

[122] The principles of processing data are listed in para. 6 of the Personal Data Protection Act and Chapter III is dedicated to the rights of the data subject, including redress (paras. 22, 23). The consolidated document in English can be found here https://www.riigiteataja.ee/en/eli/512112013011/consolide

> *"In Estonia, we don't have Big Brother; we have Little Brother. You can tell him what to do and maybe also beat him up".* [123]

This kind of relation makes dealing with Estonian government rather attractive from the foreigner's perspective, especially if in his or her native country public administrative services are less streamlined or/and transparent.

The card and the USB card reader will be provided together with two PIN codes – one for identification, another for digital signature, and a PUK code to change or unblock your PIN codes should the need arise.[124] Among the available to e-residents e-services is the official state portal to verify and control personal data, a company registration service and business register to create a company 100% online and various services providing access to banking (also 100% online with some limitations), accounting and tax declaration. As it becomes obvious from this list, the idea of engaging in economic activity through a company incorporated in Estonia is the main purpose of e-residency, even though other uses such as connecting with Estonian expats or promoting Estonian culture and science were made public[125].

From the abstract philosophical position, the e-residency of Estonia is a peculiar mix of discourses: from the one hand it established itself as a "disruptive" innovative tool of virtual belonging that transcends physical borders and physical in general, giving access to effective and efficient administrative services, empowering global entrepreneurship and almost non-discriminatively increasing people's capabilities[126]; but on the other hand, it has a strong national self-interest component – as it can be seen as a clever way of involving foreigners in the

[123] Nathan Heller of New Yorker magazine mentioned it in his piece in December Number of the magazine. It can also be found at the end of para. 20 in 2017/12/18 online New Yorker here - https://www.newyorker.com/magazine/2017/12/18/estonia-the-digital-republic
Also mentioned here - https://tincture.io/we-have-seen-the-future-and-it-is-estonia-6716d8b2d3f3

[124] This information is corraborated here https://e-resident.gov.ee/faqs/using-your-e-residency-digi-id/#most-common-problems

[125] KERIKMÄE and SÄRAV, 2015, p. 76.

[126] To use an Amartya Sen's principle of justice in society – contrary to a distributive justice comparison with division of a public good "cake", a capability is enabling a person to use that "piece of cake" for his of hers utmost advantage in a way he or she has reason to value. Slightly resembling John Rawls' "difference principle" according to which the worse-off should be positively discriminated against in order to compensate for their inequalities, capabilities approach is concerned with "functionings" – beings and doings that a particular person has a justified preference for. See "The idea of Justice" by Amartya Sen.

national economy without putting strain on social security services, impacting immigration quotes, or significantly changing the population's makeup.[127] Such dichotomy of discourses around citizenship and residency programmes was noted and named by PARKER[128] respectively a "market cosmopolitan" vs. "legal communitarian". He concludes that such dichotomy is an intrinsic characteristic of virtually all IPPs as they can be and are interpreted within both currents of discourse. Estonia, though, by virtualizing the "genuine link"[129] created a more palatable solution for "legal communitarians", which would be reluctant to entertain the possibility of wealthy new citizens without "meaningful connection" to the country exercising their rights by participating in politics and economy and potentially using their wealth to influence political decisions via, for example, "media ownership and party funding"[130]. According to DZANKIC, small countries are especially cautious with granting citizenship rights as their political forces can, in theory, be swayed by a few thousand voters; the investors, however, are commonly thought to be disinterested in political participation and as such enjoy "relaxed" naturalization conditions.[131]

Another reason behind the aversion to actual residency oriented benefits is caution – a small state of 1.3 million people from which only about 900,000[132] are native Estonians is concerned with "diluting" its culture and preserving its language, as it follows from the statements of its political figures:

> "The state treasury would receive more money thanks to millions of paying clients who, at the same time, would not use the physical infrastructure or natural resources of our state. (...) as a result of common efforts we would enlarge our

---

[127] The concerns regarding the "dilution" of the Estonian culture and language were voiced by one of the responsible officers of the e-residency programme Taavi Kotka. More on his can be found here: https://taavikotka.wordpress.com/2014/05/04/10-million-e-estonians-by-2025/
[128] PARKER, O. – Commercialization of Citizenship in Crisis EU, p. 10.
[129] Viviane REDING, the Commissioner for Justice, Fundamental Rights and Citizenship insisted at the European Parliament session in 2014 that Member States have responsibility only award its nationality only to those with "genuine link" to the country. http://europa.eu/rapid/press-release_SPEECH-14-18_en.htm
[130] PARKER, O. – Commercialization of Citizenship in Crisis EU, p. 11.
[131] DZANKIC, Immigrant Investor Programmes..., p. 11.
[132] Official statistics can be found here under "Population" – "Population indicators and composition" – "Population figure and composition" - RV0222: Population by sex, ethnic nationality and county, 1 January": http://andmebaas.stat.ee/Index.aspx?lang=en

> economic space enormously without diluting our culture and also protect our language"[133]

and

> "increase the number of those contributing to our economy (...) without them moving to Estonia physically. The richer the state, the more means to contribute to protection of our culture and language"[134]

Without discussing potential ethical issues of such reasoning, it seems very likely that the solution offered by the Estonian government is a versatile strategic tool that can be used by other countries regardless their immigration sentiments and national pride. It might be arriving especially timely, as it is not a secret -- or at if it is, it's a *Polichinelle*'s one -- that official pro-immigration narrative of the European Union based on universal fundamental human rights is currently under fire and challenged on national level by several member states such as Poland, Hungary or Slovakia, with likes of Austria voting for anti-immigration far-right candidates. As the immigration and its acceptance by the local population is a complex issue that depends on various indicators from economic to social and demographic, and it is unlikely to be uniformly accepted, the novel solution brought to practice by Estonia in 2014 could be used, regardless a certain degree of xenophobia of an implementing nation state, as it's tapping into the development of the digital virtual environments that are already affecting such important sectors as trade, labour and financial institutions, which subsequently echoes in national policy making.

### 3.2.1 Considerations with high relevance for the Estonian case

#### i) Yes, e-residency is a form of tax competition (but not only):

When two unequally-sized countries compete for a tax base, the smaller country have stronger incentives to lower tax rates and suffers less adverse

[133] A commentary by Taavi Kotka, Deputy Secretary General of ICT at the Ministry of Economic Affairs and Communications in Tammpuu, Masso – Welcome to the virtual state.., p. 13.
[134] Same person's commentary, ibidem.

consequences of competition. Actually, the larger is the disparity the better off the smaller country ends up.[135] As it follows – tax competition is an important tool of leveraging economic disadvantage for small countries. It is also important to note, and it rather logically follows, that more agile the lawmaking is in the country, more likely it will be able to establish competitive advantage in tax competition[136], yielding increased revenues, improving its public services and becoming even more attractive for potential residents. Estonian e-residency solution takes the pressure off the tax competition and redirects it to efficiency of the governments. Estonia vehemently denies tax considerations being a part of the implementation of the e-residency programme, however, despite these claims, it is still ranking No.1 in International Tax Competitiveness Index for several consecutive years. It might be totally "*intra legem*" and fair play, but having 0% CIT on undistributed profit makes Estonian companies an attractive vehicle for long-term financial and economic operations. Savings (capital) taxation rates influence jurisdiction of holding – a 0% rate on non-distributed profit can be used as capital savings (stable jurisdiction, predictable flat rate tax in Estonia).[137]

Estonia, despite its 0% tax on undistributed corporate profit, can hardly be called a tax haven as it does not offer banking or business secrecy, on the contrary – it even makes the names of company owners publicly available. However, it has good chances to attract businesses because of its streamlined administrative services and skilled labour. It has been noted that the locations of multinational companies are correlated with not only low corporate tax rates, but also such factors as good public infrastructure, access to new technology, a well-educated labour force and social and political stability. Majority of studies show that the FDI flows correlate negatively with the corporate income tax (CIT) rates and some studies point out that this correlation intensifies over time.[138]

The popular dissatisfaction with banks and other financial institutions that are commonly perceived as facilitators of massive tax evasion due to secrecy and

[135] GENSCHEL, Philipp; SCHWARZ, Peter – Tax competition: a literature review. Socio-Economic Review, 9, 2011, p. 341.
[136] GENSCHEL, Philipp; SCHWARZ, Peter – Tax competition: a literature review. Socio-Economic Review, 9, 2011, p. 342.
[137]
[138] GENSCHEL, Philipp; SCHWARZ, Peter – Tax competition: a literature review. Socio-Economic Review, 9, 2011, p. 349.

lack of transparency is also growing.[139] Under these circumstances, it is not surprising that the appearance of novel decentralized solutions such as digital currencies and fintech banking alternatives enjoy high levels of acceptance and approval.

Estonia with its low sovereign debt and novel approach to public administration through encouraging public-private partnerships beats the prediction that succumbing to the “race to the bottom” competing states would end up providing “sub-optimally low supply of tax-financed public goods”.[140]

Estonia scores high on both competitive tax system and agile law making, plus it has an efficient and “user-friendly” public administration.[141]

### ii) Importance of income tax rates for highly skilled location independent workers (e.g. IT)[142]

A digital economy removes to the considerable degree the competitive advantages from the large companies, allowing smaller firms step forward due to improved communication, easy outsourcing and cost-efficient targeted advertising. In contrast to other jurisdictions that are concerned with attracting HNW individuals and high-income professional labour, Estonia plans to catch many digital “davids” while other countries chase a few physical “goliaths”. Another important consideration that should not be disregarded is that e-residency programme is also suitable for “catching” location-independent entrepreneurs – those who provide services and deliver digital goods. They are

[139] SOLTYSINSKI, Stanislaw – Global Tax Competition and Tax Cooperation. In STRAUS, J (ed.) – The role of Law and Ethics in the Globalized Economy, Berlin, Heidelberg: Springer-Verlag, 2009, p.83.
[140] GENSCHEL, Philipp; SCHWARZ, Peter – Tax competition…,p. 341.
[141] In preparation of this work, the author contacted Estonian and Portuguese tax authorities to inquire about prospective tax obligations of an e-resident business owner in Estonia actually living in Portugal. Estonia responded by e-mail within a few days with the full list of potential taxes and even potential anticipated consequences. Portugal tax authorities that were contacted by phone after being presented the concise situation redirected the author to an online form submission for the official information request, which was processed quickly – also about a week time, however resulted in zero information, as the Portuguese Tax Authority does not deal with “hypothetic” cases. Therefore, it was impossible to assess the incurring taxes and make an informed decision.
[142] GENSCHEL, Philipp; SCHWARZ, Peter – Tax competition: a literature review. Socio-Economic Review, 9, 2011, p. 348.

also potential HNW in making, as digital platforms are currently a fastest growing high-earners of the digital market.[143]

According to Harvard Business Review, the technology, media, financial and professional services are the top four sectors that lead digital workforce that allows them increase productivity and boost profit margins.[144] Notably, all of these sectors fit well with the location independent entrepreneurial approach facilitated by e-residency. From more than 35 thousand e-residents as of May 2018, over 41% are interested in location independent international businesses. E-residents own over 5.500 companies in Estonia with top ten economic activities being business and management consultancy and support, computer programming and consultancy, holding companies, and other information technology related businesses.[145] As HARDY and HOLLINSHEAD mention in Space, Place and Global Digital Work, "with virtually no sunk costs, the structural characteristics of the software industry make it highly mobile".[146]

### 3.3 The issue of location-independence

The E-residency programme demonstrates a special penchant for location independent digital businesses own by so-called digital nomads.[147] Location independence becomes a new buzzword of even most stationary of industries. Such innovations as movable factories operating with help of the likes of the Location Independent Manufacturing software will allow SMEs produce their goods in the most efficient and ecologically conscious ways by having access to and comparing operation models, access and cost of raw materials, costs of

---

143 See, for example, ACCENTURE – Platform Companies: Treading the Path from Early Disruptor to Platform Titan. Avaialable online at: https://www.accenture.com/t20171004T021111Z__w__/us-en/_acnmedia/PDF-62/Accenture-Platform-Companies-PoV-Part2.pdf

144 MANYIKA, James; PINKUS, Gary; RAMASWAMI, Sree – The Most Digital Companies Are Leaving All the Rest Behind. Harvard Business Review, January 21, 2016. Available online at: https://hbr.org/2016/01/the-most-digital-companies-are-leaving-all-the-rest-behind

145 Official statistics of e-Residency programme. Data accessed May 25, 2018. Updated version can be seen at: https://app.cyfe.com/dashboards/195223/5587fe4e52036102283711615553

146 HARDY, Jane; HOLLINSHEAD, Graham – "Clouds" in the Desert? Central and Eastern Europe and Ukraine in the New Division of Labour for Business Services and Software Development. In FLECKER, Jòrg (ed.) – Space, Place and Global Digital Work, Dynamics of Virtual Work Series. London: Palgrave Macmillan, 2016, p. 99.

147 More on this work/life style can be seen in MANNERS, David; MAKIMOTO, Tsugio - Digital Nomad, New York: Wiley, 1997. Or in MULLER, Annika . The Digital nomad; Buzzword or research category? *Transnational Social Review*, 6:3, 2016, pp. 344-348.

timeframes deliveries as well as taxation, logistics and other incurring expenses of the manufacturing.[148]

Traditional industries, such as energy, oil and gas, also look to "digitize their physical assets, bringing us closer to the era of connected cars, smart buildings, and intelligent oil fields".[149]

Platform-based online businesses are also on the rise. Job market platforms are used for both punctual project-based tasks and extended collaboration with a remote employee. The economic significance of such platforms should not be overlooked – one of them, for example, the US based Elance reportedly came from 200 million USD to 1 billion USD turnover in 5 years from 2008 to 2013 and more than doubled the number of registered users (from 1.5 million to 3.5 million).[150]

"Global virtual teams, telecommuting and distributed work"[151] are on the rise as a result of advancements of the ITC sector that allows efficient immediate voice and video communication, virtual offices where the teams can share instantaneously digital files despite being physically thousands of kilometres apart and internet-based platforms serving as market places for those offering and buying labour for various tasks – from micro to mega.

This electronic remote relation to the participants in Estonian economy aligns well with the "national survival" policy thread that allows a small Baltic nation to preserve its culture and language intact preventing the potential "dilution" should

---

148 PELTOKOSKI, Merja; VOLOTINEN, Jarno; LOHTANDER, Mika – Location Independent Manufacturing – A software solution for supply chains. Procedia Manufacturing, 11, 2017, pp. 863-870. Available online at: https://ac.els-cdn.com/S2351978917303979/1-s2.0-S2351978917303979-main.pdf?_tid=57de029a-fbf5-4f23-91bc-17663d225550&acdnat=1527252252_5d22eb5bb254bf4353629f3e2278aa81

149 MANYIKA, James; PINKUS, Gary; RAMASWAMI, Sree – The Most Digital Companies Are Leaving All the Rest Behind. Harvard Business Review, January 21, 2016. Available online at: https://hbr.org/2016/01/the-most-digital-companies-are-leaving-all-the-rest-behind

150 MEIL, Pamela; KIROV, Vassil – Introduction: The Policy Implications of Virtual Work. In MEIL, Pamela; KIROV, Vassil (eds.) – Policy Implications of Virtual Work. Cham, Switzerland: Springer International Publishing AG, Palgrave Macmillan, 2017, p. 9.

151 RAGHURAM, Sumita; TUERTSCHER, Philipp; GARUD, Raghu – Mapping the Field of Virtual Work: a Co-Citation Analysis. Information Systems Research, 21:4, pp. 983-999.

the numbers of immigrants attracted to effective public administration and propitious business environment increase.

The traditional description of capital as mobile and labour as immobile[152] is another set of beliefs that has been challenged with the developments of the ITC. Estonia is one of the first to understand it and use it to its advantage: with development of virtual and remote work forms and platform-based and gig economies, Estonia's solution of electronic residency catches up with the "spirit of the time" and creates solution for the digital labour force. Even if the person who becomes e-resident does not automatically become tax resident by the virtue of registering a company for his or hers digitally operating business they are caught into the Estonian tax net. Given the wealth and the quality of administrative solutions that e-residents are entitled to, this is of little surprise.

## Conclusion to part III

*"As a result of population ageing, productivity growth is set to become by far the most important source of economic growth"*
OECD, Economic Survey of Netherlands[153]

The idea that the governments resemble more and more business enterprises is not new and appears more often in press and academic literature.[154] Currently it seems that attracting residents, especially the actual and potential private and business investors that would augment the capital and create jobs, and also those with high income jobs or pensions, is one of the main strategies pursued by the states. DZANKIC already pointed out a perceived interest of governments of the

[152] See, for exemple, PERALTA, S.; VAN YPERSELE, T. – Regional Science and Urban Economics, 36:6, 2006, pp. 708-726.
Also GLATZER, Miguel – Tax Reform, Income Inequality and the Welfare State: The Case of Portugal. In LEAMAN, Jeremy; WARIS, Attiya – Tax Justice and the Political Economy of Global Capitalism, 1945 to the Present. USA: Berghahn Books, 2013, p.66.
[153] OECD Economic Survey of the Netherlands, 2002 in Public.private partnerships for research and innovation: an evalutation of the Dutch experience.
[154] SCHNURER, Eric – What Would It Mean for Governments to Compete Like Businesses? May 22, 2013, The Atlantic: Politics and Policy Daily
https://www.theatlantic.com/politics/archive/2013/05/what-would-it-mean-for-governments-to-compete-like-businesses/275723/

Member States in “long-distance citizens”, giving the example of Bulgaria, Cyprus and Malta that seek to attract one-off investments of the HNW individuals who not necessarily see themselves moving to the country or becoming “involved in the polity”.[155] Other countries, that are offering to investors only residence (some with potential path to naturalization), such as Greece, Ireland, Spain and Portugal, as well as Cyprus and Malta that have this option too in addition to abovementioned citizenship by investment programmes, are set to attract “long-distance migrants”[156]. These residence-granting investments usually require little or no physical presence, but deliver advantageous tax regimes (as do Greece, Ireland, Malta, Spain and Portugal), thus not being after human capital, but looking for additional tax revenues and investment in specific sectors that suffered economic downturn.[157]

Estonia, however, does not look for citizens, it looks for market, investors and, oddly, fans – not one-off, but “on subscription” and not just “long-distance”, but virtual. Explaining its move by the difficulties of attracting potential residents to a cold, rainy and still recovering from post-soviet past country, Estonia pioneered the virtualisation of its prospective taxpayers. This special regime is not a tax benefit *per se*, but a state-backed identity proof that grants access to an array of national public services, including incorporation of a business entity, which in turn gives access to pro-investment taxation regime, which can be considered extremely beneficial for starting businesses, given the profits are only taxed upon distribution, leaving the reinvested amounts tax-free.

The reason for implementing one or another programme is often a comparative advantage that a specific country considers to have. It is present when a country can produce goods of a similar or superior quality for similar or inferior costs by comparison with other countries.[158] Since administrative services are becoming a “good”, Estonia has comparative advantage in the supply of this good in comparison with many countries – from the most to lesser developed.

---

[155] Ibidem.
[156] Idem, p. 12.
[157] Ibid, pp.12-13.
[158] DEARDORFF, Alan V – Terms of Trade: Glossary of International Economics. New Jerseay at al.:World Scientific Publishing Co. Pte. Ltd., pp. 57.

Estonia proved itself as a very far-sighted strategic planner by making emphasis on growth-oriented economy supported by tax policy with accent on digital solutions. If the predictions for the countries with high public debt are right, Estonia, as an extremely low debt country will have a chance to improve its economic indicators and continue providing quality public services, when many developed countries will be at risk to cut expenditures, which could lead to deterioration of their administrative capabilities.

# DISCUSSION AND GENERAL CONCLUSIONS

Around the European Union there exist various programmes that instrumentalize residence and directed at influencing local economy. They vary by types of residence, target audience of programmes, conditions regarding physical presence and value they derive and provide.

| | Full residence /Citizenship | Partial residence (temporary) | Virtual residence |
|---|---|---|---|
| Main target | HNW – high entry level capital<br>**Mostly non-EU* | HNW; highly-skilled labour<br>**EU and non-EU* | All – low entry level capital, no specifications.<br>**EU and non-EU* |
| New resident | Yes – applicant cannot reside in the country | Yes | Yes, but not physical resident. Theoretically possible be an e-resident of various countries |
| Physical presence | Mostly not (one visit to take care of formalities) | Some – up to 6 months | Not required, but possible (e.g.: before becoming qualified for temporary residency application). Plus one visit to embassy or special center to |

| | | | |
|---|---|---|---|
| | | | provide biometric data). |
| Value for resident | Access to EU and visa-free travel, tax arbitrage, lifestyle, political stability. | Access to the EU and visa-free travel for the duration of residence. Potential track to naturalization. | Strictly EU market through legal entity creation. Streamlined administrative, financial and legal services |
| Value for country | Mostly one-off investment (high) | Mostly one-off investment (medium) | Subscription/platform basis (from low to high |

***Table 3. Comparative table of CBI, Temporary residency tax-benefits for skilled labour and virtual residence***. Author's synthesis based on bibliography consulted.

## IMPROVEMENTS

There are several areas that point at e-residency programme of Estonia as superior to others residence-based competitive tools.

### i) Distributive Justice

The question of justice in international taxation becomes more than just a topic of abstract philosophical discussion, but a part of the "nitty-gritty" of national policy making, as governments struggle to uphold their social security structures due to tax base erosion seen in the response to tax competition, which results in more and more of public expenditure coming out of the pockets of employed population and even the retired one.[159] Who benefits from the IIPs in the country is also a pertinent question when considering the level of "harm" in membership for investment exchange programmes. For example, in case of Malta the donations of prospective Maltese citizens are destined to the national development and social fund, which can be seen as an argument that this programme is within the scope of public interest. In case of property investment the contributions will not become a part of a "public good", though, but will instead enrich only property

[159] Portugal's recent history of pension cuts is still a painful memory of hundreds of thousands of retirees. E.g.: https://www.publico.pt/2012/09/12/economia/noticia/cortes-nas-pensoes-afectam-mais-de-200-mil-reformados-do-publico-e-do-privado-1562716

owners and share holders.[160] In case of Estonian e-residency the distribution is more pro-social as it is focussed on providing pre-existing services which in turn stimulates the development of the public-private partnerships in transparent and cooperative environment. The provided services are openly available to local residents and citizens and as such are not "ring-fenced".

### ii) Genuine link

The notion of the citizenship and naturalization being linked a) to territoriality, and b) to "genuine connection" to the country.[161] The naturalization practices of the Member States affect directly or indirectly the neighbouring countries, therefore the practices of granting political membership in exchange for money benefit only the grantor, while benefit is provided by the entirety of the EU. It also has to be noted that majority of the EU Member States have constitutional provisions of awarding nationality to prominent figures of science, culture, sports etc. under the national interest or an extraordinary contribution to the state clause, Austria, Bulgaria, Slovakia and Slovenia explicitly stating "commercial" or "economic" interest.[162] But it is only recently that the RBI/CBI programmes became so wide-spread that they attracted global attention. Estonian solution of e-residency allows remaining within the constraints of "fair play" while deriving value from granting virtual access to the EU single market.

### iii) Overcoming the logic of scarcity

An additional consideration as pointed out by DZANKIC[163] is that the "pool" of HNW individuals interested in access to the EU is limited and as citizenship by investment programmes enable the holder of one Member State citizenship to access all the other states of the EU, it is highly unlikely that this individual would be shopping for another EU citizenship and, thus, participate in the investor programmes of other countries, therefore, concludes DZANKIC, "with each granted passport" the contenders' pool is decreasing. The user of the electronic

[160] Parker, Commercialization of Citizenship, p. 9.
[161] Roots and Dumbrava in Kerikmae (ed.) The Future of Law and E-Technologies – p. 45. The authors cite the ICJ's case law Nuttebohm case where citizenship was described as a "legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests, and sentiments, together with the existence of reciprocal rights and duties" Liechtenstein v Guatemala, Second Phase 1955 ICJ Reports 4 (Judgment of 6 April), 23.
[162] DZANKIC, Immigrant Investor…, p. 5-6.
[163] Dzankic, J.- Immigrant Investor Programmes..., p. 11.

residence card can be still interested in other countries similar programmes, should the legislative procedures or practical solutions prove more beneficial or less cumbersome. Digital platforms offer an array of possibilities for user and providers alike.

### iv) Respectful non-conformism

The German Institution for Economic Research presented arguments for the ultimate inefficiency of drastic austerity measures such as cuts in government spending and tax increases – the ones that Spain, Portugal and Italy underwent from 2010 forward – concluding that the more varied and balanced policy mix might have been more successful. [164] The mainstream guidelines of troika's austerity measures definitely failed to deliver for Portugal, Spain and Italy and could be likened to the proverbial example of "good intentions" that paved the road to hell – or recession in this particular case. Given the asymmetric conditions in the economic and social makes of the Member states, it might be that following the guidelines of increasing tax cooperation would prove not the best strategy for some of the players – a strong case for this approach makes DAGAN.[165] Estonian programme offers an alternative to regular tax cooperation and competition by offering transparent and agile instrument that would benefit the users first and then create an additional profit for the state. It creates jobs for locals – first as services for e-residents: legal, financial, administrative; second – as workforce for companies created by e-residents (depending on the type of business it could be from one person as local representative, assistant etc. to potentially dozens and hundreds of employees in case of a large company).

### v) Potential Competition Authority for EU Tax Competition?

There is an interstate competition, and states are becoming more and more "entrepreneurial". For example, the "founding fathers" of the e-residency program address it as a form of governmental start-up[166], emphasizing the state's status

[164] ENGLER, Philipp; KLEIN, Mathias – Austerity measures amplified crisis in Spain, Portugal, and Italy. German Institute for Economic Research, Economic Bulletin 8/2017. The link for the original paper and more information can be found here:
https://www.diw.de/en/diw_01.c.553175.en/topics_news/the_austerity_policy_was_counterproductive_in_spain_portugal_and_italy.html
[165] DAGAN, Tsilly - International Tax Policy
[166] KORJUS et al, Estonian e-residency: Redefining…, p. 7

of economic agent. From the begging, the e-residency project was run as a start-up business – a governmental one, nonetheless – and was in “public beta phase, meaning that everyone is invited to apply for residency and to help the Estonian government by providing feedback that will help the organizers tailor it to users’ specific needs.”[167]

In order to regulate this type of competition, Dagan suggests establishing an interstate competition authority to curb unfair competition among states.[168] Competition policy aims to prevent collusion among competitors and excessive market power concentration.[169] Tax competition policy, advocated by Dagan, in this case, could oversee the current BEPS situation.

## CAVEATS

There are, of course, precautions and considerations that should be address before advancing with an e-residency programme. In their assessment of the potential risks that e-residency could present in terms of civil law TORGA and ESPENSBERG[170] point out the following:

- Excessive burden on judiciary in enforcement procedures, for example in case of international debt collection, bankruptcy filing etc.
- Legal uncertainty related to application of foreign law in cases of e-residents, given that there are even states that do not recognize Estonian law (e.g. Malaysia, that already has 77 e-residents application and 5 companies established by e-residents[171])
- Lack of harmonization on prohibition of business activities among the Member States and possible abuses by unscrupulous banned business-owners

[167] KORJUS, KOTKA, VARGAS – Estonian e-Residency: Benefits, Risks and Lessons Learned, p.4
[168] Dagan, p. 11.
[169] DEARDORFF, Alan V – Terms of Trade: Glossary of International Economics. New Jersey et al.: World Scientific Publishing Co. Pte. Ltd., p.44.
[170] TORGA, Maarja, ESPENBERG, Kerly - Mapping the Civil Law risks of the e-Residency Project (E-residentsuse Projekti tsiviilºoiguselike riskide kaardistamine), Final report Tartu: University of Tartu, RAKE, 2015 available (in Estonian) at the University of Tartu Skytte Institute of Political Studies official site here - https://skytte.ut.ee/sites/default/files/ec/lopparuanne_2_06_15.pdf
[171] E-residency dashboard website here - https://app.cyfe.com/dashboards/195223/5587fe4e52036102283711615553

- Risk that the already established Estonian companies will have their management relocated since the place of management is no longer obligatory situated in Estonia, potentially losing the status of resident and/or creating a double taxation situation.

The problem of legal certainty is often addressed by academic literature on the topic admitting the vague legal status of e-resident[172], and even going as far as to making a case for necessity of a specific regulatory framework and not just amendments of the existing laws.[173]

**OTHER CONCERNS**

## i) Commodification of membership

The market logic has found its way to the political membership through such commercialized programmes as Residency by Investment, Citizenship by Investment and Immigrant Investment Programmes. Calling such programmes a threat to the very notion of the national citizenship, the European Commission criticized the practice of offering membership in exchange for money. Some authors, however, note the contradictory nature of the European Union's position on the issue[174], as it also relentlessly promotes supra-national identity formation since the single market represents virtually borderless community with increased and facilitated mobility of goods, capitals, services, and labour among the EU countries. Estonia, thus, has only furthered the trend by introducing both digital platform economy solution and remote participation without, however, offering full membership in its society.

## ii) Data protection and security

[172] Korjus et al. – Perspectives…, p. 181.
[173] Sàrav, Sandra and Kerikmäe, Tanel – E-Residency: a cyberdream embodied in a digital identity Card? In T.Kerikmäe, A. Rull (eds.), The Future of Law and eTechnologies: Switzerland: Springer International Publishing, 2016, pp. 57-79.
[174] See, for example, PARKER, Owen – Commercializing Citizenship in Crisis EU: The Case of Immigration Investor Programmes. Journal of Common Market Studies, 55:2, 2017, pp. 332-348. Abstract available at https://onlinelibrary.wiley.com/doi/pdf/10.1111/jcms.12462

Potential the privacy issue – the data is stored in highest security databases and, according to the Estonian national data protection law, kept for 50 years[175]. In light of the proportionality of data collection under the recently coming in force EU Regulation 2016/679, commonly known as GDPR[176], e-residency regulations might need an adjustment. Digital IDs of nationals and e-residents provide different levels of freedom and access (no physical entry for e-residents), but the way they are handled from the security perspective is equal, which is against the Data Protection Regulation art.6 - principles of purpose and proportionality. As eID of e-residents is not supposed to serve purposes of physical identification, but only digital, there is a privacy issue. There are also academic opinions that biometrics might be superfluous in eIDs, which are already based on a "multi-layered technological infrastructure" and potentially harmful to democratic principles supporting NYMAN-METCALF's argument for "proper regulation" of e-identity.[177]

There are also the general security risks concerns associated with the use of digital carriers. The e-residency's eID card, initially presented as absolutely secure thanks to heavy encryption, had to withstand a serious blow to its reputation as recently as in November 2017, when a discovered vulnerability in the encryption process used by the manufacturer of the chip of the Estonian ID cards (and Estonia is just one of many customers of this provider) was made public. A large quantity of e-resident cards had to be suspended as it was thought to be potentially unsafe to continue its use.[178] The situation was swiftly resolved, but several hundred thousands of

[175]Estonian Personal Data Protection Law in English can be found at the official online journal here: https://www.riigiteataja.ee/en/eli/512112013011/consolide

[176] Regulation (EU) 2016/679. Available online at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2016.119.01.0001.01.ENG

[177] Katrin Nyman-Metcalf, in Kerikmäe, Tanel (ed.) Regulating eTchnologies in the European Union: Normative Realitites and Trends. Cham et al: Springer, 2014, p. 33.

[178]Information for e-residents on the official blog regarding the issue can be found here - https://medium.com/e-residency-blog/estonia-is-enhancing-the-security-of-its-digital-identities-361b9a3c9c52
Also at the state ID portal here https://www.id.ee/?lang=en or at the Information Systems Authority official site here https://www.ria.ee/en/estonia-resolves-its-idcard-crisis.html

electronic ID cards, including the regular Estonian IDs, had to be updated. Apart from this faulty chip scare, the security of the access to the e-services is claimed to be safe, at least until the next risk exposure.

### iii) Potential worsening of inequality and discrimination

As virtual resident programmes give advantage to more digitally advanced countries by letting nationals of other countries to outsource administrative services a serious assessment should be made regarding the consequences of this on public services in other countries. It also will most likely be more advantageous in case of smaller countries with streamlined public administrations and agile legislative processes, which might receive a stimulus to develop digitally accessible effective and efficient public services and goods. However, the countries with heavily bureaucratic administrations might experience serious disturbances and outflow of receipts, which will only exacerbate the governmental inefficiency. Another discrimination could be faced by e-residents businesses, as many countries would not yet know how to deal with such multi-locational enterprises. The lack of certainty could result in double taxation of e-resident businesses.[179]

### iv) Humanistic value and cosmopolitanism

The authors of the idea of e-residence see the programme as a gate into digital "cosmopolitanism" (and even coin the term *e-cosmopolitanism*) that will "serve as a transforming venue of global social interaction and commercial transaction", suggesting that e-residency of Estonia is challenging the delineation between national and international, local and global, and that more cosmopolitan-inclined people are less likely to engage in mindset as "us" vs. "them".[180] The opinion of Estonian academics, however, is somewhat sobering – they qualify Estonian e-residency is "a closed, Estonia-patronising system" that has "never shown any

---

[179] KORJUS, Kaspar, CASTILLO, Carlos, KOTKA, Taavi – Perspectives for e-Residency: Strengths, Opportunities, Weaknesses and Threats. *IEEE 2017 Fourth International Conference on eDemocracy and eGovernment (ICEDEG),* Quito, Ecuador. The authors use the following wording: "In most cases, the business established in Estonia by e-residents is imposed taxes by the Estonian state and states of their residence".

[180] Korjus et al, Estonian e-residency: Redefining…, p. 14

philanthropic purpose at the global scale".[181] On the one hand, it can look like Estonia found the way to overcome the dichotomy between the European politics of inclusion and increasingly humanitarian values vs. "neoliberal" commodification of political membership and segregation of migrants by prospective market value. "Selective permeability" of borders underlined by Mavelli[182], who claims that the situation should not be seen only as it was until recently as tendency of commodification of political membership and market logic seeping through the immigration policies, but in conjunction with limitation of mobility opportunities for "undocumented migrants, refugees and even economically valuable migrants", which ultimately is the re-evaluation of the value of belonging.[183]

[181] Sàrav, Sandra and Kerikmäe, Tanel – E-Residency: a cyberdream embodied in a digital identity Card? In T.Kerikmäe, A. Rull (eds.), The Future of Law and eTechnologies: Switzerland: Springer International Publishing, 2016, p.74.

[182] MAVELLI, Luca – Citizenship for Sale and the Neoliberal Political Economy of Belonging. International Studies Quarterly, upcoming, published online May 16, 2018. Available online at: https://academic.oup.com/isq/advance-article/doi/10.1093/isq/sqy004/4996972?searchresult=1 Similar arguments can be found in PARKER, O. – Commercializing Citizenship in Crisis EU, p. 5.

[183] MAVELLI, Luca – Citizenship for Sale and the Neoliberal Political Economy of Belonging. International Studies Quarterly, upcoming, published online May 16, 2018, p.1.

# GENERAL CONCLUSION

Recent economic crisis left many European countries stranded after the short-sighted crisis management measures introducing austerity into public spending led to increased public debt and deterioration of social welfare. Current push for the innovation, research and development is a fine strategy for the future, including the innovation, research and development of the public administration solutions that would be more robust and withstand a potential next financial and economic crisis. Until those solutions are found and introduced to the administrative practices the governments are mostly funded through coercing the residents (and some non-residents, as it was demonstrated above) to part with a certain percentage of their capital in exchange for public services.

The residency-based approaches can work well for countries that have high "symbolic capital"[184] and can offer attractive conditions in exchange for financial capital and skills participating in local economy, but the lesser sought after destinations could benefit greatly from the virtual residency programmes, given that they develop sufficient infrastructures for accommodating the growing number of digital queries and transactions.

As countries find themselves torn between competition and cooperation and concerned with the fate of the welfare state under demographic duress, the main strategies appear to be centred on attracting high-net-worth investors and highly skilled labour in the country. However, these strategies are not without flaws, as with more countries competing for a finite number of investors, the overall tax revenues might be falling rapidly. Instead of attracting physical residents – full or part-time, Estonia came up with a solution to have remote residents by subscription, attracting them with already existing public services and opening its digital platform to private service providers via public-private partnerships.

With digital forms of interaction with public services becomes more and more widespread and in light of increased cooperation between the EU Member States, the next area of competition between them might be the provision of digital public

[184] A notion from social sciences proposed by Pierre Bourdieux that denotes a high value such as reputation, prestige or recognition that is gives a person or an entitiy a competitive advantage. For more detailed account see Pierre Bourdieux "

services (business incorporation and administration with related financial and legal services).

Estonia sees itself as an example for others “new policy instrument of the e-state for other nations”[185], maybe specifically as an example for small states with e-residency being called the “strategic tool for economic development, branding, and future viability of a small nation”[186].

However, in order to succeed in implementing such a “tool”, a small nation would need to have in place certain preconditions. What the authors of the programme see as strengths of e-residency project could shed some light on such pre-requisites:

- pre-existing digital infrastructure,
- support from public and private sectors and strong experience in private-public partnerships, [187]
- flexibility and responsiveness of the legislative power manifested in prompt amendments of the existing laws,
- involvement of international organizations,[188]
- the small size of the country is actually seen as an advantage, because it implies lesser bureaucracy[189].

While the CBI/RBI programmes pose significant risks to successful cooperation between the Member States[190] and often considered as harmful or borderline harmful tax practices, the Estonian e-residency programme offers a viable alternative and “throws down a gauntlet” to the governments of other Member States that could only benefit from the likes of e-residency programme if they invested in streamlining of their public administrative services.

---

185 Korjus et al – Estonian e-residency: Benefits…, p.3.

186 Korujs et al – Perspectives for e-Residency: Strengths ..., p. 177

187 Many service providers for e-residents, from fintech solutions to business and legal support, are private companies.

188 These and more can be found in Korjus et al, Perspectives..., pp. 178-179.

189 Ibidem.

190 For a detailed review of perceived risks of these practices see, e.g. OECD – Public Input Received on Misuse of Residence by Investment Schemes to Circumvent the Common Reporting Standard: Compilation of Comments. 17 April 2018. Available online at: https://www.oecd.org/tax/exchange-of-tax-information/public-input-received-misuse-of-residence-by-investment-schemes-to-circumvent-the-common-reporting-standard.pdf

# TABLE OF CONTENTS

# BIBLIOGRAPHY

## BOOKS AND ARTICLES

AAVIK, Gerli and KRIMMER, Robert - Integrating Digital Migrants: Solutions for Cross-Border Indentification from e-Residency to eIDAS. A Case Study from Estonia. In H.J. Scholl et al. (Eds.): EGOV 2016, LNCS 9820, Springer International Publishing Switzerland, 2016, pp. 151–163.

AUERBACH, A. J.; SIEGEl, J. M. – Capital-gains realizations of the rich and sophisticated. American Economic Review, 90, 2000, pp. 276–282. Available online at: https://eml.berkeley.edu/~auerbach/ftp/gains5.pdf

AVI-YOHAN, Reuven S. – International Tax as International Law: An Analysis of the International Tax Regime. Cambridge Tax Law Series. Cambridge et al.: Cambridge University press, 2007.

BECKER, Johannes; DAVIES, Ronald B. – Learning to Tax: Interjurisdictional Tax Competition Under Incomplete Information. CESifo Working Paper Series, 6699, 2017. Available online at: https://ssrn.com/abstract=3075759

BLOOMBERG, L. D.; VOLPE, M. - Completing your qualitative dissertation: A roadmap from begin-ning to end. Thousand Oaks, CA: Sage, 2008.

CAI, Hongbin; Treisman, Daniel – Decentralization, globalization and public policy. American Economic Review, 95:3, 2005, pp. 817-830.

CAMPBELL, J.L. – Fiscal Sociology in an Age of Globalization: Comparing Tax Regimes in Advanced Capitalist Countries. In NEE, V.; SWEDBERG, R. (eds.) – The Economic Sociology of Capitalism. Princeton, NJ: Princeton University Press, 2005, pp. 391-418.

CLEMENTS, Benedict; MPOOIJ, Ruud de; GUPTA, Sanjeev; KEEN, Michael (eds. ) – Inequality and Fiscal Policy, IMF, 2015.

DAGAN, Tsilly - International Tax Policy: Between Competition and Cooperation, Cambridge Law Series, Cambridge University Press, Clays: St Ives plc, 2018

DAUNFELDT, Sven-Olov; PRASKI-STAHLGREN, Ulrika; RUDHOLM, Niklas – Do high taxes lock-in capital gains? Evidence from a dual income tax system. Public Choice, 145, 2010.

DAVIES, M. R. - Doing a successful research project: Using qualitative or quantitative methods. Basingstoke, UK: Palgrave Macmillian, 2007.

DEARDORFF, Alan V. – Terms of Trade: Glossary of International Economics. New Jerseay at al.:World Scientific Publishing Co. Pte. Ltd.

DESAI, Mihir A.; FOLEY, C. Fritz; HINES, James R. - The Demand for Tax Haven Operations. Journal of Public Economics, No. 3, 2006, pp. 513-531.

DOCQUIER, Frédéric; MACHADO, Joêl – Global Competition for Attracting Talents and the World Economy. The World Economy, 39:4, 2016, pp. 530-542.

DURST, Michael C., Limitations of the Beps Reforms: Looking Beyond Corporate Taxation for Revenue Gains (September 1, 2015). ICTD Working Paper 40. Available online at: https://ssrn.com/abstract=3119839 or http://dx.doi.org/10.2139/ssrn.3119839

DZANKIC, Elena – Immigrant Investor Programmes in the European Union (EU). Journal of Contemporary European Studies, 26, 2018:1, pp.64-80.

-----------------------, – Investment-based Citizenship and Residence Programmes in the EU. EUI Working Paper RSCAS 2014/01, , Robert Schuman Centre for Advanced Studeis, European Union Democracy Observatory on Citizenship, European University Institute: 2015.

EGGER, P; RADULESCU, D.M. – The influence of labour taxes on the migration of skilled workers. World Economy, 32, 2009, pp. 1365-1379.

EGGERT, W.; KOLMAR, M. – Residence-Based Capital Taxation in a Small Open Economy: Why Information is Voluntarily Exchanged and Why it is Not. International Tax and Public Finance, 9, 2002, pp. 465-482.

EGGERT, W.; KOLMAR, M. – The taxation of Financial Capital under Asymmetric Information and the Tax-competition Paradox. Scandinavian Journal of Economics, 106:1, 2004, pp.83-105.

ENGLER, Philipp; KLEIN, Mathias – Austerity measures amplified crisis in Spain, Portugal, and Italy. German Institute for Economic Research, Economic Bulletin 8/2017

FERNANDEZ, Rodrigo; HOFMAN, Annelore, AALBERS, Manuel – London and New York as Safe Deposit Box for the Transnational Wealth Elite. Environment and Planning A: Economy and Space, 48:12, 2016, pp. 2443-2461.

FLECKER, Jòrg (ed.) – Space, Place and Global Digital Work, Dynamics of Virtual Work Series. London: Palgrave Macmillan, 2016.

FUEST, Clemens; SULTAN, Samina – How Will Brexit Affect Tax Competition and Tax Harmonization? The Role of Discriminatory Taxation (January 11, 2018). CESifo Working Paper Series No. 6807. Available at SSRN: https://ssrn.com/abstract=3124127

GAISBAUER, Helmut P. et al. (eds.) - Philosophical Explorations of Justice and Taxation: National and Global Issues, Ius Gentium, Comparative Perspectives on Law and Justice, Vol. 40, Cham: Springer International Publishing, 2015.

GARETT, G. – Shrinking States? Globalization and National Autonomy in the OECD. Oxford Development Studies, 26, 1998, 145-177.

GENSCHEL, Philipp; SCHWARZ, Peter – Tax competition: a literature review. Socio-Economic Review, 9, 2011

GLATZER, Miguel – Tax Reform, Income Inequality and the Welfare State: The Case of Portugal. In LEAMAN, Jeremy; WARIS, Attiya – Tax Justice and the Political Economy of Global Capitalism, 1945 to the Present. USA: Berghahn Books, 2013, p.60-61.

HAN, Yutao; PIERETTI, Patrice; ZOU, Benteng – Does Tax competition increase infrastructural disparity among jurisdictions? *Review of International Economics*. 26:1, Zurich: Wiley 2018, p. 20-36. Available online at http://onlinelibrary.wiley.com/doi/10.1111/roie.2018.26.issue-1/issuetoc

HJI PANAYI, Christiana – The Europeanization of Good Tax Governance (August 19, 2018). Yearbook of European Law, 36:1, 2017, pp. 442-495. Available online at: https://ssrn.com/abstract=3105350

HOLDEN, Stephen H. Agile Policy Development for Digital Government: adn exploratory case study. Proceedings of the 14th Annual International Conference on Digital Government Research, June 2013. Available - https://www.researchgate.net/publication/262156368_Agile_policy_development_for_digital_government_An_exploratory_case_study

IOSIFIDI, Maria; MYLONIDIS, Mikolaos – Relative effective taxation and income inequality: Evidence from OECD countries. Journal of European Social Policy, 27:1, pp. 57-76.

KASAMATSU, Satoshi; KISHISHITA, Daiki - When Populism Meets Globalization: Analysis of Tax Competition (April 6, 2018). Available at SSRN: https://ssrn.com/abstract=3164192 or http://dx.doi.org/10.2139/ssrn.3164192

KERIKMÄE, T.; RULL A. (eds.) - The Future of Law and eTechnologies: Switzerland: Springer International Publishing, 2016.

KERIKMÄE, Tanel (ed.) – Regulating eTechnologies in the European Union: Normative Realities and Trends. Switzerland: Springer International Publishing, 2014.

KHANNA, Parag – Connectography: Mapping the Future of Global Civilization, New York: Random House, 2016

KORJUS, Kaspar, CASTILLO, Carlos, KOTKA, Taavi – Perspectives for e-Residency: Strengths, Opportunities, Weaknesses and Threats. *IEEE 2017 Fourth International Conference on eDemocracy and eGovernment (ICEDEG),* Quito, Ecuador.

KORJUS, Kaspar; KOTKA, Taavi; VARGAS, Carlos – Estonian e-Residency: benefits, risks and lessons learned, in KÓ, Andrea, FRANCESCONI, Enrico (eds.) Electronic Government adn the Information Systems Perspective: Proceedings of the 5th International Conference, EGOVIS 2016, Porto, Portugal. Switzerland: Springer Inernational Publishing, 2016

KYRIACOU, Andreas P; MUINELO-GALLO, Leonel; ROCA-SAGALÉS, Oriol – Redistributive efficiency in 28 developed economies. Journal of European Social Policy. 2017.

LANGENMAYR, Dominika; SIMMLER, Martin – Why the Current Tax Rate Tells You Little: Competing for Mobile and Immobile Firms (January 23, 2018). CESifo Working Paper Series No. 6827. Available at SSRN: https://ssrn.com/abstract=3129980

LEAMAN, Jeremy; WARIS, Attiya – Tax Justice and the Political Economy of Global Capitalism, 1945 to the Present. USA: Berghahn Books, 2013.

LOPES DA FONSECA, Mariana – Tax Mimicking in Local Business Taxation: Quasi-Experimental Evidence from Portugal. Working Paper of the Max Planck Institute for Tax Law and Public Finance No. 2017-8. Available at SSRN: https://ssrn.com/abstract=3083924 or http://dx.doi.org/10.2139/ssrn.3083924

MANN, F. A. – The doctrine of jurisdiction in international law. 111, RCADI, Brill, 1964.

MANNERS, David; MAKIMOTO, Tsugio - Digital Nomad, New York: Wiley, 1997.

MANSBRIDGE, Jane - Common Good. In LAFOLETTE, Hugh (ed.) – International Encyclopedia of Ethics. New Jersey: Blackwell Publishing Ltd., Vol.2. 2013, pp. 913-926.

MAVELLI, Luca – Citizenship for Sale and the Neoliberal Political Economy of Belonging. International Studies Quarterly, upcoming, published online May 16, 2018. Available online at: https://academic.oup.com/isq/advance-article/doi/10.1093/isq/sqy004/4996972?searchresult=1

MEIL, Pamela; KIROV, Vassil (eds.) – Policy Implications of Virtual Work. Cham, Switzerland: Springer International Publishing AG, Palgrave Macmillan, 2017.

METS, Tõnis., KELLI, Aleksei – Rural development in the digital era: A case of a born-global SME in Estonia –In: Bernice Kotey, Tim Mazzarol, Delwyn Clark, Tui McKeown and Martina Battisti (eds), SMEs in the Digital Economy: Surviving the digital revolution, Prahran, Australia: Tilde University Press, VIC 3181, 2015 pp. 50-63. Available at https://www.researchgate.net/profile/Tnis_Mets/publication/313241703_Rural_development_in_the_digital_era_A_case_of_a_born-global_SME_in_Estonia/links/589387a8aca27231daf62105/Rural-development-in-the-digital-era-A-case-of-a-born-global-SME-in-Estonia.pdf

MORGAN, Danielle and PARSOVS, Arnis – Using the Estonia Electronic Identity Card for Authentication to a Machine. In LIPMAA, Helger, MITROKOTSA, Aikaterini, MATULEVICIUS, Raimundas (Eds.) – Secure IT Systems: 22nd Nordic Conference, NordSec 2017, Tartu, Estonia, November 8-10, 2017, Proceedings.LNCS 10674, Cham, Switzerland: Springer International Publishing AG, 2017, pp. 175-191.

MORISSON, Fred L. – Fiscal Rules: Legal Limits on Governmental Deficit and Debt. General Report. In MORISSON, Fred L. (ed.) – Fiscal Rules—Limits on Governmental Deficits and Debt. Ius Comparatum – Global Studies in Comparative Law Series, Vol. 20. Switzerland: Springer International Publishing AG, 2016.

MOUTON, J. How to succeed in your Master's and Doctoral Studies: A South African guide and re-source book,.Pretoria: Van Schaick Publishers, 2001.

MULLER, Annika . The Digital nomad; Buzzword or research category? *Transnational Social Review*, 6:3, 2016, pp. 344-348.

MUSGRAVE, Richard A. – The Theory of Public finance: A Study in Public Economy, New York, 1959

NAGHSHPOUR, Shahdad – Fiscal Policy within the IS-LM Framework. In ROMERO, Philip J.; EDWARDS, Jeffrey A. (Ed.) Economics Collection, New York: Business Expert Press, 2014.

NYMAN-METCALF, Katrin – e-Governance in Law and by Law: The Legal Framwork of e-Governance in KERIKMÄE, Tanel (ed.) - *Regulating eTchnologies in the European Union: Normative Realitites and Trends*. Cham et al: Springer, 2014.

OVERESCH, Michael; RINCKE, Johannes – What drives corporate tax rates down? A reassessment of globalization, tax competition, and dynamic adjustment to shocks, CESifo working paper, No. 2535, 2009.

PARKER, Owen – Commercializing Citizenship in Crisis EU: The Case of Immigration Investor Programmes. Journal of Common Market Studies, 55:2, 2017, pp. 332-348.

PAUL, Ellen Frankel; MILLER, Fred D., Jr., PAUL, Jeffrey (eds.) – Taxation, Economic Prosperity and Distributive Justice. Cambridge: Cambridge University Press, 2006.

PELTOKOSKI, Merja; VOLOTINEN, Jarno; LOHTANDER, Mika – Location Independent Manufacturing – A software solution for supply chains. Procedia Manufacturing, 11, 2017, pp. 863-870. Available online at: https://ac.els-cdn.com/S2351978917303979/1-s2.0-S2351978917303979-main.pdf?_tid=57de029a-fbf5-4f23-91bc-17663d225550&acdnat=1527252252_5d22eb5bb254bf4353629f3e2278aa81

PERALTA, S.; VAN YPERSELE, T. – Coordination of capital taxation among asymmetric countries. Regional Science and Urban Economics, 36:6, 2006, p, 721.

PONELIS, Shana R. – Using interpretive Qualitative Case Studies for exploratory research in doctoral studies: a case of information systems research in small and medium enterprises. International Journal of Doctoral Studies, 10, 2015, pp. 535-550. Available online at: http://ijds.org/Volume10/IJDSv10p535-550Ponelis0624.pdf

RAGHURAM, Sumita; TUERTSCHER, Philipp; GARUD, Raghu – Mapping the Field of Virtual Work: a Co-Citation Analysis. Information Systems Research, 21:4, pp. 983-999.

ROGERS, Everett M. – Diffusion of Innovations. New York et al: Free Press, 2005

SANANDAJI, Tino – Entrepreneurship and the theory of taxation. IFN Working Paper No. 732, 2009, p. 180-181. Available online at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1089367

--------------------------, – The international mobility of billionaires. Small Business Economics. New York: Springer, 42:2, 2014, pp. 329-338.

SCHNURER, Eric B. – E-Stonia and the Future of the Cyberstate:Virtual Government Come Online, Foreign Affairs online, January 28, 2015 Available online at: https://www.foreignaffairs.com/articles/eastern-europe-caucasus/2015-01-28/e-stonia-and-future-cyberstate<

SEARLE, John – The Construction of Social Reality. London: Allen Lane, The Penguin Press, 1995.

SEN, Amartya – The Idea of Justice. Cambridge, Massachusetts: The Belknap Press of HUP, 2009.

SHACHAR, Ayelet; BAUBÔCK, Rainer (eds.) - Should Citizenship be for Sale? EUI Working Paper RSCAS 2014/ 01, European University Institute, Robert Schuman Centre for Advanced Studies, European Union Democracy Observatory on Citizenship, 2014.

SHORT, John Rennie – Attracting wealth: crafting immigration policy to attract the rich. Chapter 18 in HAY, Iain; BEAVERSTOCK, Jonathan V. (eds.) – Handbook on Wealth and the Super-Rich. Cheltenham, UK; Northampton, MA, USA: Edward Elgar Publishing, 2016, pp. 363-380.

STIGLITZ, J - On Liberty, the Right to Know, and Public Discourse: The Role of Transparency in Public Life. Oxford Amnesty Lecture, Oxford, 1999

STRAUS, J (ed.) – The role of Law and Ethics in the Globalized Economy, Berlin, Heidelberg: Springer-Verlag, 2009.

SUGIN, Linda – Theories of Distributive Justice and Limitations on Taxation: What Rawls Deamands from Tax Systems. Fordham Law Review, 72:5, 2004.

TAMMPUU, Piia; MASSO, Anu – “Welcome to the virtual state”: Estonian e-residency and the digitalized state as a commodity. European Journal of Cultural Studies,1, 2018, first published online, pp.1-18. Available online at: http://journals.sagepub.com/doi/full/10.1177/1367549417751148

TANZI, Vito – Foreword: Common Pressures to Reform European Tax Systems. In BERNARDI, Luigi; PROFETA, Paola (eds.) – Tax Systems and Tax Reforms in Europe. London: Routledge, 2004.

TORGA, Maarja, ESPENBERG, Kerly - Mapping the Civil Law risks of the e-Residency Project (E-residentsuse Projekti tsiviilºoiguselike riskide kaardistamine), Final report Tartu: University of Tartu, RAKE, 2015 available (in Estonian) at the University of Tartu Skytte Institute of Political Studies official site here - https://skytte.ut.ee/sites/default/files/ec/lopparuanne_2_06_15.pdf

ULJALA, Linda; SCUPOLA, Ada – Motivators and Inhibitors of e-residency adoption for entrepreneurial purposes. In 27th RESER Conference proceedings, Bilbão September 7-9, 2017, pp. 465-484. Available at http://reser2017.com/wp-content/uploads/2017/10/RESER%202017_Proceedings.pdf

VAN DALEN; Hendrik P.; HENKENS, Kène – Longing for the Good Life: Understanding Emigration from a High-Income country. Population and Development Review, 33:1, 2007, pp. 37-65.

VASSIL, Kristjan, SOLVAK, Mihken – E-voting in Estonia: Technological Diffusion and Other Developments Over Ten Years (2005-2015). Tartu: University of Tartu, 2016.

WINNER, Langdon – Upon Opening the Black Box and Finding it Empty: Social Constructivism and the Philosophy of Technology. Science, Technology, & Human Values, 18-3, 1993, pp. 362-378.

YOUNG, I – Anger over rich Chinese blamed for Canada migration scheme’s axing. In SHORT, John Rennie – Attracting wealth: crafting immigration policy to attract the rich, p. 365-366.

ZIELNIEWICZ, Agata – The Swiss “success Story” of Sustainable Public Finance: Debt Restrictions and Budgeting Processes in the Swiss Confederation. In

MORRISON, F.L. (ed.), *Fiscal Rules - Limits on Governmental Deficits and Debt*, Ius Comparatum - Global Studies in Comparative Law 20, Cham: Springer International Publishing, 2016.

ZODROW, G.R. – Capital mobility and source-based taxation of capital income in small open economies. International Tax and Public Finance, 13:2, 2006, pp. 269-294

**MEDIA ARTICLES**

ADEE, Sally – Moving (cyber) house – New Scientist, 12 November 2016, pp. 18-19.

ERR - Deloitte: E-residency brought 14.4 Million Euro to Estonia in first three years. Available online at: https://news.err.ee/646254/deloitte-e-residency-brought-14-4-million-to-estonia-in-first-three-years

EURONEWS – Nordic Countries oppose EU plans for digital tax on firms' turnover. Can be seen here: http://www.euronews.com/2018/06/01/nordic-countries-oppose-eu-plans-for-digital-tax-on-firms-turnover

SCHNURER, Eric – What Would It Mean for Governments to Compete Like Businesses? May 22, 2013, The Atlantic: Politics and Policy Daily

https://www.theatlantic.com/politics/archive/2013/05/what-would-it-mean-for-governments-to-compete-like-businesses/275723

**EU COMMUNICATIONS**

EU Commission, White Paper on the Future of Europe, 2017. Available online at: https://ec.europa.eu/commission/sites/beta-political/files/white_paper_on_the_future_of_europe_en.pdf

Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures**.** *Official Journal L 013 , 19/01/2000 P. 0012 - 0020*

Regulation (EU) 2016/679. Available online at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2016.119.01.0001.01.ENG

**GOVERNMENTAL WEBSITES**

ESTONIA OFICIAL WEBSITE - https://estonia.ee/

E-ESTONIA - https://e-estonia.com/

ESTONIAN PRESIDENCY OF THE COUNCIL OF THE EUROPEAN UNION - https://www.eu2017.ee/

E-RESIDENCY PROGRAMME - https://e-resident.gov.ee/

E-RESIDENCY DASHBOARD - https://app.cyfe.com/dashboards/195223/5587fe4e52036102283711615553

**ESTONIAN LEGISLATION**

State Fees Act - RT I, 30.12.2014, 1 – Available online at: https://www.riigiteataja.ee/en/eli/511022015002/consolide (in English)

Identity Documents Act - RT I 1999, 25, 365 – Available online at: https://www.riigiteataja.ee/en/eli/ee/521062017003/consolide (in English)

Personal Data Protection Act – Available online at: https://www.riigiteataja.ee/en/eli/512112013011/consolide

**PORTUGUESE LEGISLATION**

LGT - Lei Geral Tributária – Lei N98/2017 – 24-08 Available online at: https://info.portaldasfinancas.gov.pt/pt/informacao_fiscal/codigos_tributarios/Pages/default-com-pdf.aspx

Decreto-Lei n.º 249/2009, de 23 de setembro (Codigo Fiscal do Investimento)

**INTERNATIONAL ORGANIZATIONS' COMMUNICATIONS**

OECD *Addressing the Tax Challenges of the Digital Economy, Action 1 - 2015 Final Report*, Paris: OECD Publishing, 2015. http://dx.doi.org/10.1787/9789264241046-en

OECD – Ministeridal Meeting on the Digital Economy: Innovation, Growth and Social Prosperity: OCD Secretariat's Summary, 2016. Available online at: http://www.oecd.org/sti/cancun-ministerial-OECD-Summary.pdfonline

OECD - Promoting SMEs for Development – Materials from the 2nd OECD Conference of Ministers responsible for small and medium-sized enterprises (SMEs). Istanbul, Turkey 3-5 June 2004. Available online at: https://www.oecd.org/cfe/smes/31919278.pdf

OECD – Preventing the Granting of Treaty Benefits in Inappropriate Circumstances, Action 6 – 2015 Final Report, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris. 2015. Available online at: http://dx.doi.org/10.1787/9789264241695-en

OECD – Model Tax Convention on Income and on Capital. Condensed version 2017, OECD Publishing. Available online at: http://dx.doi.org/10.1787/mtc_cond-2017-en

OECD – Are the Current Treaty Rules for Taxing Business Profits Appropriate for E-Commerce? Final Report. CTPA Available online at: https://www.oecd.org/ctp/treaties/35869032.pdf

OECD – Harmful Tax Practices – 2017 Progress Report on Preferential Regimes. Available online at: https://www.oecd-ilibrary.org/taxation/harmful-tax-practices-2017-progress-report-on-preferential-regimes_9789264283954-en

OECD – Public Input Received on Misuse of Residence by Investment Schemes to Circumvent the Common Reporting Standard: Compilation of Comments. 17 April 2018. Available online at: https://www.oecd.org/tax/exchange-of-tax-information/public-input-received-misuse-of-residence-by-investment-schemes-to-circumvent-the-common-reporting-standard.pdf

ERNST AND YOUNG (EY) - Saudi Arabian tax authorities introduce Virtual Service PE concept. EYGM, 2015. Available online at: https://webforms.ey.com/Publication/vwLUAssets/Saudi_Arabian_tax_authorities_introduce_Virtual_Service_PE_concept/$File/2015G_CM5642_Saudi%20Arabian%20tax%20authorities%20introduce%20Virtual%20Service%20PE%20concept.pdf

DELOITTE – Non-habitual residentes: Portuguese special tax regime for inbounds 2018. Available online at: https://www2.deloitte.com/content/dam/Deloitte/pt/Documents/tax/NHR/EN-NHR-flyer-pensioners2018.pdf

KPMG – Lump-sum Taxation – an interesting alternative: International Private Client Services. KPMG AG, 2016. Available online at: https://assets.kpmg.com/content/dam/kpmg/pdf/2016/06/ch-lump-sum-taxation-en.pdf

ACCENTURE – Platform Companies: Treading the Path from Early Disruptor to Platform Titan. Available online at: https://www.accenture.com/t20171004T021111Z__w__/us-en/_acnmedia/PDF-62/Accenture-Platform-Companies-PoV-Part2.pdf

# ANNEX I

Possible confusion and similarities to other residency related regimes and terms[191]:

A clear distinction has to be made between the concept of electronic residency as implemented by Estonia and such regimes exemplified by Portuguese legislation as:

- Non-habitual resident (*residente não-habitual*[192]) for fiscal purposes – which is a privileged tax regime a new factual resident who has not been paying taxes in Portugal for at least 5 years.
- Part time resident for fiscal purposes
- Single digital address (*morada única digital*)[193] which is basically is an official electronic address of a tax payer (*domicílio fiscal eletrónico* as stated in Art. 19.2 of Portuguese Tax Law (*Lei Geral Tributária*) by means of which Tax Authority communicates with already existing tax payers, and which also can dispense with the necessity of fiscal representative[194]

[191] The comparison is made with Portuguese legal notions, given the thesis is defended at a Portuguese university.
[192] Decreto-Lei n.º 249/2009, de 23 de setembro (Codigo Fiscal do Investimento)
[193] Art. 19.2 of LGT *(Redação do Decreto-Lei n.º 93/2017, de 1 de agosto) and* Art 19.10 of LGT *(Redação da Lei 66-B/2012 de 31 de dezembro)*
[194] Art. 19.12 of LGT - A obrigatoriedade de designação de representante fiscal ou de adesão à caixa postaleletrónica não é aplicável aos sujeitos passivos que aderiram ao serviço público de notificaçõeseletrónicas associado à morada única digital, com exceção do previsto quanto às pessoascoletivas ou outras entidades legalmente equiparadas que cessem atividade. *(Redação do Decreto-Lei n.º 93/2017, de 1 de agosto)*