



# ***The Elusive Resident in the 21st century: Tax Residency Criteria and the Case for EU Harmonisation***

***Jean-Philippe Van West***

***Tax Autumn at the University of Belgrade Faculty of Law – 23 October 2025***



VRIJE  
UNIVERSITEIT  
BRUSSEL

# AGENDA

**1** Setting the Scene

**2** The Criteria to Determine Tax Residency

**3** Is there a Case for EU Harmonisation?



# 1. Setting the Scene

# Society is Changing - Individuals are increasingly mobile

- ▼ Technological developments
- ▼ Demographical developments and changing family compositions
- ▼ Changes in the way we work and the way work is organised
- ▼ Schemes to attract mobile individuals
- ▼ Geopolitical state of affairs

# Mobile individuals - Who are they?

- ▼ Teleworkers
- ▼ Digital Nomads
- ▼ (E-)Sporters and artists
- ▼ High-Net-Wort Individuals
- ▼ Platform Workers
- ▼ C-suite
- ▼ Mobile students
- ▼ Refugees
- ▼ Mobile pensioners
- ▼ Influencers
- ▼ Cross-border workers
- ▼ People who work for international organisations
- ▼ ...

# Mobile individuals - How many are they?

- ▼ Theory versus reality
- ▼ Data gap
- ▼ Lack of reliable data combined with difficulties of defining mobile individuals complicates the life of (international) (tax) policymakers

# Increased scholarly debate on tax aspects

- ▼ The assumption that capital is more mobile than labour is challenged
- ▼ Tax planning opportunities and double-non taxation
- ▼ Redistribution and budgetary issues
- ▼ The concept of residence plays a central role in (international) taxation, but is outdated
- ▼ Concepts used in tax treaties and the way taxing rights are allocated are challenged

# The situation in Belgium (1/2)

- ▼ Residents taxed on their worldwide income
- ▼ Individuals are resident in Belgium if
  - ▼ Residence (domicile/ woonplaats) in Belgium or,
  - ▼ Residence outside Belgium but centre of economic interests (siège de leur fortune/ zetel van fortuin) in Belgium.
- ▼ The tax authorities bear the burden of proof, but two presumptions
  - ▼ Rebuttable presumption: registration in the civil register of a Belgian municipality
  - ▼ Irrebuttable presumption: married person has residence where their family is established.

## The situation in Belgium (2/2)

- ▼ Nationality is not regarded as a determining criterion.
- ▼ No time-threshold (e.g. 183-day rule)
- ▼ No exit tax
- ▼ No trailing tax (post-departure “continuing residence” )
- ▼ CFC rules for individuals
- ▼ The current definition does not differ significantly from the definition that was included in the Law of 27 December 1817 on inheritance taxes

# Research Questions

- 1) What are the “*ideal*” criteria to determine when an individual should be subject to worldwide taxation from a national perspective in today’s world?
- 2) Is there a case for harmonization of the concept of tax residency within the EU?



## 2. The Criteria to Determine Tax Residency



# Approach

- Analysis of criteria used by EU Member States and by OECD Members to determine tax residency
- Identify different approaches and reactions
- Learning from and building on existing criteria to determine best practices

# A survey of nexus rules to determine tax residency (1 / 2)

- ▼ Different nexus rules and terminology
  - ▼ Citizenship
  - ▼ Domicile
  - ▼ Habitual abode
  - ▼ Physical presence during a certain period
  - ▼ Centre of vital and economic interest
  - ▼ Place where the family lives
- ▼ Many differences between similar nexus rules
  - ▼ Different number of days and calculation methods for physical presence test, ownership of a house
- ▼ Use of a combination of criteria
  - ▼ Day-count combined with qualitative tests (centre of vital or economic interest, permanent home, ) as a backstop
- ▼ ...

# A survey of nexus rules to determine tax residency (2/2)

- ▼ Preliminary conclusions
  - ▼ Databases and country reports useful source of inspiration, but not sufficient on their own to determine best practices (e.g. ratio legis of the rule, economic impact assessment etc is lacking)
  - ▼ Similar approaches, but still very different without clear explanations
  - ▼ Hard to cluster countries' approaches

# The ideal criteria for worldwide taxation in today's world

- ▼ Which criteria to use and which combination?
  - ▼ Citizenship? Day-count? Home available? Place of work? Family ties? New criteria needed? ...
- ▼ Alignment with other areas of law needed (e.g. social security law, labor law, migration law, ...)?
- ▼ Working with (rebuttable) presumptions a good approach?
- ▼ Are exit taxes, CFC rules for individuals, trailer taxes etc recommended?
- ▼ ...

➔ To be continued



### 3. Is there a Case for EU Harmonisation?

# Is there a Case for EU Harmonisation? Some thoughts

- ▼ Limited progress at European level in the area of direct taxation to promote cross-border mobility of individuals through secondary law, despite the concept of the internal market and free movement of persons
- ▼ Increased mobility of individuals is a trend affecting all EU Member States, different approaches might undermine the Member States' approaches
- ▼ Which approach would best support the idea of the internal market and the free movement of persons?
- ▼ Different rules across the EU Member States increase creates obstacles to free movement: increased complexity, increased compliance, risk of double taxation etc
- ▼ Hard law vs soft law
- ▼ ...

# Is there a Case for EU Harmonisation? Some thoughts

- ▼ Is harmonisation through secondary law a must given the vast amount of tax treaties concluded between EU Member States, and the EU Dispute Resolution Directive?
- ▼ Is this something that should be governed at EU level, are Member States not better placed to address the issue?
- ▼ Is harmonisation through a Directive a realistic and desirable option (unanimity requirement, sovereignty of Member States, ...) ?

# Thank you

**Jean-Philippe Van West**

**jean-philippe.van.west@vub.be**

**Follow me on LinkedIn: <https://be.linkedin.com/in/jeanphilippevanwest>**



VRIJE  
UNIVERSITEIT  
BRUSSEL