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# EVOLUTION OF APPROACHES TO DETERMINING TAX JURISDICTION OVER INDIVIDUALS: HISTORICAL AND THEORETICAL ANALYSIS, CONTEMPORARY ISSUES

This article explores the evolution of legal approaches to determining tax jurisdiction over individuals, focusing on the transition from citizenship-based to residence-based taxation frameworks. The relevance of this research stems from the increasing mobility of individuals in the context of globalization, remote work, digital transformation, and displaced persons due to the Russian war in Ukraine, all of which challenge traditional taxation models and create new legal and administrative dilemmas. The study outlines the historical foundations of individual tax jurisdiction, starting with the emergence of territorial- and citizenship-based taxation, and its gradual replacement by residence-based principles in international treaties, particularly under the influence of the OECD Model Tax Convention.

Special attention is given to the criteria used to establish tax residence — such as permanent home, center of vital interests, physical presence, and habitual abode — and the challenges these criteria face in the modern world. The research analyzes specific legal conflicts arising from non-residency, dual residency, wartime displacement (e.g., the case of Ukrainian citizens), and the growing population of digital nomads who are economically active across multiple jurisdictions.

The article highlights the need to adapt existing legal frameworks to contemporary realities, including the development of clearer legal mechanisms to ensure tax certainty and fairness. It also emphasizes the importance of theoretical and doctrinal analysis of tax jurisdiction in supporting future reforms.

**Key words**: individual taxation, tax residency, tax resident, digital nomads, OECD, center of vital interests, habitual abode.

**Problem setting.** The determination of tax jurisdiction over individuals has become an urgent legal and administrative challenge in the era of globalization, digitalization, and remote work. Traditional tax systems, based on territoriality and permanent residence, are increasingly ill-suited to address the realities of mobile professionals, digital nomads, and forcibly displaced persons who live and work across multiple jurisdictions.

In today's globalized context, the notion of stable tax residency is often blurred. The rise of so-called "stateless taxpayers" — individuals with unclear or overlapping residency status — increases the risk of both double taxation and non-taxation. Growing mobility and the proliferation of various residence statuses have weakened the traditional connection between nationality and taxation, prompting jurisdictions to redefine tax sovereignty in terms of functional economic presence rather than formal legal status.

This issue is especially acute in military conflict-affected countries like Ukraine. Since the beginning of the full-scale Russian invasion, according to UNHCR statistics, more than 8 million Ukrainians have relocated abroad [1], many without clear fiscal residency. This mass displacement has exposed gaps in both national legislation and international tax treaties. The resulting legal ambiguities pose significant fiscal risks for Ukraine and create uncertainty for individuals regarding their tax obligations. Over time, the government may face increasing difficulty in financing public expenditures — such as pensions and infrastructure — if more Ukrainians continue to work and pay taxes abroad rather than at home [2].

There is, therefore, a pressing need to reassess and modernize the theoretical foundations of tax jurisdiction. This requires moving beyond outdated models and adapting legal frameworks to reflect contemporary patterns of global mobility and economic activity.

 

**Analysis of recent researches and publications.** The issue of determining tax jurisdiction over individuals remains largely underexplored in legal scholarship, especially in light of recent global trends such as large-scale displacement, digital labor, and hybrid residence statuses. Nevertheless, in terms of the historical and theoretical development of the tax residency concept, several scholars from various fields have made meaningful contributions to the subject.

Giedre Lideikyte-Huber, professor at the University of St. Gallen (Switzerland), in her 2015 article "Taxation without Representation: The Case of Resident Non-Citizens" [3], provides a detailed analysis of early OECD efforts — particularly the 1923 Technical Study — where initial ideas of shifting away from the citizenship-based approach to taxation were first introduced.

Claus Haas, professor at Aarhus University (Denmark), in his work "What is Citizenship? An Introduction to the Concept and Alternative Models of Citizenship" [4], examines various models of citizenship and their legal and conceptual links to tax residency, offering a theoretical basis for evaluating jurisdictional claims by states.

Ruth Mason, professor at the University of Virginia School of Law (USA), presents a philosophy of "citizenship taxation", treating taxation as a civic duty owed to the nation itself, not merely to the territory of residence [5]. Her argument challenges traditional notions of tax nexus and reflects on the normative dimension of tax obligations.

British economist John Maynard Keynes, in "How to Pay for the War" [6], considered physical presence an objective indicator of connection to the state, yet emphasized the need for flexibility in applying tax rules to mobile individuals. His work remains relevant in assessing how tax systems should respond to mass movement across borders.

Together, these contributions support the author's effort to identify the historical and theoretical approaches to determining tax jurisdiction over individuals — the core objective of this article — and will serve as a foundation for future sections of the author's PhD dissertation, which will address the need for tax reform in this area today.

**Purpose of the research** is to analyze the historical development and theoretical foundations of how states determine tax jurisdiction over individuals, with a focus on evolving concepts such as citizenship, residence, and economic connection. By examining these approaches in light of modern global challenges — including displacement, mobility, and legal uncertainty — the article aims to clarify the current doctrinal gaps and offer a conceptual basis for future tax policy reform.

**Article's main body.** In the early 21st century, globalization significantly enhanced human mobility, giving rise to the phenomenon of "global citizens" — individuals who move between countries without a clearly defined place of residence [7]. Traditional tax systems, originally designed for sedentary populations, have proven ill-suited to this new reality, creating challenges in determining the country entitled to tax such individuals' income. The spread of digital economies and remote work has made it essential to revisit and justify, from a theoretical standpoint, which jurisdiction holds legitimate taxation rights. This article analyzes historical and theoretical foundations of this issue, with a focus on the principles of citizenship and residence.

The taxation of individuals has a long history, dating back to ancient times when taxes were levied mainly on habitats of a given territory. In the Roman Empire, for example, tax jurisdiction was primarily territorial, tied to residence or property ownership in a province [8]. However, the mobility of merchants, soldiers, and administrators posed challenges similar to modern ones. The Roman state adapted by focusing on economic presence (e.g., taxing trade or property) rather than strictly personal residency, a precursor to modern debates on functional economic presence. During the Middle Ages in Europe, taxation was also based on territoriality: feudal lords taxed those residing on their lands, regardless of citizenship.

This changed with the emergence of nation-states in the 17th–18th centuries, when citizenship became linked to tax obligations. Countries such as Great Britain began taxing their citizens even when residing abroad. The British income tax introduced in 1799 marked a notable precedent by establishing taxation based on citizenship [9].

In the 19th century, with industrialization and growing cross-border trade, the problem of double taxation emerged. This led to early bilateral treaties, which shifted emphasis from citizenship to residence as the key criterion. One of the first tax treaties signed was the one concluded between Prussia and the Austro-Hungarian Empire on 21 June 1899. The general principle of this treaty was that nationals of the states would be subject to direct taxation (income tax) only in their state of domicile or residence [10].

In the 20th century, the Organisation for Economic Co-operation and Development (OECD) played a decisive role in shaping modern approaches. In its 1923 technical study, the OECD concluded that citizenship alone is insufficient for taxing non-residents; rather, individuals should pay taxes where they maintain economic interests [3]. This idea became the basis of the OECD Model Tax Convention of 1963, which formalized residence as the main taxation criteria for member states. So, after that period citizenship and residence became the two main criteria for determining tax jurisdiction over an individual's income.

The citizenship principle holds that a person is taxed by the state of which they are a citizen, regardless of residence. This approach is rooted in the concept of a social contract, where the citizen is considered part of a community with obligations to support it. British philosopher Greg Hill emphasized that citizenship in democratic societies requires contribution — such as taxes — for the maintenance of public goods [11]. Historically, this principle dominated in countries where citizenship signified a permanent legal bond with the state.

Today, however, the citizenship principle is applied narrowly. The best-known example is the United States, where citizens are taxed based on nationality, even while living abroad. American scholar Ruth Mason notes that this reflects a unique philosophy of "citizenship taxation," in which taxation is seen as a duty owed to the nation, not just to the place of residence [5]. Yet even in the U.S., bilateral tax treaties can override this model, illustrating the growing dominance of residence over citizenship in practice.

The residence principle, now prevailing globally, is based on actual ties between the individual and the jurisdiction. It assumes that taxes should be paid where one receives economic benefits and public services. The OECD Model Convention outlines key criteria for determining tax residence, which have been the subject of academic attention. Four such criteria are reviewed below.

The first is physical presence, typically measured by the 183-day rule. This assumes that prolonged presence indicates economic integration. British economist John Maynard Keynes, in his wartime writings, supported physical presence as an objective marker of connection to the state, though he also emphasized the need for flexibility for mobile individuals [6]. Modern studies, such as those by Giedrė Lideikytė-Huber, confirm that the 183-day threshold represents a compromise between precision and practicality [3].

The second is availability of permanent housing, meaning access to stable accommodation rather than temporary lodging. Swiss legal scholar Giedrė Lideikytė-Huber notes that permanent housing reflects an intent to remain, making it a significant factor in residence determination. However, she critiques its subjectivity, as intent is hard to prove [3]. The OECD further clarifies that temporary stays, such as hotels, do not count toward residence status [12].

The third is the center of vital interests, which takes into account a combination of personal and economic ties, such as family, employment, and social relations. American tax law professor Michael J. Graetz emphasized that this is the most comprehensive indicator but also the most complex to apply, as it requires assessing the full context [6]. The OECD stresses that actions, not just declarations, are decisive, making the standard both flexible and open to interpretive challenges [5].

The fourth is habitual abode, which considers the regularity and frequency of a person's stay in a given country. British economist Kenneth J. Arrow argued that habitual abode reflects a "settled lifestyle," essential for fair taxation. However, he acknowledged that under globalization, this standard loses clarity, as individuals may have multiple "habitual" locations [13]. The OECD distinguishes habitual abode from both transient stays and permanent housing, situating it as an intermediate category [5].

These theoretical approaches to determining tax jurisdiction serve as the foundation for the tax legislation of most modern states. While the citizenship-based principle continues to apply in a limited number of jurisdictions, the residence-based approach has become the prevailing international standard. Nonetheless, there is an increasing necessity to adapt these principles to contemporary challenges, particularly those arising from digitalization and heightened individual mobility. In the future PhD research, the author intends to examine both national and international legal frameworks for determining individual tax residency. Special attention will be given to complex and underexplored cases, such as the taxation of Ukrainian citizens displaced by war, the legal and fiscal status of digital nomads, and other unique situations emerging in a globalized and mobile world.

**Conclusions**. In this article, the author has explored the historical development and theoretical foundations of determining tax jurisdiction over individuals, with particular emphasis on the evolution of tax residency concepts. The study has shown how the approach to taxing individual income has gradually shifted from the early principles of territoriality and citizenship toward a more widely accepted residence-based model.

Within the residence-based taxation model, the article examined key doctrinal approaches used to establish tax residency — including physical presence, permanent home, center of vital interests, and habitual abode. While these criteria form the basis of most modern tax systems, the research has highlighted their limitations in addressing the realities of digital nomads, hybrid residents, and displaced persons, whose lives and incomes are increasingly detached from a single jurisdiction.

The findings of this research will serve as a foundation for the author's future PhD work, which will focus on critically assessing both national and international approaches to determining individual tax residency. The aim will be to identify why current models fail to adequately address the challenges posed by global mobility, digital labor, and wartime displacement, and to develop updated legal mechanisms capable of restoring clarity, fairness, and tax certainty in such cases.

This issue holds particular urgency for Ukraine, a country severely affected by the ongoing Russian war. Millions of Ukrainian citizens have relocated abroad, often without establishing clear fiscal residency. Over time, this creates the risk not only of losing taxpayers but also of losing citizens altogether, should they acquire new tax residencies and eventually adopt foreign citizenships. Such a shift would have significant long-term implications for Ukraine's fiscal base, public finance system, and national identity.

Therefore, Ukraine must prioritize the development of effective tax and legal policies aimed at preserving economic and fiscal ties with its citizens abroad. Maintaining Ukrainian tax residency for displaced persons, creating incentives to declare income in Ukraine, and ensuring continued connection to the Ukrainian state will be essential. This requires a comprehensive reevaluation of domestic tax laws and active participation in the international dialogue on mobility and tax jurisdiction.

Ultimately, the author concludes that legal reforms in this field are not only timely but vital to Ukraine's financial sovereignty and national resilience.

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## ЕВОЛЮЦІЯ ПІДХОДІВ ДО ВИЗНАЧЕННЯ КРАЇНИ ОПОДАТКУВАННЯ ДОХОДІВ ФІЗИЧНИХ ОСІБ: ІСТОРИКО-ТЕОРЕТИЧНИЙ АНАЛІЗ, СУЧАСНІ ВИКЛИКИ

**Постановка проблеми.** У статті розглядається проблема трансформації підходів до визначення країни оподаткування доходів фізичних осіб в умовах зростаючої глобальної мобільності, віддаленої праці та масового переміщення населення — зокрема, на тлі повномасштабної війни Росії проти України. Традиційні моделі оподаткування, засновані на територіальності та постійному місці проживання, виявляються недостатніми для сучасних умов. Окрім цього, в контексті війни — Україна стикається з фіскальними ризиками через невизначений податковий статус мільйонів переміщених осіб, що загрожує втратою платників податків та потенційно громадян.

**Аналіз останніх досліджень і публікацій.** Хоча концепція податкового резидентства вивчалася раніше, сучасна юридична наука ще не дала всебічної відповіді на виклики, пов'язані з новими формами мобільності. Значний внесок зробили такі дослідники, як Ґедре Лідеікіте-Губер, Клаус Гаас та Рут Мейсон, які досліджували перехід від оподаткування на основі територіальності та громадянства до оподаткування на основі резидентства, а також нормативні засади податкових зобов'язань. Їхні праці є теоретичним підґрунтям для аналізу поточних правових викликів.

**Мета статті** — здійснити історико-теоретичний аналіз підходів до визначення податкової юрисдикції щодо фізичних осіб, а також оцінити доцільність громадянського та резидентного підходів в умовах мобільного світу. Особливу увагу приділено статусу податкових зобов'язань переміщених осіб, цифрових кочівників та осіб із

гібридним чи невизначеним резидентством, зокрема у випадку України. Стаття покликана окреслити доктринальне підґрунтя для майбутніх наукових досліджень автора та, відповідно, формування пропозиції реформ податкового законодавства.

**Виклад основного матеріалу.** У статті прослідковується еволюція податкової юрисдикції від античної та середньовічної територіальності до сучасних підходів, сформованих під впливом Модельної конвенції ОЕСР. Проведено критичний аналіз оподаткування за громадянством та критеріїв резидентства — таких як фізична присутність, постійне житло, центр життєвих інтересів та звичайне місце проживання. Розглянуто сучасні правові дилеми, пов'язані з подвійним резидентством, особами без громадянства та переміщенням в умовах війни. Проаналізовано недоліки чинних правових інструментів і наголошено на потребі адаптивних механізмів для реагування на нову транскордонну реальність.

**Висновки та перспективи подальших досліджень.** Зроблено висновок, що домінуюча на сьогодні модель оподаткування на основі резидентства потребує модернізації з огляду на виклики цифрової епохи та мобільності. Для України актуальним є реформування національного податкового законодавства з метою збереження фіскального зв'язку з переміщеними громадянами та зміцнення фінансового суверенітету. Напрацьовані у статті висновки стануть концептуальною основою для дисертаційного дослідження автора, спрямованого на підвищення правової визначеності та прозорості податкових зобов'язань у транснаціональному контексті.

**Ключові слова:** оподаткування фізичних осіб, податкове резидентство, податковий резидент, цифрові кочівники, ОЕСР, центр життєвих інтересів, звичне місце перебування.

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