



Residence Concept of Individuals (Art 4 OECD-MTC) under scrutiny considering Generational Differences

Why additional research

- Concept is largely unchanged since OECD-MTC 1963/final proposal of the OEEC 1959
- Concept (still) causes difficulties in application/interpretation
- Generational differences have not yet been considered (in detail) for suggested changes to the concept



Methodological approach

- Legal methodology Art 31-33 VCLT
- Autonomous interpretation
- Most current commentary at treaty conclusion date relevant
- New concept should be legally and politically feasible, appropriate and should provide (more) legal certainty
- Generational differences via sociological studies of other authors



Research questions

i. What considerations have been the basis for the development of the concept of residence acc to Art 4 OECD-MTC?

ii. Of which importance is the concept of residence with respect to the OECD-MTC?

iii. How shall residence acc to Art 4 OECD-MTC be interpreted and the concept of residence be understood?

Selected findings to questions i.-iii.



- Principle of ability to pay (not e.g. the benefit theory)
- Residence criteria must reflect such an attachment of the individual to the state that taxation right appears „natural“
- A clear solution to the question of residence should be found; actual – not assumed – realities of life are decisive
- Considerable importance: Applicability of a treaty, distribution articles, method article, mutual agreement procedure
- Permanent home: Objective and subjective element (without high demands on the latter); temporal aspect is important
- Centre of vital interests: Neither personal nor economic relationships are more important per se (history confirms that); relations of contracting states must be considered and not to a third state, quality/intensity of relationships is relevant
- Mutual agreement: Obligation to reach a conclusion

iv. Is the current concept of residence – inter alia considering its purpose and generational differences – in need of revision?

v. Which modifications to the concept of residence have already been suggested in literature?

vi. How should the concept of residence be adapted from a legal policy perspective?

Preliminary considerations to questions iv.-vi.



- Yes: Mobility as main difference compared to 1950s/1960s; mobility and digitalization lead to more cases of double residence and a more difficult assessment of the realities of life; common understanding of the concept is crucial
- Extension or restriction of residency acc to Art 4/1 OECD-MTC
- Nationality as an/no appropriate criterion
- Refining the existing Tie-Breaker-Rules
- Relevance of the physical presence
- Splitting of the taxation right instead of binary allocation
- Additions to the commentary to ensure a common understanding?
- Simplified/Formalized Rules (in some cases)? Understandability is important, as especially individuals are the norm addressees?
- „Temporary-Freeze“ of an individual's residence?

Thank you very much for your comments and questions!