Reconsidering Citizenship Taxation

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This Chapter discusses citizenship taxation as a potential solution to the challenges posed by increasing global mobility and the digitalization of work, which have made traditional tax systems less effective. As people increasingly work, live, and invest across multiple jurisdictions, it becomes harder for states to maintain their tax bases and social contracts. Although citizenship taxation—which involves taxing citizens on their worldwide income regardless of where they live—could help address these challenges, citizenship taxation alone is too crude a basis for worldwide taxation and therefore requires adjustments. Neither citizenship nor residence alone perfectly reflect membership in a national community, which is the traditional fairness justification for the imposition of tax obligations for redistribution. Instead, combining elements of both citizenship and residence might better align tax obligations with actual community membership.

Even if a country were to conclude that citizenship taxation or a combination of citizenship and residence taxation were desirable, it would still have to find a way to enforce this tax. The example of the failure of the United States to effectively administer its citizenship taxation suggests that even powerful countries with a robust tax administration will have trouble with unilaterally enforcing tax compliance from their citizens abroad, all while weaker nations lack even the economic leverage to implement similar measures. Less attractive or economically disadvantaged countries would struggle with citizenship taxation because their wealthy citizens might relinquish their citizenship if tax burdens are too high, making the policy potentially counterproductive for these nations. While multilateral cooperation could theoretically help solve these issues, such arrangements would likely favor stronger states over weaker ones, potentially widening rather than reducing global economic disparities.

I. Introduction

As people and work both become less connected to particular states, forms of taxation invented for a less mobile, less digitized world become obsolete. Scholars and policymakers point to citizenship taxation as a solution to the tax challenges of globalization and migration

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because citizenship taxation would enable states to tax people no matter where they work or migrate. By tying taxation to a more immutable jurisdictional hook than residence or source, citizenship taxation directly addresses globalization and migration. Citizenship taxation may, indeed, turn out to be an important tool in combatting income-tax base erosion. But we argue that citizenship alone is too crude a basis for imposing worldwide income taxation, and so it demands adjustments. Additionally, pointing to the failure of the United States to effectively enforce its citizenship tax, we address the significant administrative and strategic obstacles posed by the unilateral adoption of citizenship taxation. Finally, although citizenship taxation has been offered as a panacea, we explain why rich countries will have a much easier time implementing citizenship tax regimes than poor countries will, and why multilateral cooperation (though potentially helpful in supporting citizenship taxation) might benefit rich countries at the expense of poor ones.

II. The Imperiled Social Contract

For most of history, people did all of the following only in the state of their nationality: reside, work, and invest. The coincidence of these factors in a single state for much of the history of the income tax made it easy to enforce tax obligations, and such taxation was perceived as legitimate. Increasingly, however, we cannot assume that these aspects of a person's life will coincide in a single state that hosts a single community to which that person pays taxes and owes duties of justice, and from which that person receives public goods and services. Hundreds of millions of people have migrated outside their state of birth or citizenship. Regional economic unions further liberalize migration and cross-border work while deemphasizing the importance of nationality.[1] Enhanced by technological and social changes brought on by the pandemic, the labor market increasingly accommodates work-from-home and remote work over long distances.[2] People increasingly work for employers or do business outside the state where they reside.[3]

These phenomena present challenges for a tax system devised in the last century. Consider labor income: our international tax system commonly sources labor income to the place of performance of the services. For a long time, it seemed obvious that the place of performance of services was the place where the service-provider was physically located. But new modes of work have begun to erode this consensus. During the world's massive experiment with working from home during the pandemic, some states changed their source rules to recapture income that they could not tax under their "place of performance" rules. Such amended rules sourced income to the

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[1] *See also (in this volume)* Afton Titus, *Embracing the African Union and the African Tax Administration Forum in Tax Governance in* TAXING PEOPLE: THE NEXT 100 YEARS XX (Tsilly Dagan & Ruth Mason eds., forthcoming 2025) (discussing economic union in Africa).

[2] *See (in this volume)* Diane M. Ring, *A Century of Labor and Taxation in* TAXING PEOPLE: THE NEXT 100 YEARS XX (Tsilly Dagan & Ruth Mason eds., forthcoming 2025).

[3] Jeanne Batalova, *Top Statistics on Global Migration and Migrants*, MIGRATION POLICY INSTITUTE, MIGRATION INFORMATION SOURCE (Jul. 2022), at 2 ("According to the latest available estimates, there were 280.6 million global migrants in 2020—representing close to 4 percent of the world's 7.8 billion people").

location of the employer or even the *former* place of performance of work.[4] States' readiness to change their source rules to maintain their budgets is not only portentous, but it also suggests that the concept of "source" lacks strong normative grounding.[5] When consensus unravels, radical change to ungrounded rules becomes possible.

Our changing economy also raises the stakes of tax competition. States have long enticed highly skilled and wealthy migrants with alluring tax packages.[6] Some countries offer non-domiciliary or "non-dom" regimes that allow people to enjoy the benefits of living in a modern social welfare state without the obligation to contribute taxes in the same way as the incumbent population. A commonplace way to structure such regimes is for the receiving state to allow wealthy foreign nationals to pay tax only on income they bring into the receiving state, or to pay tax at a special rate.[7] If the person's origin state does not tax the person's worldwide income—for example, because the origin state, like nearly all states, only taxes residents on their worldwide income—the person may escape ability-to-pay taxation on their worldwide income in both the receiving state and the origin state. Some countries even offer so-called citizenship-for-sale regimes.[8] Although not entirely free from risk,[9] such regimes allow states and individuals to strike a bargain different from that available to other members of society. The emerging phenomenon of digital nomads—people who work remotely and who may reside in several countries over the course of a year, establishing tax nexus in none[10]—raises concerns similar to those raised by non-

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[4] *See, e.g., New Hampshire v. Massachusetts*, 141 S.Ct. 1262 (2021), *cert. denied* (challenging a Massachusetts rule that sourced income to pre-pandemic place of performance).

[5] *But see* Mitchell Kane, *A Defense of Source*, 32 YALE J. REG. 311 (2015).

[6] Economists have calculated that the "average net present fiscal value of a (permanent) immigrant [is] . . . $198,000 for an immigrant with more than a high school education." Mihir A. Desai et al., *Sharing the Spoils: Taxing International Human Capital Flows*, 11 INT'L TAX & PUB. FIN. 663, 669–70 (2004).

[7] Under a U.K. regime set to be repealed, for example, qualified residents could opt for remittance-based taxation which effectively exempted from U.K. tax any foreign-source income and gains not remitted to the U.K. Whilst other U.K. residents paid tax to the United Kingdom on their worldwide income and gains regardless of remittance, those opting for non-dom status would pay only an annual charge of £30,000, and even that charge applied only if the person lived in UK for at least 7 of previous 9 years (with the charge increasing to £60,000 after at least 12 years of residence out of the previous 14 years. See Income Tax Act 2007, c. 3, §§ 809B, 809C(1A), 809C(4), and 809H. Other examples for favorable residency regimes include Italy, Malta, Ireland, Israel, and Portugal; *see* Tsilly Dagan, *Tax and Globalization: Toward a New Social Contract*, 44 OXF. J. LEG. ST. 487 (2024).

[8] *See* Ayelet Shachar, *Citizenship in* THE OXFORD HANDBOOK OF COMPARATIVE CONSTITUTIONAL LAW *The Oxford Handbook of Comparative Constitutional Law* (Michel Rosenfeld & András Sajó eds., 2012). *See also* Allison Christians, *Buying In: Residence and Citizenship by Investment*, 62 ST. LOUIS U. L.J. (2017). *See also* Emma Agyemanghe, *The Low-tax Countries Wooing the World's Wealthy*, FIN TIMES. (Aug. 12, 2024) ("it's never been so easy for the super-rich to relocate"). Id. (describing attractive regimes in Switzerland, the UAE, Singapore, and Monaco and the tightening or possible tightening of regimes in France, Italy, Portugal, and the United Kingdom). *See also* OECD, *Why Do OECD Countries Offer Tax Relief Programs to Attract Foreign Migrants and Returning Nationals?,* MIGRANT POLICY DEBATE, No. 25 (June 2024) (describing programs ranging from reduced tax rates to full or partial exemptions) [hereinafter OECD, *Why Do OECD Countries*].

[9] Recent developments demonstrated that there is also a flip side to such choices: the risk that one's assets may not be as well protected as those of full members. *See e.g.,* Foreign, Commonwealth & Development Office, *Press release: UK hits key Russian oligarchs with sanctions worth up to £10 billion*, GOV.UK (14 April 2022), https://www.gov.uk/government/news/uk-hits-key-russian-oligarchs-with-sanctions-worth-up-to-10bn.

[10] For a discussion on whether everyone must pay taxes somewhere *see (in this volume)* Wolfgang Schön, *Must Everybody Pay Tax Somewhere? in* TAXING PEOPLE: THE NEXT 100 YEARS XX (Tsilly Dagan & Ruth Mason eds., forthcoming 2025).

dom regimes, namely, that some people can completely avoid ability-to-pay taxation on their worldwide income.

Although they escape tax, the beneficiaries of these regimes nevertheless consume public goods and services in various jurisdictions. These people thus retain (or at least preserve the option to use) substantially all the benefits of the social contract of one or more rich welfare states, without paying for those benefits the way that other taxpayers do. Interstate competition for the most desirable migrants—the rich and high-skilled—thus erodes the ability of states to enforce people's duties to fund not only taxes for redistribution, but even to fund the costs of providing public goods and services. In this way, the twin pressures of mobility and state competition unbundle the social contract.[11]

If we accept that membership in a political or social community generates a moral obligation to pay taxes for redistribution, then the ability of some, but not all, taxpayers to escape that responsibility is inequitable. Of course, the problems of migration and economic mobility are not new, but globalization, digitalization, and free movement exacerbate the problem by increasing opportunities for people not only to exit but also to splinter their interactions with states by placing various aspects of their life and livelihood in multiple jurisdictions.

An initial, but very important, question is whether states ought to do anything at all to curb tax-motivated migration and other forms of economic mobility. After all, free exit is an important aspect of liberty, and taxpayers choosing to leave a country (whatever the reason) exercise a fundamental right. Likewise, economic mobility enhances people's options and thereby their liberty. Utilitarian arguments also may support competition among states for residents, workers, and investment: such competition checks government spending,[12] and movement in response to taxation represents an alternative and amplifier to voice[13] in helping to reveal preferences for levels of tax and public goods and services.[14] It thereby encourages governments to respond to voter preferences. Thus, one possible response to complaints about revenue lost from tax-motivated migration is that it is a needed and acceptable disciplinary and accountability device. But even if we could agree—and not all would[15]—that tax competition is salutary, tax-motivated migration and other forms of economic mobility raise fairness concerns because not everyone has equal access to them as a means to avoid tax. The ability of domiciliaries to de-link the receipt of a state's publicly funded benefits from the obligation to pay taxes that fund those benefits also undermines the utilitarian arguments for tax competition. If taxpayers can exit the tax part of the bargain, but not the benefit part, then mobility loses its value as a government accountability device. Moreover,

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[11] For more on this *see* Dagan, *supra* note ___. [OJLS]

[12] Wolfram F. Richter, *Delaying Integration of Immigrant Labour for the Purpose of Taxation* 5 (CESifo Working Paper No. 802, 2002) ("Taxpayers become exploitable when they cannot avoid home taxes by emigrating.").

[13] Jonathan W. Moses, *Exit, Vote and Sovereignty: Migration, States and Globalization*, 12 REV. INT'L POL. ECON. 53, 53 (2005) (modeling free international migration and showing that it improves government responsiveness to citizen demands).

[14] *See generally* Charles M. Tiebout, *A Pure Theory of Local Expenditures*, 64 J. POL. ECON. 416 (1956).

[15] TSILLY DAGAN, INTERNATIONAL TAX POLICY: BETWEEN COMPETITION AND COOPERATION 120-141 (2017) (chapter 4).

because it hampers states from providing redistribution and other public goods and services, it creates new rifts within society.[16]

III. Possible Policy Responses

Recognizing trends in migration and mobility, scholars have considered possible policy responses. The issue with some of these responses is that the pressures of tax competition make it unlikely for receiving states to implement them, even if such states possess both the nexus and enforcement capacity needed to collect tax from their incoming residents and domiciliaries. The reason for this is that such states often lack the *desire* to prevent migration and mobility because they perceive themselves as benefitting from it. Put equivalently, they either are the winners in tax competition, or they perceive themselves as winning in tax competition.[17] An instructive example is provided by the U.K.'s non-dom regime, which granted significant tax benefits to many high-net-worth individuals including Akshata Murty, a citizen of India and the spouse of the former U.K. Chancellor Rishi Sunak. Following popular outrage, the regime was recently announced to be abolished by both the previous Conservative U.K government (led by Rishi Sunak himself)[18], and the new Labour government's own reform as part of the 2024 Autumn Budget. Each of these reforms, however, nonetheless maintained significant tax benefits for certain new arrivals to the UK with respect to their foreign income and gains[19]. This example illustrates that even where there is public pressure to renounce such a favorable regime, there are limits to what a receiving state is willing to do, making it less likely that *receiving* states will develop effective unilateral responses to tax competition for migrants. Furthermore, voters in democracies may not object to the idea of foregoing tax revenue if the inbound investment, business, and migration of highly skilled and wealthy people generates enough local benefit.[20]

The weight of perceptions that desirable migrants respond to tax incentives in receiving states - even limiting the effect of policy responses such as those set out by the UK - means that the principal responses to tax-motivated migration (or migration of work) will likely come from sending states. One traditional response has been for states to tax residents on a worldwide basis. Under such worldwide tax regimes, the person's residence state taxes all their income, wherever in the world derived, typically with a credit for taxes paid at source. Other proposals have been advanced for how sending states might use their tax systems to respond to human migration. For example, as early as the 1970s, in response to the massive migration of professionals from

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[16] Dagan, *supra* note ___. [OJLS]

[17] OECD, *Why Do OECD Countries*, *supra* note ___, at 10 (noting evidence that such regimes affect migration).

[18] *See* HM Treasury, *Spring Budget 2024: Non-UK Domiciled Individuals Policy Summary,* GOV.UK (March 6, 2024), https://www.gov.uk/government/publications/spring-budget-2024-non-uk-domiciled-individuals-policy-summary/spring-budget-2024-non-uk-domiciled-individuals-policy-summary.

[19] For the Labour government's proposed Foreign Income and Gains (FIG) regime, *see* HM Treasury, *Autumn Budget 2024*, GOV.UK (October 30, 2024), https://assets.publishing.service.gov.uk/media/672b9695fbd69e1861921c63/Autumn_Budget_2024_Accessible.pdf.

[20] For suggestions for coordinated source responses, *see (in this volume)* Yariv Brauner, *Comfortably Numb: Should the Reign of Residence over the International Tax Regime Continue in the 21st Century? in* TAXING PEOPLE: THE NEXT 100 YEARS XX (Tsilly Dagan & Ruth Mason eds., forthcoming 2025) (advocating formulary source-only taxation and emphasizing that that whatever source rules are chosen should be consistent across all states).

developing countries to developed countries, economist Jagdish Bhagwati advocated for a 10 percent tax on the disposable incomes of professional emigrants.[21] Such "brain-drain" tax proposals, which have taken various forms, could help migrant-sending states recoup the costs associated with educating and training residents who accept jobs elsewhere.[22] They could also help compensate the sending country for the loss of skills of the migrant. Additionally, Bhagwati claimed, the migrant has "a moral obligation to share their gains with those left behind."[23] A possible reason why such taxes have not proved popular is that migrants benefit their origin states by sending remittances back home; beyond the immediate benefit to the recipients of remittances, both remittances and international migration are regarded as having a positive impact on poverty in developing countries by creating an increased incentive for domestic population to improve their skills and education.[24] Such remittances confer political clout on emigrants and their beneficiaries back home.

It is to such residence-based worldwide tax regimes that human migration of the highly skilled and ultra-wealthy in part responds. To avoid residence-based taxation on worldwide income, people increasingly change their residence state. To be effective, then, solutions to tax-based migration must apply irrespective of residence. One such response is exit taxation. Whereas states would levy "brain drain" taxes on an ongoing basis, exit taxes typically involve a one-time assessment by the origin state against the wealth of a departing national or resident. Exit taxes typically treat the loss of tax residence as a realization event, and the exiting person pays tax on the appreciation of her assets.[25] The problem with lump-sum exit taxation is that it significantly inhibits human migration, undermining liberty. Thus, exit taxation has proved unpopular in liberal societies that value the free movement of persons. Liberal states that have exit taxes today typically limit them in various ways, including with large exemption amounts and opportunities for significant deferral and even waiver.

Another response is citizenship taxation. Citizenship taxation could, in principle, solve the twin problems of economic mobility and tax-motivated migration by taxing the migrant (and her mobile investment, work, and business) on a worldwide basis.[26] Under citizenship taxation, a

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[21] Jagdish Bhagwati, *Taxing The Brain Drain*, 19 CHALLENGE 34 (July/August 1976).

[22] *See e.g.,* Bhagwati, *supra* note ___, at 37 (describing a 10 percent surcharge on the income of professional immigrants from lesser developed countries to developed countries that would apply for a limited period such as 10 years, collected by developed host countries, and routed to lesser developed countries for development spending).

[23] Bhagwati, *supra* note ___, at 35.

[24] Whereas remittances may not play a vital role in a large and growing economy like India's, they are a significant source of income for some low-income countries. *See* Batalova, *supra* note ___, at 6. *See also* Bhagwati, *supra* note ___, at 35 (explaining that Pakistan had to suspend its brain drain tax due to unpopularity). *See* Richard H. Adams Jr. & John Page, *Do International Migration and Remittances Reduce Poverty in Developing Countries?*, 33 World Development 1645 (2005) (finding that both remittances and international migration have a significant and positive effect on poverty in developing countries).

[25] Luc de Broe, *General Report: The Tax Treatment of Transfer of Residence by Individuals*, 87 CAHIERS DE DROIT FISCAL INT'L 19, 29 (2002); see also Andrew Appleby, *No Migration without Taxation: State Exit Taxes*, 60 HARV. J. ON LEGIS. 55 (2023)

[26] Other options include extended residence rules; retention of citizenship based taxation if the migrant retains an abode in the country of origin; and citizenship taxation of a limited subset of citizens, such as military personnel, students, or temporary corporate secondees. See Mason, *supra* note ___, at ___ (discussing proposals of coauthors Cynthia Blum and Paula N. Singer and of Bernard Schneider).

person would be liable to her citizenship state to pay tax on her worldwide income, no matter where that person resided. Such a regime would treat the migrant and her economic interests as if they never left the citizenship state. Proponents tout citizenship taxation as a solution to both tax-motivated migration and state-level tax competition. The argument is straightforward: because most people will not relinquish their citizenship, taxing people on the basis of citizenship, no matter where they reside, will reduce incentives for people to move to take advantage of lower taxes elsewhere. If people cannot benefit from lower taxes by migrating to other countries, then receiving countries would have no (or less) reason to offer a non-dom regime or other tax incentives to migrants. The broad adoption of citizenship taxation therefore could help avoid a looming race to the bottom for high-skilled, high-income, high-net-worth individuals.[27] It also would serve as an effective unilateral response to tax incentives offered by receiving states.

IV. Citizenship Taxation and Fairness

In response to increasing calls for citizenship taxation, particularly as a solution to tax-motivated migration, the rest of this Chapter aims to provide a clear-eyed evaluation of citizenship tax as it exists in the world today, as well as evaluating prospects for the wider adoption of citizenship taxation.[28] As we explained, scholars have begun advocating for citizenship taxation mainly as a response to revenue losses already associated with or expected to arise from increased human mobility. But because there are many ways a state can raise revenue, advocacy for citizenship taxation as the correct method to raise revenue has to be supported by arguments apart from mere revenue needs. One such argument is fairness. The conventional fairness argument for citizenship taxation has three elements. First, by retaining their citizenship, citizens would tacitly consent to taxation. Second, citizenship taxation represents fair payment for government benefits that citizens receive while abroad. Third, citizens should not be able to escape their social obligation to pay taxes simply because they live abroad.[29] We will not spend significant time on arguments trying to justify citizenship taxation on the basis of taxpayers' consent or benefits received, which we find unconvincing.[30] Besides, no matter to whom one applies it, an argument based in the receipt of benefits supports only limited taxation equal to the value of those benefits.[31]

That leaves arguments about social obligation of citizens to pay taxes and the remaining fairness basis supporting citizenship taxation. What seems to concern advocates of citizenship

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[27] OECD, *Why Do OECD Countries*, *supra* note ___, at 14 (reporting "no indication of a 'race to the bottom'").

[28] Much has been written on citizenship taxation. *See e.g., (in this volume)* Reuven Avi-Yonah, *Taxing Nomads: Reviving Citizenship-Based Taxation for the 21st Century in* TAXING PEOPLE: THE NEXT 100 YEARS XX (Tsilly Dagan & Ruth Mason eds., forthcoming 2025). *See also (in this volume)* Schön, *supra* note ___. *See also* David Elkins, *A Scalar Conception of Tax Residence*, 41 VA. TAX REV. 149 (2022); Shayak Sarkar, *Tax Law's Migration*, 62 B.C. L. REV. 2209 (2021); Giorgio Beretta, Citizenship and Tax, 2019 WORLD TAX J. 227 (May 2019); Shu-Yi Oei, *The Offshore Tax Enforcement Dragnet*, 67 EMORY L.J. 655 (2018); Young Ran (Christine) Kim, *Considering 'Citizenship Taxation': In Defence of FATCA*, 20 FLA. TAX REV. 335 (2017); Edward A. Zelinsky, *Citizenship and Worldwide Taxation: Citizenship as an Administrable Proxy for Domicile*, 96 IOWA L. REV. 1289 (2011); Michael S. Kirsch, *Taxing Citizens in a Global Economy*, 82 N.Y.U. L. REV. 443 (2007).

[29] *See generally* Ruth Mason, *Citizenship Taxation*, 89 S. Cal. L. Rev. 169 (2016).

[30] See Mason, *supra* note ___, at 187-196.

[31] Mason, *supra* note ___, at 189-196.

taxation is the impact of human migration (and economic mobility in general) on the ability of states to maintain the welfare state. Thus, the concern is not merely about how states will fund the provision of government goods and services, but also how states will fund redistribution. Modern welfare states fund many public benefits, as well as redistributive programs using not only benefits taxation, but also ability-to-pay taxation, under which a person's liability to pay tax increases with their income, which income constitutes the measure of the taxpayer's ability to pay. Each society defines both income and ability to pay differently, just as each society defines how much redistribution it wants to accomplish through the fiscal system. Each system also defines who will receive redistributive benefits, as well as who it will require to fund them. The fairness question at the core of citizenship taxation, then, is whether it is fair for a country to ask its citizens to contribute taxes to fund redistribution.

At first glance, the answer to this question seems obvious: if not citizens, who would the state require to fund taxes for redistribution? The answer becomes murkier, however, when we consider that across the globe, only a small handful of countries—the United States being the most notable among them—use citizenship as the basis to attaching the obligation to pay taxes on worldwide income to fund public benefits and redistribution. Far more commonly—although this choice may be motivated by the legal and practical considerations we address in the next section—states impose worldwide taxation on residents, not citizens. Since most people reside in their nationality state, the difference in these two nexuses matters only for people who reside outside their residence state or who possess multiple nationalities or residences.

The typical fairness argument for worldwide taxation states people's membership in a national community triggers an obligation to pay taxes for redistribution. To the extent that that argument is correct (and we assume for purposes of our discussion that it is), then evaluating the fairness of citizenship taxation in the case that interests us—the one in which a taxpayer resides *outside* their citizenship state—depends on how well citizenship aligns with national community membership for people who reside abroad. The question *who is a member of the national community?* is a complex one that touches on fundamental issues of belonging, morality, and solidarity; it goes to the very foundations of the state, and we cannot do it justice here. Some commentators conclude that political membership or citizenship qua citizenship generates a moral obligation to pay taxes for redistribution (and some even argue that only citizenship *in a democracy* can generate such a moral obligation[32]). But, in our view, citizenship and national community membership are not identical, even though they substantially overlap. Therefore, evaluating the fairness of citizenship taxation relative to states' current systems, which tax on the basis of residence, requires consideration of whether residence or citizenship is a better proxy of national community membership. Although we cannot fully address the arguments here, we think it relatively easy to see that, at least in some cases, nonresident citizens are not members of the national community and in other cases, non-citizens *are* members of the national community.[33]

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[32] *See* Avi-Yonah, *supra* note ___, (arguing that because only citizenship can support ability to pay taxation, countries should not tax resident aliens on their worldwide income).

[33] See Mason, *supra* note ___, at 196-205.

To elaborate, diverse reasons motivate people to reside outside their citizenship state. A refugee driven from the state of her birth by political persecution may justly feel no obligation to contribute to redistribution in the state she fled, although any moral obligation she would have to support the national community of her receiving state would presumably take some time to develop. The lifelong citizenship taxation of so-called Accidental Americans is often cited as unfair. These people are U.S. citizens because they happen to have been born in the United States, rather than because they have any meaningful connection with the country. More generally, a person may be born outside the state of nationality of their parents due to tourism, education, temporary employment, deprivation, or war. Permanent resettlers pose particularly challenging questions: they may, after a transition period, become a bona fide members of their receiving state's national community who are morally obliged to contribute to that community even before they naturalize as citizens of the adoptive state (or even if they never naturalize). But a student who lives temporarily abroad for education, for example, is unlikely to become a member of her school's national community; she may nevertheless satisfy that state's tax residence or domicile test in a particular year. Likewise, a temporary corporate transferee may earn significant income from her host state, while remaining outside its national community and owing no greater moral obligation to support members of her host state's national community than her citizenship state's national community. Considering just a few scenarios demonstrates that neither citizenship nor residence/domicile is a perfect proxy for a person's membership in a national community, and therefore for her moral obligation to pay taxes for redistribution.

These few examples suggest that neither citizenship alone nor residence alone represent perfect proxies for national community membership. As a result, using either as the sole basis for imposing the obligation on an individual to pay taxes on their worldwide income to fund redistribution will be unfair in a range of circumstances. By contrast, states could improve the correspondence between the basis for worldwide taxation and national community membership by combining elements of both—that is, by using both citizenship and residence (or other substantive indicia of national community membership). In this way, states could secure a better match between those legally obliged to pay taxes for redistribution and those morally obliged to do so. Substantive connections, such as domicile or residence, could help determine which state takes priority in taxing a person as a member of its community.[34] One way to better reflect people's belonging to a certain community may be to let individuals make specific choices: for example, a citizen moving abroad even might be offered an election to remain subject to worldwide citizenship taxation or to pay an exit tax.[35] This election could help increase the correspondence between national community membership and the set of people subject to worldwide taxation. Such an approach could be particularly important for states that convey citizenship by birth, and as a result, have potentially large populations of accidental citizens residing abroad. Alternatively, a dramatic option would be to simply let an individual choose among the several states to which she is connected the one that should benefit from her taxes.[36]

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[34] *See* Mason, *supra* note ___, at 231-33.

[35] *See* Mason, *supra* note ___, at 235.

[36] For a suggestion along these lines, *see (in this volume)* Mitchell A. Kane*, Exit, Voice and Electivity: Confronting the Rise of Private Money and Private Taxation in* TAXING PEOPLE: THE NEXT 100 YEARS XX (Tsilly Dagan & Ruth Mason eds., forthcoming 2025). Rules to prevent unintended strategic selections (i.e., the lowest rate) would have to accompany such proposals.

In our view, citizenship is a good proxy for substantive national community membership, most of the time. But whereas citizenship is binary—your either are a citizen or you are not—membership in the community is not all or nothing. As a result, although citizenship is a good proxy for community membership, it will not always coincide with community membership. Thus, voters and policymakers should think carefully about how they can align the population they subject to worldwide taxation with membership in the national community. Although we fully acknowledge that in tax, as in many other legal areas, we choose bright-line binary classifications for administrability or other reasons, we believe states can and should fine-tune taxation in cases where citizenship and membership diverge. Regardless of whether countries make dramatic changes, they should consider targeted anti-abuse rules for residents or citizens who move abroad temporarily to avoid tax on the sale of assets.

V. Enforcing Citizenship Taxation

Notwithstanding that, in our view, citizenship should not be the sole factor for subjecting an individual to worldwide taxation, most policy proposals concern exactly that. This section considers challenges that arise in implementing a citizenship tax. We start by considering the challenges that would arise if a state attempted to impose citizenship taxation unilaterally. At present, the United States is one of two or three states in the world that tax citizens on their worldwide income, no matter where in the world those citizens reside, and no matter how long those citizens reside abroad.[37] The experience of the United States with citizenship taxation is, however, no success story.

A. Unilateral Enforcement of Citizenship Taxes

The problems with enforcing citizenship taxation begin with administration. As compared to taxing the worldwide income of only resident taxpayers, taxing the worldwide income of citizens residing abroad is considerably harder.[38] The citizenship state cannot employ the same mechanisms—such as wage withholding—in the foreign as in the domestic context. The US citizenship tax, for example, is thought to be characterized by widespread noncompliance, but the truth is, the United States cannot accurately estimate the tax gap related to failure of nonresident Americans to pay the citizenship tax because the United States does not and, by its own admission, cannot keep track of Americans residing abroad.[39] Although some commentators have argued that legislation called the Foreign Account Tax Compliance Act (FATCA) will enable the United States to accurately police nonresident citizens' income, government departments disagree; the U.S.

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[37] *See* I.R.C. §§ 1, 7701(b).

[38] For the argument that citizenship taxation, as compared to residents or domicile taxation, eases the initial question of who is subject to worldwide taxation, see Edward A. Zelinsky, Citizenship and Worldwide Taxation: Citizenship as an Administrable Proxy for Domicile, 96 Iowa L. Rev. 1289 (2011).

[39] *See* NATIONAL TAXPAYER ADVOCATE SERV., 2023 ANNUAL REPORT TO CONGRESS 118 (2023) (the number of noncompliant overseas American taxpayers is "unknown but potentially sizeable") [hereinafter NTA REPORT 2023). *See also* PATRICIA A. DALTON, U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-04-1077T, 2010 CENSUS: COUNTING AMERICANS OVERSEAS AS PART OF A CENSUS WOULD NOT BE FEASIBLE (2004), http://www.gao.gov/assets/120/111231.pdf (a government project to evaluate the feasibility of counting overseas Americans for purposes of congressional apportionment and redistricting concluded that such counting would be infeasible). If the United States cannot even count the number of Americans abroad, it has no realistic prospect of learning the exact amount of their incomes.

government notes capacity issues that prevent the IRS from effectively enforcing citizenship based taxation.[40] If, by its own estimation, the United States has been unable to effectively enforce its citizenship tax despite its high tax capacity,[41] states with less tax capacity would face even more serious obstacles.

In addition to the enforcement challenges it generates for the government, citizenship taxation also generates significant administrative burdens for overseas taxpayers, who would likely be required to file full residence-based returns twice: once in their residence state and once in their citizenship state. This has proven especially difficult for overseas Americans who, because they earn income abroad, are subject to "the Kafka-esque U.S. international tax regime."[42] This means that Americans abroad operating small businesses in the form of corporations must, for example, comply with Subpart F and GILTI. These taxpayers lack access to affordable, qualified tax preparers abroad, leaving the National Taxpayer Advocate to attribute record-breaking U.S. citizenship-renunciation numbers to the compliance burden associated with citizenship tax.[43] For all the complexity, however, the majority of Americans abroad owe no residual tax to the United States because the United States is a low-tax country relative to the states in which Americans reside abroad, and the United States credits taxes paid abroad against the U.S. taxes that nonresident citizens owe.[44] Nevertheless, this experience raises serious questions about the effectiveness of citizenship taxation, even as practiced by one of the highest tax-capacity jurisdictions in the world.

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[40] The National Taxpayer Advocate concluded in 2012 that as a result of FATCA, the IRS "will increasingly have to ignore violations that it can detect… ". NATIONAL TAXPAYER ADVOCATE SERV., 2012 ANNUAL REPORT TO CONGRESS: VOLUME ONE 134-153, 143 (2012), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/Most-Serious-Problems-IRS-Offshore-Voluntary-Disclosure-Programs.pdf .. More recently, the GAO concluded that IRS tax enforcement for Americans abroad was ineffective, in part due to the IRS's own failure to incorporate FATCA data. GAO, Foreign Asset Reporting: Actions Needed to Enhance Compliance Efforts, Eliminate Overlapping Requirements, and Mitigate Burdens on U.S. Persons Abroad, *GAO Highlights* (April 2019), at 16 (observing that "TIGTA's 2018 report concluded that IRS was still unprepared to enforce compliance with FATCA in part because [IRS] took limited or no action" to integrate FATCA data into enforcement efforts); see also TREAS, INSPECTOR GEN. TAX ADMIN, THE INTERNAL REVENUE SERVICE NEEDS TO ENHANCE ITS INTERNATIONAL COLLECTION EFFORTS, Sept. 12, 2014 (detailing the many additional obstacles the IRS faces in enforcement abroad).

[41] The Global Forum's peer review of the compliance by the United States of the global standard for information sharing on request noted that "[t]he power of the IRS to obtain information for tax purposes is wide-ranging and is coupled with strong compulsory powers. Such powers are used regularly." OECD GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES, PEER REVIEW REPORT COMBINED: PHASE: UNITED STATES 8 (2013). It went on to observe that "[p]ersons seeking to obscure their affairs for tax or other reasons wouldn't generally be eager to expose themselves to the authority of the Internal Revenue Service." *Id*.

[42] TAXPAYER ADVOCATE SERV., 2011 ANNUAL REPORT TO CONGRESS 151 (2011).

[43] NTA REPORT 2023, *supra* note ___, at 121. A recent empirical study of U.S. citizenship by Americans abroad concluded that recent citizenship-renunciations were motivated by increased compliance costs, not the tax liability associated with citizenship taxation. Paul R. Organ, *Citizenship and Taxes,* 31 INT'L TAX & PUB. FIN. 404 (2024).

[44] *See also* NTA REPORT 2023, *supra* note ___, at 117 (62 percent of Americans abroad reported zero liability between 2015 and 2021). *Id.* at 122 (in 2021, only 5 percent of international filers had an adjusted gross income of over $400,000). *See also* Mason, *supra* note ___, at 181-86 (explaining impact on residual U.S. liability of foreign-earned income exclusion and foreign tax credits).

B. Availability of Unilateral Citizenship Taxation to Poor States

We now move to the question of whether citizenship taxation is even an option for all states. Not every state is in a position to address the same problem in the same way. Tax evasion through the use of secret foreign bank accounts provides a good illustration. For many years, the act of hiding assets in a foreign financial institution and fraudulently omitting to report the income earned on those assets was an effective tax evasion strategy for the simple reason that, because the foreign financial institution had no tax-information-reporting obligation to holders' residence states, those residence states typically would not learn of the foreign income if the owner refused to report it. Bank secrecy jurisdictions—such as Switzerland and Luxembourg—turned a tidy profit on administering the accounts of tax evaders from all over the globe.

But at least some countries could act unilaterally to address such tax evasion. To staunch the loss of an estimated $100 billion in annual tax revenue from the fraudulent underreporting of income in such foreign accounts,[45] and to overcome foreign bank-secrecy legislation, the United States passed the FATCA legislation mentioned earlier that requires foreign financial institutions to report directly to the United States on foreign accounts held by U.S. citizens. To ensure compliance with its regime, the United States subjected uncooperative foreign financial institutions to a 30 percent withholding tax on certain U.S.-source payments, including U.S.-source interest, dividends, and gross proceeds from the sale of assets that generate U.S. dividends and interest.[46]

Although other countries experienced similar tax evasion, not every jurisdiction could counter it unilaterally. FATCA worked for the United States because no foreign financial institution could afford to remain invested in the U.S. capital market while paying the penalty for non-compliance. Nor were financial institutions willing to make the business decision to exit the U.S. capital market to avoid the penalty; the United States leveraged its massive capital market to gain regulatory control over foreign banks. Few other countries—maybe no other country—could have adopted FATCA unilaterally. States with smaller capital markets were, however, able to free-ride on the introduction of FATCA. They adopted their own cross-border account-information-sharing regime, short of an enforcement mechanism.[47]

A similar problem arises for citizenship taxation. Although citizenship taxation could help reduce tax-motivated migration, if not all countries adopt citizenship taxation, then countries that hold out can be expected to be even more attractive target states for the most desirable migrants, at least some of whom may desire to naturalize in their receiving state.[48] Worse, the adoption of citizenship taxation by high-tax states could motivate lower-tax states to respond by offering citizenship havens.

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[45] Staff of the Homeland Security and Governmental Affairs Permanent Subcommittee on Investigations, 110th Cong., ''Tax Haven Banks and U.S. Tax Compliance,'' at 3 (2008).

[46] Joshua D. Blank & Ruth Mason, *Exporting FATCA*, 142 TAX NOTES 1245 (2014) (explaining U.S. strategy and other countries' responses).

[47] *See e.g.,* Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC, 2011 O.J. (L. 64) 1. *See generally* Noam Noked, *Should the United States Adopt CRS?*, 118 MICH. L. REV. ONLINE 118 (2019).

[48] *See* Mason, *supra* note ___, at 227-231 (making this argument in the U.S. context).

More generally, not every state is equally able to tax its citizens abroad. Citizenship is relatively sticky; it is both an important part of personal identity and guarantees free egress, ingress, and entitlement to work in a country. When people value their citizenship highly, their states can demand a tax price that enables those states to pursue domestic distributive justice using mandatory contributions from citizens abroad. Moreover, international law precludes people from becoming stateless.

But states' relaxation of their prohibitions on dual and multiple nationality has conferred upon individuals the opportunity to choose among multiple citizenships. Additionally, some states offer attractive naturalization programs in the hopes of attracting wealthy, high income, and high skilled immigrants.[49] People with dual or multiple nationalities, and those in high demand outside their states of original citizenship (e.g., the talented, wealthy, and young), can jettison their original citizenship if the tax price is too high. People will retain their citizenship only if they regard that citizenship as worth the associated tax costs.

Less attractive states, whose citizens view their citizenship as easier to relinquish, would find it difficult or impossible to raise revenues from the worldwide taxation of nonresident citizens' income and wealth. States may be relatively unattractive for a variety of reasons. A state may be relatively unattractive because it is oppressive or undemocratic, in which case, the threat or pressure of exit by its elites may incentivize needed and welcome changes. But a state may be relatively unattractive because it is poor, subject to climate change or other natural disasters, or simply too small to offer economic opportunities equally attractive to those available in other states. Such states might suffer from increased competition over their strongest members due to the perpetually widening gaps between what they can offer and what stronger states can offer in terms of public goods, and this difference may be due not to any particular mismanagement or malfeasance on the part of the less attractive state, but rather due to accidents or crimes of history, geography, climate, and so on. Moreover, unlike with FATCA, with citizenship taxation other states cannot simply follow the leader. The adoption by the United States of citizenship taxation does not make it any easier for other states to adopt similar policies. This is evidenced by the fact that even though the United States began taxing citizens during its Civil War, other states have not followed suit.[50] In the absence of policy cooperation, as the best-off and most mobile people accept citizenship or residence offers from more attractive states, less attractive states would lose not only valuable citizens but also a part of their tax base, thereby continually worsening their competitive position. This could lead to a vicious circle, as thinner public goods and benefits and less redistribution make membership less attractive to those who remain.

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[49] *See* Tsilly Dagan & Talia Fisher, *State Inc.,* 27 CORNELL J.L. & PUB. POL'Y 661.

[50] Although the risk to states of permanently losing their most mobile and wealthiest members might make US-style worldwide taxation impossible for many states, those states might be able to impose an optimal citizenship-retention fee that is less than full ability to pay taxation based on worldwide income. In the absence of policy cooperation, as the best-off and most mobile people accept citizenship or residence offers from more attractive states, less attractive states would lose not only valuable citizens but also a part of their tax base, thereby continually worsening their competitive position. This could lead to a vicious circle, as thinner public goods and benefits and less redistribution make membership less attractive to those who remain.

C. Multilateral Enforcement of Citizenship Taxation

If citizenship tax is a luxury policy that only the richest and strongest states can unilaterally implement, one might ask whether international cooperation could help by restraining competition over migrants and citizens. Multilateral cooperation is often offered as a solution to tax competition, and perhaps it could overcome some of the obstacles to citizenship taxation. If states join forces, the argument goes, they could overcome collective-action problems, enabling them to afford the public goods their constituents prefer and pursue the distributive justice their constituents demand. Multilateral cooperation on citizenship taxation or similar policies could mimic past multilateral efforts to curb state competition for corporate residents and corporate investment. States could agree, for example, to refrain from enacting ring-fenced non-dom regimes or to impose minimum individual taxes. But cooperation is difficult. Negotiating a bargain among states with conflicting interests, and getting them to agree on how to allocate the costs and benefits of cooperation, is daunting. Sustaining such a deal is even trickier because participants have incentives to defect when some states benefit more from lowering their taxes and attracting (or retaining) non-dom residents or new citizens than do others.

Moreover, a global deal on citizenship taxation would raise significant questions of global justice. A uniform minimum tax imposed on all taxpayers by their country of citizenship, for example, might create a comparative advantage for states that can currently offer superior public goods, services, and institutions to their citizens relative to other states that are not in a position to offer equally good benefits. Would there be a duty for cooperating states to compensate weaker states under such a regime? Questions of global justice are highly disputed even on a theoretical level as cosmopolitans support a *global* duty of distributive justice irrespective of state association, statists argue for duties of distributive justice that stop at the border, and institutionalists take a middle-of-the-road position that transnational duties of distributive justice emerge from cooperation. We cannot settle such debates in this Chapter.[51] Politics, however, dictates that as multilateralism imposes greater duties on strong countries, their interest in multilateralism will wane. We therefore worry that a cooperative accord, even if attainable, might advantage stronger countries at the expense of weaker ones.

Importantly, state consent does not ensure that multilateralism in citizenship taxation will serve the interests of all cooperating parties. Even in the absence of deception or coercion, tax cooperation may provide some actors with excessive power. Such excess power may derive not only from some states' superior bargaining power, but also from the greater expertise and resources that they can afford to invest in negotiations and from their ability to use agenda-setting.[52] This is not theoretical speculation. Seemingly innocuous and undoubtedly consensual cooperative accords, such as bilateral tax treaties, have tended to favor developed countries over developing ones. Because the format of tax treaties requires the source state to forebear tax in favor of the tax entitlement of the residence state, and because poor states tend to be net source states relative to rich states, when negotiated between a rich and a poor state a bilateral tax treaty will tend to shift tax revenue from the poor to the rich state. This effect has been so pronounced that the IMF has

[51] For a full analysis of application of the different approaches in political philosophy to international taxation *see* Dagan *supra* note ___ (chapter 6), [Dagan book].

[52] For some examples *see* Dagan *supra* note ___ (chapter 5), [Dagan book]. *See also* MARTIN HEARSON, IMPOSING STANDARDS (2021).

advised that developing countries carefully consider whether they ought to enter such treaties.[53] Another example of multilateral cooperation that many have argued will disproportionately benefit strong states relative to weak ones was the 2021 two-pillar accord, which claims to solve a problem—corporate tax competition—that not all states agree even constitutes a problem.[54]

Given this history, we should not assume that cooperation—should it emerge in order to support citizenship-base taxation—is inherently beneficial to all parties. We also should not assume that consent assures that each participant benefits, particularly when the ultimate outcome of the agreement depends in part on how private parties respond, which may be difficult to predict in advance. Even if we could surmount the global justice problems implicated by multilateral cooperation on citizenship taxation—a big if—such cooperation would raise serious concerns about individual liberty with respect to its potential constraining of human migration. Moreover, as with corporate taxation, cooperation on individual taxation would raise the risk that competition would be shifted to another field, such as competition over definitions of social membership, including citizenship, or competition over the provision of public goods and services.

VI. Conclusion

The pressures of globalization undermine the ability of states to collect taxes and pursue distributive justice. Free movement and other opportunities for people to engage with different jurisdictions on a personal and economic level are essential for liberty. But unrestrained market competition between states to provide the world's wealthiest and most skilled a fragment of the social contract in exchange for a reduction in their tax obligations imperils the welfare state.

If, as most scholars argue, the duty to pay taxes for redistribution exists within self-defining communities, then our new world of multiple and partial community allegiances raises fundamental questions. Modern people are increasingly mobile, frequently live outside their state of nationality, and interact with multiple jurisdictions in a variety of ways. In the next century, as in the last, people and their governments will have to answer the question *who* is obliged to contribute taxes for redistribution to *which community*? The answer to that question in the second century of income taxation may be different from the answer in the first. Although what constitutes membership may be decided by each such community independently, human mobility and interstate competition erode the ability of a single community, acting alone, to enforce its view of membership. As the community loses the ability to define itself and to bind people it considers

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[53] IMF, Spillovers in International Corporate Taxation 28–29 (2014), https://www.imf.org/external/np/pp/eng/2014/050914.pdf ("Some would simply advise developing countries not to sign BTTs."). Sebastien Leduc & Geerten Michielse, *Are Tax Treaties Worth It for Developing Economies? in* CORPORATE INCOME TAXES UNDER PRESSURE: WHY REFORM IS NEEDED AND HOW IT COULD BE DESIGNED (Ruud A. de Mooij, Alexander D. Klemm, & Victoria J. Perry, eds., 2021). For more on this, *see e.g.*, Dagan *supra* note ___, [Dagan book] 72–119.

[54] *See* Tsilly Dagan, *Globe: The Potential Costs of Cooperation*, 51 INTERTAX 638 (2023). Leopoldo Parada, *Global Minimum Taxation: A Strategic Approach for Developing Countries*, 15 COLUMBIA J.TAX LAW 188 (2024). Suranjali Tandon, *Policy Note: Assessing the Impact of Pillar Two on Developing Countries,* 50 INTERTAX 923 (2022). Rita de la Feria, *The Perceived (Un)Fairness of the Global Minimum Corporate Tax Rate in* THE PILLAR 2 GLOBAL MINIMUM TAX (W. Haslehner et al. eds., 2024).

members to that choice, the community also loses the material support it needs to sustain itself. In such a world, the very definition of community becomes subject to the rules of supply and demand, under which diverging elasticities and the relative attractiveness of both jurisdictions and taxpayers become paramount.

The strongest states may be able to overcome these challenges unilaterally with the aid of citizenship taxation (although, for reasons we argued above, we conclude that a regime that combines citizenship and residence would be fairer than using either factor alone). We emphasize, however, that the United States may remain an outlier. Its citizenship has proved extremely sticky, and therefore capable of sustaining a lightly administered form of citizenship taxation characterized by toleration for what is presumed to be widespread non-compliance. But weaker and less attractive states may be unable to sustain even a limited form of citizenship taxation, and they may therefore lose their tax base as they lose members. This result would undermine domestic justice and increase the gaps between stronger and weaker states on the global level.

A cooperative accord on the global level could tame some interstate competition over migrants. Such a global accord would, however, face difficulties, including setting the desirable balance between personal liberty and community responsibility; determining the duty of justice between states; and defining the procedures that will determine the arrangements. States would also face accountability, legitimacy, and practical difficulties in implementing any such arrangements. These difficulties should not be underestimated but overcoming them is one of the challenges of the next one hundred years of taxing people.