THERE MUST BE FIFTY WAYS TO TAX A DIGITAL NOMAD: DOES TAXATION CONSTRAIN THE GEOGRAPHICAL FREEDOM OF THE DIGITAL NOMAD?[1]

Marisa Ouro

You don't need to discuss much

Just drop off the key, Lee

And get yourself free

50 ways to leave your lover, Paul Simon

Summary: I – Introductory note; **II** – Digital nomad definition; **III** – The taxation of the enterprise that employs the digital nomad; **IV**– The taxation of the digital nomad as an employee; **V**– How tax competition and tax cooperation between States affect digital nomads; **VI –** Conclusion.

I – Introductory note

This paper will answer some questions about taxing an employee that is also a digital nomad. The purpose of this is, ultimately, to answer the following question: does the digital nomad has his geographical freedom conditioned by the fact that he produces income while travelling?

We will approach the topic from the perspective of corporate income tax and the individual taxation of employees, both under Portuguese domestic law and the OECD Model Convention (OECDMC). We will analyse them in separate chapters for the convenience of exposition, although these aspects are deeply intertwined.

At the corporate taxation level, we will first reflect on the possibility of a digital nomad having a fixed place of business from where the enterprise develops all or part of its activity, creating a permanent establishment (PE). Secondly, we will combine the fact

[1] This Article was written in January 2023, in Portuguese. This is an English translation made by the author.

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that the digital nomad is constantly on the move with the obligations under BEPS Action 13 and the possible implications under Pillar 2.

At the level of personal income taxation of the nomad's income, as an employee, we will analyse the issue from the perspective of the current wording of Articles 15 and 4 of the OECDMC, focusing on the amplification of taxation conflicts provided by the characteristics of digital nomads.

Next, in the chapter on the relationship between States, we will address the topic both from the perspective of tax competition between States and from the perspective of cooperation. Regarding the issue of tax competition, we will address the so-called "digital nomads visas", referring to the tax measures usually associated with them. We will also reflect on what we consider to be the practical consequences of this tax competition for the geographical freedom of the digital nomad. Regarding the cooperation between States in the information exchange field, unintended consequences may go beyond the tax effects foreseen in those information exchanges.

Finally, in the last chapter, we present the conclusions reached throughout the previous chapters and answer the final question posed at the beginning of this chapter.

II – Digital nomad definition

As Matheus de Souza, digital nomad and author of the book "Digital Nomad: a guide for you to work and live how and where you want" says: "The nomad, when digital, is digital because he appropriates the Internet to perform his work from anywhere in the world, maintaining his career or creating a new one."[2]

Digital nomads defy a single definition, although they all have in common that they combine remote work with travel for varying reasons and different periods.[3]

[2] Matheus de Souza, *Nômade Digital: Um Guia Para Você Viver e Trabalhar Como e Onde Quiser*, 2019, 13 ebook.

[3] MBO Partners, "The Aspirations and Reality for Digital Nomads," 2022, 4, https://info.mbopartners.com/rs/mbo/images/2022_Digital_Nomads_Report.pdf.

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There are no definite figures on the number of digital nomads, but a study made by MBO Partners[4] points to 16.9 million digital nomads in 2022, this only in the USA. This study presents other interesting data:

- Between 2019 and 2022, the number of digital nomads increased by 131%[5];
- Since the start of the pandemic, the number of digital nomads who are employees has tripled and outnumbered those who are self-employed[6];
- 45% of nomads reported earning more than $75,000 per year.[7]

Having high earners among digital nomads is justified by the fact that many work in areas with a high demand for talent, namely in information technology.[8]

To finance their lifestyle, many seek out locations with a low cost of living while working for employers located in markets that pay them high wages.[9]

The expansion of remote working has allowed this lifestyle to go from something exceptional to something commonplace. The message in the book "Digital Nomad" by Tsugio Makimoto, published in 1997, which says that the advance of technology in people's lives would lead to a new lifestyle that would break the constraints of time and place,[10] has already become a reality.

III – The taxation of the enterprise that employs the digital nomad

The fact that the digital nomad stays in different countries while remote working may lead to the taxation of the enterprise itself in those countries for the income generated there. That happens because, although the rule is that the taxation of an enterprise is on profits in the State to which it belongs, if it has a PE in a given State, it may be subject to taxation on the profits earned there.

[4] MBO Partners, 4.
[5] MBO Partners, 3.
[6] MBO Partners, 4–5.
[7] MBO Partners, 11.
[8] MBO Partners, 11.
[9] This lifestyle corresponds to the concept of geo arbitrage, popularised in the book of Timothy Feriss, *The 4-Hour Work Week: Escape the 9-5, Live Anywhere and Join the New Rich.*, ed. Vermilion (Londres: Ebury Publishing, 2011).
[10] Tsugio Makimoto and David Manners, *Digital Nomad*, ed. John Wiley & Sons Inc, 1997.

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In addition, if the digital nomad, while an employee of the enterprise, is also its director, the enterprise may be taxed not only on the income generated in that territory but also on its worldwide income. That happens because if one of the criteria for taxing the income of an enterprise in a given country is the fact that the enterprise has a place of effective management in that territory, this may lead to considering the physical location of the nomad as the place of effective management.[11]

Since this paper focuses on the digital nomad as an employee, we will analyse this circumstance exclusively. We will answer whether the presence of the digital nomad working in a given country may constitute a PE. Article 5 of the Portuguese Corporate Income Tax Code (CIRC) defines PE as "any fixed installation through which an activity of a commercial, industrial or agricultural nature is carried on". The double taxation treaties (DTT) entered into by Portugal closely follow Article 5 of the OECDMC, which defines, in point 1, PE as "a fixed place of business through which a business of an enterprise is wholly or partly carried on".

We will investigate whether it is possible to consider that a digital nomad has a fixed installation from which the enterprise carries out all or part of its activity and if, because of it, the presence of a digital nomad in Portugal may lead to the constitution of a PE.

Assuming that the digital nomad works with a computer with an internet connection or a smartphone and from different locations, including coworking spaces, hotels and Airbnb spaces, two questions are possible: 1) can these spaces be considered a fixed place of business? 2) can the computer or smartphone of the digital nomad be considered a fixed place of business?

Concerning question 1), the answer will depend on a case-by-case analysis. The definition of PE in Article 5(1) of the CIRC and Article 5(1) of the OECDMC requires the verification of three conditions: i) the existence of a place of business, such as premises, machinery or equipment, which must be at the enterprise's disposal; ii) it must be a fixed place of business, that is, there as to be a link between the place of business and a specific geographical point and it must be established with some degree of permanence; iii) the enterprise must develop its activity through this fixed place of business. As regards the

[11] This is the case in Portugal, which in Article 2(1)(a) of the CIRC considers as IRC taxpayers: "Commercial or civil societies under commercial form, cooperatives, public companies and other legal persons of public or private law, with head office or effective management in Portuguese territory".

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first condition, it is necessary to ascertain whether the specific space is available to the undertaking, even though a third party may own it. Regarding the second condition, it requires some continuity in using a place. As regards the third condition, the activities carried out there must not be merely ancillary to the enterprise's activity. As a rule, a coworking space, a hotel or an Airbnb space will not be at the enterprise's disposal. It is a space freely chosen by the digital nomad and whose location varies depending on his decision at each moment. Thus, we have been able to configure as a PE the case of a coworking space that is recurrently rented by an enterprise so that its employees, digital nomads, can go there to work. In addition to being likely to meet the conditions indicated above, this example also has clear points of contact with the example indicated in paragraph 23 of the Commentary to Article 5 of the OECDMC. This example refers to the case of several offices of an office hotel that a consultancy firm frequently uses. The building constitutes a geographical whole, and the hotel is a place of business for the enterprise. Therefore, notwithstanding always requiring a case-by-case analysis, coworking spaces, hotels, and Airbnb spaces can be considered PEs, provided being paid, chosen by the enterprise and repeatedly used by one or more digital nomads. At the same time, they must perform activities that are not merely ancillary to their employer.

Regarding question 2), as already pointed out by Leonard Wagenaar,[12] if a market stall or a desk in a coworking space can be a PE because they are part of a "geographical whole", why not a smartphone or a computer? The phone is never in the same place, but neither is a market stall or a coworking space, and we have already seen that these could be considered PE. Moreover, there is no size limit for what can be considered a PE. Its design does not come from the digital age we live in.[13] As to the condition of these means having to be at the enterprise's disposal, if we understand this expression as the power to exclude the access of someone to a place, the fulfilment of this condition is defensible if we consider that at any moment the employer may cut the access to communications, internet or VPN access to the enterprise. The question is quite pertinent, but, in our view, allowing a portable work instrument, such as a smartphone – being the motive to use it the advantage of mobility, that is, the absence of dependence on a geographical point - to be considered a "fixed place of business", is going beyond the letter of the law. In

[12] Leonard Wagenaar, “The Real Reason Your Work Doesn’t Let You Remote-Work from Abroad, and How to Fix It,” Tax Policy Associates, 2022, https://www.taxpolicy.org.uk/2022/11/09/remote_work/?#_ftn10.
[13] Wagenaar.

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Portugal, looking at Article 9 of the Civil Code, applicable *ex vi* Article 2(d) of the General Tax Law, we find that, in interpreting the law, the interpreter cannot consider a meaning which does not have a minimum of verbal correspondence in the law, even if imperfectly expressed. Also, Article 31(1) of the Vienna Convention on the Law of Treaties states that a treaty is to be interpreted in accordance with the ordinary meaning to be given to its terms in their context and in the light of its object and purpose. The essential point of the PE, as a fixed place of business, is the connection with a geographical area, which justifies a state's right to tax the PE. The examples given in Article 5(2) of the CIRC and Article 5(2) of the OECDMC[14], although not mutually exclusive, corroborate the meaning of this interpretation. This is also what follows from paragraph 21 of the Commentary to Article 5 of the OECD, which states that a place of business must be fixed, in the sense that there is a connection between that place and a specific geographical point. Now, a laptop or a smartphone has the freedom of geographic movement as a basic premise without dependence on a concrete physical space. We do not deny that through these instruments, workers are exercising an activity. Nevertheless, if, in this case, there is a right to taxation by a State, it cannot be based on the existence of a PE as defined in Article 5(1) of the OECDMC or Article 5(1) of the CIRC. As far as we know, there are no national court decisions or binding information on these two issues.[15]

The above does not prevent other circumstances leading to considering a PE, listed in Article 5, (3) to (6) of the CIRC and Article 5, (3) to (6) of the OECDMC. Among these circumstances, we highlight that the digital nomad may be considered a dependent agent or constitute a Service PE. A digital nomad can be a dependent agent if he acts in Portuguese territory on behalf of an enterprise by exercising powers of intermediation of contracts that bind the enterprise within the scope of its activities. Alternatively, the possibility, foreseen under Portuguese law, to constitute a Service PE which happens if the enterprise provides services, including consultancy services, through that digital

[14] Both articles give as an example of a permanent establishment: a place of management; a branch office; an office; a factory; a workshop, and a mine.

[15] However, the Spanish tax authority has already ruled on the possibility that a home office may constitute a permanent establishment - cf. DGT V0066-22, of 18/01/2022. Although, in this specific case, this hypothesis has been ruled out. What is clear from this decision is that, although a case-by-case assessment is always necessary, the home office may constitute a permanent establishment.

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nomad worker for a period exceeding 183 days in a 12-month period starting or ending in the tax period concerned.[16]

When analysing the conditioning of the geographical freedom of the digital nomad by tax issues, it is also essential to bear in mind the obligations arising from Action 13 of the Action against Base Erosion and Profit Shifting (BEPS). Action 13 aims at developing transfer pricing documentation rules, thus increasing transparency for tax administrations.[17] The implementation of this Action relies on three levels of documentation: i) a Master File, in which MNEs provide information on their global system of business operations and their transfer pricing policies in a file that should be available to all relevant tax administrations; ii) a local file, a country-specific file with detailed transfer pricing documentation; iii) a Country-by-country Report (CbCR), provided annually to each tax jurisdiction in which they do business, indicating the amount of revenue, profit before income tax and income tax paid and accrued. MNE Groups should also report the number of their employees, stated capital, accumulated earnings and tangible assets in each tax jurisdiction. This information should make it easier for tax administrations to identify companies engaged in transfer pricing and other practices that artificially shift profits earned.

CbCR provides information on the number of employees in each entity within a group. Knowing which jurisdiction the MNE should allocate these workers for CbCR purposes is a challenging question when mobile workers are concerned, especially if they are digital nomads. The answer will vary according to the type of contract and the length of stay.[18] Furthermore, the documentation requirements, a company's first line of defence in an audit situation,[19] must correspond to the reality of the worker's location.

[16]The latter possibility, contained in Article 5(3)(c) of the CIRC, has been in force since 1 January 2021. It was a provision inspired by Article 5(3)(b) of the United Nations Model Convention, as the OECDMC does not contemplate this possibility.

[17] OECD, "Action Plan on Base Erosion and Profit Shifting," *Action Plan on Base Erosion and Profit Shifting*, 2013, 23, https://doi.org/10.1787/9789264202719-en.

[18] See Carolina Acuña Peña, "Acciones Incluidas En El Proyecto BEPS Que Tienen Incidencia En Personas Naturales Vinculadas a Través de Contratos Laborales de Movilidad Internacional y En Sus Compañías Empleadoras," *Revista de Derecho Fiscal*, no. 12 (2018): sec. 19, https://doi.org/10.18601/16926722.n12.02 The author also notes that it will be necessary to ensure that CbCR data is consistent with other information on employees available to tax authorities, as well as with information on short-term business visitors for their visa applications to the relevant immigration authorities.

[19] Acuña Peña, 24.

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At the European Union (EU) level, member states reached an agreement on 12 December 2022 regarding the implementation of rules for global minimum taxation by the end of 2023. The OECD model rules for Pillar 2 follow the OECD/G20 Inclusive Framework very closely. Business groups whose turnover is at least €750 million for at least two of the last four tax years are affected. The purpose is to ensure that these groups are subject to 15% effective taxation in each of the jurisdictions under which they operate. This framework, established by the EU, sets up a system consisting of two interlinked rules, together also referred to as the 'GloBE rules', whereby levies an additional amount of tax (a 'top-up tax') where the effective tax rate of an MNE in a given jurisdiction is less than 15%. In such cases, it is considered a low-tax jurisdiction. These two interlinked rules are the Income Inclusion Rule (IIR) and the Undertaxed Profit Rule (UTPR). However, the Directive has included an income exclusion based on the substance of employee-related costs and the value of tangible assets in a given jurisdiction. This exclusion would, to a certain extent, address situations where an MNE or a large-scale domestic group carries out economic activities that require a material presence in a low-tax jurisdiction, as in that case, BEPS practices are unlikely to thrive. Hence, as a consequence of Pillar 2 in the EU, it will also be essential to know in which jurisdiction an employee is carrying out activities for a particular group of companies.

The BEPS project has consequences not only for enterprises but also for people. The requirements derived from Action 13 of BEPS, combined with the digital nomad's ability to constitute a PE, means that enterprises find it challenging to give digital nomads the freedom to move where, when and for as long as possible they want. As Carolina Acuña Peña[20] mentions, all areas of the enterprise (payroll, finance and human resources) need to work with the tax area to manage all these implications and risks. Implementing Pillar 2 in the EU will further accentuate this situation, as an employee's allocation to a specific jurisdiction can directly affect the worldwide taxation of an MNE.

IV– The taxation of the digital nomad as an employee

Regarding employment income, Portugal follows Article 15 of the OECD in the DTT concluded by Portugal. According to this Article, in principle, the competence to tax is exclusive to the State of residence. When the employment is exercised in a State other

[20] Acuña Peña, 24–25.

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than the State of residence, the employee may also be taxed in that State. To do so, it is sufficient that one of the following circumstances applies: i) the worker is present for more than 183 days in the State where he/she carries out his/her employment; or ii) the remuneration is paid by or on behalf of an employer resident in that State; or iii) the remuneration is paid by a PE which the employer has in that State.[21]

Given the provisions of Article 15 of the OECD and assuming that the digital nomad does not exceed 183 days in another country, it would seem that in such a case, taxation would always fall on the State of residence.[22] However, taxing the digital nomad based on the residence principle may be challenging. On the one hand, each State has its own rules for considering someone a tax resident. In other words, the nomad may have difficulty proving that he or she has a fiscal residence or may be considered a fiscal resident in several countries.[23] Contrary to what one might think, not having a fiscal residence is not advantageous. Firstly, banks are legally obliged to collect this information and therefore require proof of a fiscal residence to open an account and may even close the account if the documentation provided is insufficient.[24] On the other hand, the opposite situation of having several States claiming tax resident status for themselves leads to double taxation. That is because the fact that the nomad registers as a tax resident in a given State and pays his taxes does not guarantee that another State will not consider that person as its tax resident.[25] In a situation of dual residence, if there is a DTT between those States, to

[21] Alberto Xavier, *Direito Tributário Internacional*, ed. Edições Almedina, 2nd ed. (Coimbra, 2020), 619.

[22] See Svetislav V. Kostić, "The Taxation of Employment Income," *World Tax Journal*, no. May (2019): secs. 209–211 The author notes that applying the residence criterion of Article 15 of the OECDMC to the digital nomad means that he is taxed neither in the State of origin (the States in which the nomad worked) nor in the State of destination of the income (the State of the employer, which is normally different from the nomad's State of residence). This runs counter to the benefit principle, since the digital nomad is not taxed in any of the countries whose infrastructure he uses to produce his income.

[23] Marisa Ouro, "Tributação Dos Nómadas Digitais: Desafios e Questões Controvertidas," in *Direito Tributário Do Turismo: Um Desafio Do Século XXI*, 2021, 115–18.

[24] The rules of the Foreign Account Tax Compliance Act (FATCA) and the Common Reporting Standard (CRS), legislation aimed at preventing tax evasion, require banks and other financial institutions to collect information on the tax residency of their clients. Banks also have to keep this information up-to-date, as required by regulators and in compliance with anti-money laundering legislation, so the contracts for opening an account that customers sign require the bank to be informed of any change in the customer's details, and the customer must attach the respective supporting documentation.

[25] See "La Agencia Tributaria Regularizó Bases Imponibles Por 5.578 Millones, Un 81% Más, En 112 Comprobaciones de La Fiscalidad Internacional de Grandes Empresas Multinacionales," Agencia Tributaria, accessed January 1, 2023, https://sede.agenciatributaria.gob.es/Sede/notas-prensa/notas-prensa/2022/La_Agencia_Tributaria_regularizo_bases_imponibles_por_5_578_millones__un_81__mas__en_112_comprobaciones_de_la_fiscalidad_inte__multinacionales.html This note from the Spanish Tax Authority states that, using "big data" tools, they were able to detect false non-tax residents, who claimed to be resident in other countries.

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resolve the taxation conflict, the various tests of Article 4(2) of the OECD come into play, which must apply according to the precedence set out therein.[26] That is a complex analysis. Not only has the increase in mobility made the interpretation of the tie-breaker criteria in Article 4(2) of the OECD difficult, but concepts such as family, in light of unmarried partnerships and same-sex marriages, have changed from the past.[27] Determining an individual's tax residence involves a predominantly factual analysis, particularly concerning the interpretation of what is the centre of vital interests and the weight given to his or her economic and personal circumstances in establishing the link with a given State.[28] Moreover, a situation may also arise when we consider the digital nomad to be solely resident for tax purposes in a given State, but that State does not have a DTT with the State in which he is carrying out his activity. Furthermore, this State in which he is carrying out his activity, by applying its domestic legislation, may consider that the income produced in its territory is subject to taxation there. It is possible to configure such a situation in the Portuguese case. For example, a digital nomad resident in Finland came to Portugal in 2022 for two months to work remotely. In 2022 Portugal no longer had a DTT in force with Finland. By combining Article 15(2) of the CIRS with Article 18(1)(a) of the CIRS, this digital nomad is subject to IRS on income obtained in Portuguese territory, which includes income from dependent work resulting from activities carried out during the two months he was in Portugal. In other words, the digital nomad will have to file the IRS Form 3 income declaration, declaring this income, which is subject to autonomous taxation at a special rate of 25%, under the terms of Article 72 (6)(b) of the IRS Code.

From the above, we conclude that the digital nomad himself may have an interest in limiting his geographical movement to certain countries, or at least the way he moves around them and the time he stays there, since he may be a tax resident in those countries or be subject to international double taxation. The digital nomad is interested in having a tax residence, preferably in a State where he pays as little tax as possible. At this point, we move on to the next chapter, where we see how States have tried to take advantage of the mobility of digital nomads.

[26] Johannes Becker et al., *Klaus Vogel on Double Taxation Conventions*, ed. Ekkehart Reimer and Alexander Rust, Fifth, 2021, para. 82.
[27] Timothy Borg Olivier, "Developments in the Analysis of the Tie-Breaker Rules," *Intertax* 45, no. I (2017): sec. 1.2.
[28] Becker et al., *Klaus Vogel on Double Taxation Conventions*, paras. 88–89.

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V– How tax competition and tax cooperation between states affect digital nomads

Tax competition between states has intensified with globalisation. Source States are unable to tax activities carried out there because a PE cannot be identified.[29] States of residence are unable to tax intangibles and dematerialised services.[30] As referred by Ana Paula Dourado,[31] the first manifestations of international recognition of this situation of tax competition between States occurred with the OECD Report of 1998, "Harmful Tax Competition". However, this report focused on territories with low taxation and banking secrecy. Globalisation has also had the virtue of making public the MNEs' strategies for eroding tax bases and transferring profits. In this context, the Action Plan on Base Erosion and Profit Shifting emerged in 2013. However, one only has to look at the introductory chapter of the Report published in 2013 by the OECD[32] to realise that the predominant focus of the creation of this initiative was to combat tax minimisation strategies by companies, in particular multinationals. Currently, the justification also seems to be to limit tax competition between States on corporate tax rates.[33]

However, tax competition between states for individuals' tax revenues has also been intensifying, a trend that has been reinforced by the growth of remote working.[34] A 2021 study by the EU Observatory points to the increase in the number of personal income tax schemes targeting foreign individuals as the most striking trend in EU tax competition.[35] The number of such schemes has increased from 5 in 1995 to 28 in 2021.[36] Although there have already been, for some years, measures implemented by states granting

[29] Ana Paula Dourado, *Governação Fiscal Global*, ed. SA Edições Almedina, 2nd ed. (Coimbra, 2022), 27.
[30] Dourado, 27.
[31] Dourado, 28.
[32] OECD, "Action Plan on Base Erosion and Profit Shifting," 7–8.
[33] In this regard, Council Directive (EU) 2022/2523 of 15 December 2022 on ensuring a worldwide minimum level of taxation for multinational and large-scale domestic groups in the EU states in its second whereas that: "That major reform aims to put a floor on competition over corporate income tax rates through the establishment of a global minimum level of taxation."
[34] See Rita de la Feria and Giorgia Maffini, "The Impact of Digitalization on Personal Income Taxes," *British Tax Review*, no. 2 (2021) The authors show that remote work will become a trend and will affect the worker's tax residence and consequently impact the countries' tax revenues coming from individuals' income and social security.
[35] Eloi Flamant, Sarah Godar, and Gaspard Richard, "New Forms of Tax Competition in the European Union: An Empirical Investigation," *EU Tax Observatory*, 2021, 3, https://www.taxobservatory.eu/wp-content/uploads/2021/11/EU-Tax-Observatory-Report-3-Tax-Competition-November-2021-2.pdf.
[36] Flamant, Godar, and Richard, 10.

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citizenship or residence in return for investment,[37] since mid-2020, visas for digital nomads have also been launched. These visas fill the gap between tourist visas and work visas for those who plan to reside for a more extended period than is possible with a tourist visa but do not meet the requirements for a work visa, namely because they do not have a work contract with an entity located in that country.[38]

Initially seen as a way to counterbalance the loss of tourism revenues at the time of COVID-19,[39] they are now a tool to attract highly skilled and well-paid foreign individuals who can work remotely from anywhere. These visas are currently seen as a tool to attract talent, allowing digital nomads to first familiarise themselves with the country in the hope that they will later settle and want to stay in another legal status.[40] Although advertised as visas for digital nomads, these visas are legally framed as visas for international teleworkers, thus allowing them to encompass digital nomads and the generality of remote workers who move to other countries to work remotely. Portugal created, through Law 18/2022, of August 25, the "residence visa for the exercise of professional activity provided remotely outside the national territory".[41] More recently, on 21 December 2022, Law 28/2022, known as the Law on Startups, was published in Spain, which allowed the entry and stays in Spain of teleworkers of international character.[42] Many of these visas are accompanied by attractive tax conditions ranging from reduced taxation to total exemption.[43] In Portugal, digital nomads who meet and apply for the conditions of the Non-habitual Resident (NHR) tax regime and are working from Portugal are taxed at a rate of 20%.[44] These are only some of the means to attract digital nomads. However, other attractive features (geographical conditions, infrastructure, and level of public services, such as health or education) decrease the

[37] See in this regard the study commissioned by the European Commission on national legislation and relevant practices on citizenship and residence schemes practiced by several member states in Jelena Dzankic et al., "Factual Analysis of Member States Investors' Schemes Granting Citizenship or Residence to Third-Country Nationals Investing in the Said Member State," *Millieu Law and Policy Consulting* (Bruxelas, 2018), https://ec.europa.eu/info/sites/info/files/deliverable_d_final_30.10.18.pdf.
[38] Nana Amo Sarfo, "Tax Incentives Among the Lures Targeting Digital Nomads," *Tax Notes International* 105, no. January 17 (2022): 265.
[39] Ouro, "Tributação Dos Nómadas Digitais: Desafios e Questões Controvertidas," 118–21.
[40] OECD, "Should OECD Countries Develop New Digital Nomad Visas?," no. JULY (2022): sec. 4.
[41] See Article 61.º- B of Law 18/2022, August 25.
[42] See Article 61(1)(f) of the Spanish Law 14/2013, September 27, modified by Law 28/2022, December 22, and the new Chapter V bis, added by the same Law.
[43] OECD, "Should OECD Countries Develop New Digital Nomad Visas?," 4; Sarfo, "Tax Incentives Among the Lures Targeting Digital Nomads."
[44] Ouro, "Tributação Dos Nómadas Digitais: Desafios e Questões Controvertidas," 123–24.

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competitive pressure.[45] However, many countries that have launched these visas meet these conditions. Therefore, the tax factor may be decisive. Tax competition stimulates the geographical mobility of the nomad, who may, at any given moment, choose to take up residence in the State that offers the best conditions from a tax point of view.

Cooperation between tax administrations is crucial in the fight against tax evasion and in protecting the integrity of tax systems. A key aspect of such cooperation is the exchange of information. The Common Reporting Standard (CRS), developed in response to the G20 request and approved by the OECD Council on 15 July 2014, calls on jurisdictions to obtain information from their financial institutions and automatically exchange this information with other jurisdictions on an annual basis. As of October 2022, there are over 4900 activated bilateral exchange relationships concerning over 110 jurisdictions committed to the CRS.[46] The fact that the CRS is indiscriminate in scope and includes countries reported for human rights violating practices and with a high rate of corruption may lead to people who have fled those countries and become digital nomads, seeing their foreign bank account details disclosed in those countries.[47] This situation is not specific to digital nomads. However, it may end up affecting them, an effect that is outside the scope of the CRS and which ends up having the perverse consequence that, if it applies without any safeguards, it will fund those states in the continuation of human rights violations.[48]

VI – Conclusion

The employer of the digital nomad will not allow him to develop his activity anywhere in the world, nor for as long as the digital nomad wants and whenever he wants. Such limitation derives from the effect of its activity in the taxation of the enterprise's income. The most obvious reason for that is that an enterprise may be subject to taxation by creating a PE in the country of stay of the digital nomad. As we have seen, the answer to this dilemma is not consensual, nor can it be answered directly, and will always depend

[45] de la Feria and Maffini, "The Impact of Digitalization on Personal Income Taxes," sec. III.
[46] Information consulted on the OECD website on 16 January 2023: https://www.oecd.org/tax/automatic-exchange/international-framework-for-the-crs/
[47] Grahame Jackson and Harriet Brown, "The Mechanisms for Defeating Tax Avoidance and Acts of Non-Compliance : The Obligation of the State and the International Community to Legitimate Reasonable Taxpayer Choices," *European Taxation* 62, no. 6 (2022): sec. 7.
[48] See the example of Liberia, given in Jackson and Brown, secs. 8–9.

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on a case-by-case analysis. However, the enterprise has other reasons to impose this limitation, such as legal obligations derived from the CbCR, with an impact on the level of transfer prices, which require to indicate the number of employees allocated to a specific jurisdiction. Similarly, the adhesion of several countries to the OECD Pillar 2, and subsequent implementation of a global minimum tax, will also impact on MNEs' employees in the sense that they will always seek to ensure an effective presence of employees in low tax jurisdictions, as a way to exclude income subject to the UTPR, which may be challenging to prove in the case of a digital nomad employee.

The digital nomad may be the epitome of a "citizen of the world", but it is always in his interest to have a fiscal residence, mainly for the practical reasons of being able to use a bank account. Even so, having a registered tax residence does not prevent another State from considering him as its resident. Given the myriad of double taxation conflicts that can arise, choosing a country with a good network of double taxation treaties is advisable. In a situation of dual residence, if there is a DTT between those States, to resolve the taxation conflict, the various tests of Article 4(2) of the OECD come into play and should be applied according to the precedence set out therein. However, it is a complex analysis, primarily because of the mobility of the nomad, who establishes different economic and social connections in the places he travels, and because family connections have changed from the old traditional patterns.

Tax competition between States for individuals' tax revenues is not new, nor is it exclusive to low-tax countries. Digital nomad visas are another instrument to attract highly skilled and well-paid foreign individuals who can work remotely from anywhere. These visas have included attractive tax conditions ranging from reduced taxation to total exemption. The ultimate goal is to fix the beneficiaries of these visas in these countries, but as they are very recent instruments, there is still a need to study their long-term effects. We wonder if they will not have the opposite effect, that is, to further stimulating the geographical mobility of the digital nomad who may, at any given moment, choose to take up residence in the State that offers the best conditions from a fiscal point of view and, when the period of exemption or reduction of taxation is over, move to another State that again offers these conditions. As for cooperation between States, being an essential instrument for combating tax evasion, it may have inadvertent effects in cases where data from the bank accounts of digital nomads abroad are disclosed to countries reported to have violated human rights and from which they had fled.

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Contrary to what is said in Paul Simon's song, that to leave a lover, all you have to do is throw away the keys and free yourself. In the case of digital nomads, taxation is a key they can never get rid of. Their freedom to work remotely anywhere is always limited because their employer must assess the tax risks associated with such a move. Several States may also dispute their individual income, whether or not they are considered a tax resident there. At the same time, each State has its own 'siren song', with its tax attractions specially designed for remote workers. More than for any ordinary citizen, the tax issue will always have to be given much thought so that it can be a form of liberation rather than a prison of obligations wherever they go.

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