MASTER THESIS | MASTER'S THESIS

Titel | Title

The International taxation of dual resident companies: Comparative analysis of the Double Taxation Agreements between Azerbaijan and Contracting States.

verfasst von | submitted by

Anvar Aliyev

angestrebter akademischer Grad | in partial fulfilment of the requirements for the degree of

Master of Laws (LL.M.)

Wien | Vienna, 2025

Studienkennzahl lt. Studienblatt | Degree programme code as it appears on the student record sheet:	UA 999 082
Universitätslehrgang lt. Studienblatt | Postgraduate programme as it appears on the student record sheet:	Europäisches und Internationales Wirtschaftsrecht [Vollzeit Englisch]
Betreut von | Supervisor:	Dr. Dimitar Hristov

TABLE OF CONTENTS

List of Abbreviations

AOE – Apple Operations Europe

ASI – Apple Sales International

AO – Abgabenordnung (General Fiscal Code, Germany)

BAO – Bundesabgabenordnung (Federal Fiscal Code, Austria)

BEPS – Base Erosion and Profit Shifting

CEO – Chief Executive Officer

CFO – Chief Financial Officer

COO – Chief Operating Officer

CMC – Central Management and Control

DTA – Double Taxation Agreement

EU – European Union

KStG – Körperschaftsteuergesetz (Corporate Income Tax Act, Austria, Germany)

LIR – Loi concernant l'impôt sur le revenu (Income Tax Law, Luxembourg)

MAP – Mutual Agreement Procedure

MEMAP – Manual on Effective Mutual Agreement Procedures

MLI – Multilateral Instrument (to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting)

OECD – Organisation for Economic Co-operation and Development

OEEC – Organisation for European Economic Co-operation (predecessor of OECD)

OECD MC – OECD Model Convention on Income and on Capital

POEM – Place of Effective Management

POI – Place of Incorporation

PwC – PricewaterhouseCoopers

TUIR – Testo Unico delle Imposte sui Redditi (Italian Income Tax Code)

UAE – United Arab Emirates

UK – United Kingdom

UN – United Nations

US – United States

Chapter I – Introduction

Today, most economic activities worldwide are carried out by corporations. The increasing globalisation of economic activity is driven by numerous factors, including the expansion of market boundaries and cross-border trade, the rapid development of telecommunications, the growing possibilities of transportation, and the digitalization of business models, which together have facilitated and accelerated access to the global market. From the perspective of international tax law, the growth of the global market plays a significant role. It attracts companies established in one state to exploit resources and business opportunities in another, thereby creating the possibility of establishing economic ties with other states. The geographic mobility of a tax base, creates the risk of double taxation, giving rise to the problem of dual residence of companies, which is the subject of the present paper.

A dual resident company is a company which, under the national legislation of two states, is subject to full tax liability on a worldwide basis in both states. Dual-residence situations may arise when two states apply different criteria to determine the fiscal residence of the same company. However, dual residence may also result from different interpretations of the same domestic criterion, or even from the application of a single criterion. The most common example of corporate dual residence occurs when a company is incorporated in one state but has its place of effective management in another.

The taxation of companies with dual residence has been widely discussed in legal literature, international agreements, treaties and national legislation.

In this paper, both national and international standards for determining corporate residency are examined. In the international context, the OECD Model Tax Convention on Income and on Capital (2017) plays a central role, since it aims to eliminate double taxation and prevent tax evasion and avoidance. Article 4(3) directly addresses the issue of dual-resident companies by referring to the mutual agreement procedure as the sole method of resolution. The OECD Commentary, which clarifies the meaning of the Convention's articles, also plays a key role in broadening the understanding of the criteria for determining tax residence.

This study examines the criteria for determining corporate residency both in national legislation and in double taxation agreements (DTAs). For a comprehensive analysis, tax legislation has considered in common law jurisdictions, such as the United States, the United Kingdom, as well as in civil law jurisdictions, such as Austria, Luxembourg, Italy, France, Germany, Türkiye, and other countries. Particular attention is given to the tax legislation of the Republic of Azerbaijan.

The focus on Azerbaijan is further motivated by its advantageous geographical and strategic location from a trade and investment perspective, as it serves as a bridge between Europe and Asia. Moreover, the above-mentioned countries, including the Russian Federation and China, are among key trading partners of Azerbaijan.

Furthermore, this thesis provides a comprehensive overview of the different approaches to determining corporate residence and highlights their specific features. In particular, connecting factors such as the place of effective management, central management and control, the place of incorporation, and the mutual agreement procedure, are analysed in depth. The practical application, relevant case law, and the advantages and disadvantages of each of these factors are also assessed.

This objective of this thesis is to critically analyse the taxation of dual-resident companies in various jurisdictions, to identify the main criteria for corporate tax residency, evaluate their effectiveness in resolving the issues of corporate residence, and propose a combination of factors that could ultimately address this problem.

This research employs a combination of comparative and doctrinal legal analysis, supported by case law review and statistical data. The comparative method is applied to examine the provisions of double taxation agreements (DTAs) between Contracting States. The doctrinal method involves a detailed analysis of the OECD MC, its Commentary, and relevant academic literature in order to establish the theoretical definition of dual residency and its criteria. In addition, case law is reviewed to illustrate how courts apply these rules in practice. Finally, statistical methods are also used to assess the duration and outcomes of the MAP.

This master's thesis consists of five chapters. Following an introduction in Chapter I, the analysis begins with defining the term of residence and corporate residence in domestic and international tax law and its respective functions. Chapter II also outlines the history of the development of corporate residence criteria under OECD MC. Chapter III examines each of the residence criteria separately and their application in DTAs, including the place of effective management, place of incorporation (registration), central management and control, the mutual agreement procedure, and other relevant factors. It evaluates the benefits and drawbacks of each criterion and reviews the relevant case law. Chapter IV explores Azerbaijan's treaty practice and domestic regulation of corporate residence in a comparative perspective. In addition, it analyses the regulation of offshore jurisdictions, including specific anti-offshore provisions in domestic tax law and the consequences of the absence of DTAs.

The final Chapter presents the key findings and offers practical proposals for the reform of treaty provisions.

Chapter II – General Concept of Tax Residence in the OECD Model Convention

2.1. Overview and Fundamental Principles of Article 4 OECD MC

Tax residency is one of the fundamental concepts in international and domestic taxation, determining where a natural or legal person is subject to tax. This concept is unique to tax law and, unlike the concept of residence in corporate or immigration law, serves to determine a taxpayer's affiliation with the state.
According to the residency principle, taxpayers of a given state are generally classified into two categories: residents and non-residents. The main distinction between these two groups is that residents pay taxes in the given state on all income received from both within and outside the state. In other words, they bear unlimited tax liability and are subject to taxation on their worldwide income. Whereas non-residents pay taxes only on income received from a source state. It means, non-residents have limited tax liability and are subject to source-based taxation.

As Polyakova and Kotlyarenko rightly note, the following principles of international tax law are associated with the concept of residency:

The principal of territoriality is one of the main principles of international tax law. According to this principle, a state has the right to levy taxes on a non-resident only in cases where a taxable object arises within the territory of that state, or abroad but in connection with activities carried out on its territory. This principle is derived from the international legal principle of the territorial sovereignty of a state over its territory.

The principle of tax jurisdiction implies that a state's taxing powers over non-residents apply only within its own territory, whereas with respect to residents, such jurisdiction may extend beyond national borders.[1]

In international tax relations, general principles of international law also play a significant role, including the principle of non-discrimination, which ensures that individuals from one state are not subject to less favorable tax treatment than individuals from any other state, and

[1] V.V. Polyakova and S.P. Kotlyarenko, 'Понятие "Международное налоговое право" [The Concept of "International Tax Law"] in S.G. Pepelyaev (ed), *Nalogovoe pravo: Uchebnik dlya vuzov* (Alpina Publisher 2016) p 437.

the principle of reciprocity, which provides for the granting of equivalent rights and obligations in the field of taxation to both private individuals and the respective states themselves. These principles are commonly referred to as the non-discrimination regime and the reciprocity regime, respectively.[2]

The vast majority of double taxation agreements are based on the OECD Model Tax Convention on Income and on Capital (hereinafter referred to as OECD MC). The OECD MC plays an important role in determining the approach to the concept of tax residency, which is the subject of Article 4. The structure of the Article 4 of the OECD MC consists of three paragraphs.

Article 4(1) OECD MC specifies the definition of the term 'resident of a Contracting State' for convention purposes. The first sentence refers to the concept of residence as used in the domestic laws of that State, where the latter is based on a territorial nexus (domicile, etc.). The second sentence clarifies that liability to tax in respect only of income from sources or capital situated in the State concerned is not sufficient. Article 4(2) OECD MC contains the tie-breaker rules for individuals. Article 4(3) OECD MC establishes a two-tier mutual agreement procedure for dual-resident persons other than individuals[3], which is examined more thoroughly in sections 1.2 and 2.4.

The concept of "resident of a Contracting State" has various functions and is of importance in three cases:

a) in determining a convention's personal scope of application;

b) in solving cases where double taxation arises in consequence of double residence;

c) in solving cases where double taxation arises as a consequence of taxation in the State of residence and in the State of source or situs.[4]

Regarding the first case, Article 1 of the OECD MC limits the application of the treaty to residents of one or both Contracting States, unless stated otherwise in the respective provision. Article 4(1) of the OECD MC defines the term 'resident' and, thus, identifies the

---

[2] Ibid 439.

[3] Roland Ismer and Katharina Blank, '*Article 4: Resident'* in Ekkehart Reimer and Alexander Rust (eds), *Klaus Vogel on Double Taxation Conventions*, 5th edn (Kluwer Law International 2021) Article 4 m.nos. 11–13.

[4] OECD, *Commentary on Article 4 of* the *Model Tax Convention on Income and on Capital: Full Version 2017* (OECD Publishing 2019) para 1.

personal scope of the Convention. Therefore, it performs the function of defining the general entitlement to treaty benefits.

Regarding the second and third cases, both the allocation rules (with the exception of Article 8 of the OECD MC) and the Method Article expressly refer to a single residence State. Article 4 of the OECD MC is therefore vital for the avoidance of double taxation – be it a consequence of double residence or of parallel taxation in the residence State and in the source State or Situs State.[5]

Notwithstanding this, it should be emphasized that the dual residency of companies is possible under the wording of the current version of Article 4(3) of the OECD MC. In case the competent authorities of the Contracting States fail to reach a mutual agreement, the company shall be regarded as a tax resident of both States.[6]

Hence, dual taxation may arise in three different situations: (1) residence-residence conflict, where a taxpayer is deemed a resident in two states; (2) residence-source conflict, where both the residence and source states claim taxing rights over the same income; (3) a mismatch in classification, where states interpret various types of income or "same criterion"[7] differently.

Residence of the taxpayer is indeed often used as a proxy to determine the source of income. This is, in particular, the case for capital income, such as dividends, interest and some capital gains, or for the consideration of services or the use of material goods, such as equipment, or intangibles (royalties). Consequently, states tend to impose withholding tax obligations on resident payers of those items of income, especially when their beneficiaries are foreign.[8]

It is also important to mention that residence is of relevance for the non-discrimination article as well as for the mutual agreement article under the OECD MC. Article 24(2) of the OECD MC applies to stateless taxpayers who are residents of one of the Contracting States, whereas Article 25 refers to the residence state of the person presenting the case to the competent authority.[9]

---

[5] Ismer and Blank (n 3) Art 4 m.no. 2.
[6] See Ismer and Blank (n 3) Art 4 m.no. 152.
[7] See Reimer and Rust (eds), *Klaus Vogel on Double Taxation Conventions* (5th edn, Kluwer Law International 2021) art 4, m.n. 127, where examples are given for differing interpretations of the "real seat" criterion, such as the location of board meetings, management activities, shareholders' meetings, or the place where day-to-day or strategic decisions are made.
[8] Edoardo Traversa, 'Corporate Tax Residence at the Crossroads between International Competition and Convergence: Outlining the Debate' in Edoardo Traversa (ed), *Corporate Tax Residency and Mobility* (IBFD 2018) p 6.
[9] Ismer and Blank (n 3) Art 4 m.no. 2.

To summarize, considering principles underlying tax residency and the key functions it performs, it can be concluded that tax residency forms the basis of the regulation of international tax relations. In the tax legislation and enforcement practice of foreign countries, the institution of tax residency is established both in relation to individual taxpayers and in relation to legal entity taxpayers. Thus, the application of the OECD MC and bilateral tax treaties heavily relies on the concept of residence.

2.2. Dual Residency of Companies under Article 4(3) OECD MC

As a general rule, resident companies are subject to tax in the state in which they are resident, whereas non-resident companies are subject to tax in that other state only on the income they receive from their permanent establishment in that other state. Therefore, distinguishing between resident and non-resident companies is vital for the proper allocation of taxing rights.

Tax treaties have developed a two-tier approach to ensure a corporate residence. First, they refer to domestic tax legislation, and then, for cases where a company is considered dual resident, they refer to a mutual agreement procedure, which is reflected in the OECD MC or tie-breaker rules, which remain common in many bilateral tax treaties.

In practice, the number of companies with dual residence has increased due to the expansion of economic ties between countries. This occurs when both countries, under their respective domestic tax laws, consider the same company to be their tax resident, resulting in the imposition of unlimited tax liability in both jurisdictions. Such situations mainly arise when a company is registered (incorporated) in one country, while the place of effective management is located in another.

In case of dual residency, it is necessary to decide on one country to be the residence state for tax treaty purposes. Both, the distributive rules as well as the methods to avoid double taxation refer to one of the countries being the residence state and the other country being the source state.[10]

Consequently, the OECD MC contains a special rule in Article 4(3) to resolve the issue of dual residence. This article describes the application of the mutual agreement procedure in

[10] Eva Burgstaller and Katharina Haslinger, 'Place of Effective Management as a Tie-Breaker-Rule-Concept, Developments and Prospects' (2004) 32 *Intertax* p 376.

cases where a person other than an individual is considered a resident of both Contracting States. Accordingly, it directly addresses residence-residence conflicts. The provision states:

"Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, the competent authorities of the Contracting States shall endeavour to determine by mutual agreement the Contracting State of which such person shall be deemed to be a resident for the purposes of the Convention, having regard to its place of effective management, the place where it is incorporated or otherwise constituted and any other relevant factors. In the absence of such agreement, such person shall not be entitled to any relief or exemption from tax provided by this Convention except to the extent and in such manner as may be agreed upon by the competent authorities of the Contracting States."[11]

It should be noted that this article does not explicitly refer to companies but instead uses the term "a person other than an individual". Therefore, it is necessary to first identify the categories of persons covered by this provision.

According to Article 3(1)(a) of the OECD MC, the term "person" includes an individual, a company, and any other body of persons. However, considering the expression "person other than an individual", it appears that this article refers only to companies and any other body of persons.

The concept of a company is further explained in the following subparagraph, Article 3(1)(b), which defines a company as "any body corporate or any entity that is treated as a body corporate for tax purposes".[12] By contrast, the term "any other body of persons" is not clarified in Article 3, which means that its interpretation is, pursuant to Article 3(2), left to the domestic law of the Contracting States. Typically, the term "any other body of persons" includes entities such as trusts, partnerships, foundations.

In the course of the analysis of Article 4(3), it can be concluded that Article 4(3) OECD MC addresses the problem of dual-resident companies on a case-by-case basis. It now provides a procedural mechanism, specifically a two-tier mutual agreement procedure.[13]

Moreover, unlike the previous version, where the tie-breaker rule was the place of effective management, and companies were required to approach the competent authorities only in the

---

[11] OECD, *Model Tax Convention on Income and on Capital: Full Version 2017* (OECD Publishing 2019) (hereinafter OECD MC 2017) Art 4(3).
[12] Ibid Art 3(1)(b).
[13] Ismer and Blank (n 3) Art 4 m.no. 6.

event of disputes regarding the determination of the place of effective management, the current version delegates the task of determining a company's residency directly to the competent authorities through mutual agreement procedure. Accordingly, the competent authorities shall consider all factors that are relevant to determining corporate residency. These include the previously applied place of effective management, place of registration and other important criteria.

Initially, the competent authorities shall endeavour to resolve by mutual agreement all cases of dual residence of persons other than individuals. Where no such agreement can be reached, the taxpayers concerned are not entitled to any relief or exemption from tax provided by the tax treaty.[14] However, the second sentence introduces an exception, which also operates through mutual agreement procedure.

As a second step, if no agreement can be reached in the first step, treaty benefits can be nevertheless granted 'to the extent and in such manner' as agreed upon by the competent authorities.[15] Therefore, it only applies, where the competent authorities have not reached an agreement at the first tier and results in the company being recognized as a dual resident. This means that a company will be considered to be a resident of each of the Contracting States for the purposes of the Convention. As long as no agreement is reached between the competent authorities after the second tier, the dual resident company is not entitled to any treaty benefits.

Thus, Article 4(3) shows some of the main trends in current OECD policy concerning dual resident companies:

- the OECD acknowledged that there is no one recipe to solve the dual residence problems.

- the OECD acknowledged the possibility that a dual residence case may be unsolved even as a consequence of negotiations.

- the OECD accepts the exclusion of dual resident companies from treaty benefits.[16]

2.3. Evolution of the Tie-breaker Rules under Article 4(3) OECD MC

The notion of tax residency has developed throughout history in both international and domestic tax law. In international tax law, international and bilateral agreements on the

[14] Ibid m.no. 13.
[15] Ibid.
[16] Yevheniy Plakhin, 'The Place of Effective Management as a Tie-Breaker Criterion' in Matthias Hofstätter and Patrick Plansky (eds), *Dual Residence in Tax Treaty Law and EC Law* (Linde 2009) p 91.

avoidance of double taxation have played a major role in the development of this concept. The history of double taxation dates back to the period of increasing international trade and investment. As a result of the growth of international economic relations in the late 19th century, the problem of taxation of the same income by two different states began to arise. At that time, there were no special treaties between countries, so countries tried to solve this problem within the framework of their national legislation.

The first tax treaty in history that dealt with the avoidance of double taxation was concluded in 1899 between the Austro-Hungarian Empire and Prussia. The treaty was based on the 1870 Prussian Imperial Double Taxation Law, which focused on the elimination of double taxation within the North German Confederation and provided the legal basis for Prussian taxation of foreign nationals. Although not in concept, but certainly in wording, it was the first time that taxation of land and business, and income from them, became exclusively taxable in the state of source. The 1899 treaty between Austria-Hungary and Prussia laid the foundation and had a profound impact on the establishment of a network of ensuing similarly worded bilateral tax treaties during the first half of the 1900s.[17]

The first attempts to systematically address double taxation were made in the 1920s. During this period, League of Nations entrusted four economists to prepare a study on the economic aspects of international double taxation. Their report concluded that in most cases, double taxation penalizes the existing nonresident investor and prevents nonresidents from making new investments. To address these concerns, the researchers favored, for practical reasons, allocating sole taxing rights to the country of source (method of deduction for income from abroad), as opposed to the full allocation of taxing rights to the country of residence (method of deduction for income going abroad) or to the sharing of taxing rights between both states.[18]

In 1928, the League of Nations adopted the Report on Double Taxation and Tax Evasion, in which a tie-breaker rule was not included. The term "real center of management" was used, but only to allocate shares or similar interests and income from maritime shipping and air navigation, serving as an example of a permanent establishment.[19]

---

[17] Sébastien Leduc and Geerten Michielse, 'Are Tax Treaties Worth It for Developing Economies?' in Ruud A de Mooij, Alexander D Klemm and Victoria J Perry (eds), *Corporate Income Taxes under Pressure: Why Reform Is Needed and How It Could Be Designed* (IMF 2021) p 123.
[18] Ibid 124.
[19] Raymond Adema, Irene Burgers and Maarten de Wilde, 'Residence, Multinational Enterprises and BEPS: Is Determining the Residence of Companies Belonging to Multinational Groups Mission Impossible?' in Edoardo Traversa (ed), *Corporate Tax Residency and Mobility* (IBFD 2018) p 108.

Subsequently, the Fiscal Committee of the League of Nations worked on expanding the scope of the 1928 Convention. In 1943, a regional conference in Mexico City introduced a new draft model for tax treaties. The main idea behind this draft was that the primary taxing jurisdiction was to be the state of source of the income, which benefited developing countries. Nonetheless, this approach was temporary. During the London meeting of the Fiscal Committee in 1946, the primary taxing jurisdiction shifted back in favor of the state of residence of a taxpayer.[20]

The Mexico and London Models laid the foundation for treaty negotiations up until the late 1950s. During that period, over 70 new bilateral tax treaties were signed. However, these treaties had several gaps and consequently were not fully accepted or unanimously followed. In 1945 the United Nations (UN) succeeded the League of Nations, but it took until 1956 for the Fiscal Committee of the Organisation for European Economic Cooperation (OEEC), that in 1961 transformed into the Organisation for Economic Cooperation and Development (OECD), to take over the review and further development of the League's London Model.[21]

In 1956 the Fiscal Committee of the OEEC decided that Working Party No. 2 had to study the Concept of Fiscal Domicile.[22] The dual residence problem was one of the ones examined by Working Party No. 2. However, decisive influence on the determination of the tie-breaker criterion was brought about by Working Party No. 5, which dealt with the taxation of income and capital of shipping inland waterways transport and air transport enterprises and of their crews.[23]

Later Working Party No. 2 decided that the preference criterion should be established according to one of its conclusions "that a corporation is regarded as fully liable to tax by two states as a consequence of attachment to each of them may be a rare occurrence in practice but is not theoretically unimaginable".[24]

In order to develop such a criterion Working Party No. 2 studied two different ways of solving dual residence problems existing at that moment: according to the law of the country in which company was incorporated[25] and according to the place where the real center of

[20] Leduc and Michielse (n 17) p 125.
[21] Ibid.
[22] OEEC, The List of Working Parties, Paris, 24 May 1956, TFD/FC/2, Working Party No. 2 consisted of Denmark and Luxembourg.
[23] Plakhin (n 16) p 84.
[24] OEEC, The Report on the Concept of Fiscal Domicile, Working Party No. 2 of the Fiscal Committee, Paris, 2 October 1956, FC/WP2(36)1.
[25] The 1943 Mexico Model Tax Convention.

company's management was situated.[26] Working Party No. 2 followed the former approach to the effect that the determination must be made on the basis of considerations of facts and not merely on the basis of a formal registration. Researchers from Working Party No. 2 admitted that it was rarely used in double taxation conventions while majority of the tax treaties attached importance to the place where the company is actually managed, although the formulation of this criterion varies from one convention to another. They also understood that "real center of management" test as well as a test of a similar nature suffers from the defect that they are not exact.[27]

Working Party No. 2 assumed that a reference to internal concepts of domicile is insufficient for the solution of the corporate resident conflict because the problem is which of domestic concepts is to be given preference. It was decided that "the 'preference criterion' must be of such a nature that there can be no question but that the person concerned will satisfy it in one country only, and at the same time it must reflect such an attachment that it is felt to be natural that the right to tax devolves upon the particular country".[28] This perspective has evolved to the assumption that the residence test should serve as the tie-breaker rule applied by either contracting state.

Thus, Working Party No. 2 decided to choose "the place of effective management" criterion instead of the "management and control test". This approach was accepted and incorporated into the text of the 1963 OECD Draft Double Taxation Convention.[29]

This brief overview of the past reveals that, in creating the tie-breaker rule the OECD decided to follow the "substance over form" approach as the fairest rule. The basis of this decision lie in the UK domestic case law for determining a corporate residence, which is analysed in Chapter 2.

As international fiscal relations increased, tax systems became more complicated, and new business sectors and organizations were emerging, it became clear in the early 1970s that the 1963 model required updating. A final version of the first OECD Model Double Taxation Convention on Income and on Capital (OECD Model) was published in 1977 and became the

[26] The 1946 London Model Tax Convention.
[27] Plakhin (n 16) p 85.
[28] OEEC, Fourth Report on the Concept of Fiscal Domicile, Working Party No. 2 of the Fiscal Committee, Paris, 5 November 1957 FC/WP2(57)3.
[29] Plakhin (n 16) p 86.

standard for bilateral treaty negotiations for years to come. Since the 1990s the OECD Committee on Fiscal Affairs regularly reviews and updates the model.[30]

Over time, the concept of the "place of effective management" has become even more unclear. Between 1963 and 2000 there was no guidance how to interpret the "place of effective management" and countries tended to interpret the concept in accordance with their local laws rather than as an autonomous concept.[31]

Until 2000 the OECD regarded the tie-breaker rule in Article 4 as self-sufficient and able to solve all dual-residence cases. In 2000 the OECD updated the Commentary on Article 4 by defining the "place of effective management" as the place where "key management and commercial decisions that are necessary for the conduct of the entity's business are in substance made". Thereby the Commentary stated that "no definite rule can be given, and all relevant facts and circumstances must be examined to determine the place of effective management".[32]

The problem of double taxation has become more complex in the era of globalization and digitalization. As a result, international cooperation to increase tax transparency and prevent tax evasion has intensified since the beginning of the 21st century. This has led to the addition of new articles to double taxation treaties. The Base Erosion and Profit Shifting (hereinafter referred to as BEPS) initiative, promoted by the OECD and the G20, aimed to eliminate loopholes in double taxation treaties.

In this regard, the new change in the 2017 OECD MC offers an alternative provision under which a two-tier mutual agreement procedure (MAP) is the only way to settle the dual residence conflict with respect to persons other than individuals. Consequently, MAP has replaced the previous tie-breaker rule, namely POEM. Moreover, Article 4(3) of the OECD MC states that, treaty entitlement would be denied in the absence of an agreement. Some states have already adopted such a treaty policy, and other countries may follow in the future.

Overall, recent developments clearly show the attempts of countries to restrict access to treaty benefits for dual-resident companies. Governments recognize that they lose substantial

[30] Leduc and Michielse (n 17) p. 125.
[31] Plakhin (n 16) p 86.
[32] OECD, *Model Tax Convention on Income and on Capital 2017 (Full Version)* (OECD Publishing 2019) Commentary (hereinafter OECD MC Commentary) on Article 4, para 24.

corporate tax revenue due to aggressive international tax planning, which artificially shifts profits to jurisdictions where they are subject to non-taxation or reduced taxation.[33]

In response, in November 2016, over 100 governments, including leaders of OECD and G20 countries, agreed to conclude the BEPS MLI (the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting), which entered into force on 1 July 2018. The MLI allows governments to modify existing bilateral tax treaties in a synchronised and efficient manner to implement the tax treaty measures developed during the BEPS Project.[34] It aims to reduce opportunities for tax avoidance by multinational enterprises without requiring countries to renegotiate each treaty individually.

The MLI also addresses the issue of dual residence. Article 4(1) and (2) of the MLI stipulate that a provision corresponding to Article 4(3) OECD MC be inserted into tax treaties. Where the treaty in question already contained a tie-breaker for persons other than individuals, the new rule is to apply in place of such tie-breaker. Previously existing rules are, however, maintained, where they specifically address the residence of companies participating in dual-listed company arrangements. Reservations are possible under Article 4(3) MLI.[35]

In conclusion, the review of the historical development of Article 4(3) of the OECD MC in this subsection has aimed to discover the roots of this provision and to put into perspective the concepts used to determine the tax residency of companies for treaty purposes.

Nonetheless, challenges associated with uncertainties of the mutual agreement procedure, the proper determination of place of effective management and residence of companies will continue to evolve in reaction to technological developments and the growing complexity of global business operations.

2.4. Conclusion

This chapter explores the concept of residence in tax law, examines the growing relevance of the residence of persons other than individuals, analyzes how dual residence may arise, and explains historical development of tie-breaker rules that have been used to resolve dual residence cases and retain importance for the further development of the Article 4(3).

---

[33] Multilateral Instrument to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (2017) OECD Doc. C(2017)39 (hereinafter MLI), Preamble.

[34] OECD, 'Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI)' <https://www.oecd.org/en/topics/beps-multilateral-instrument.html> accessed 15 July 2025.

[35] See MLI Art 4.

It was highlighted that tax residency serves several functions, such as defining personal scope of the OECD MC and entitlement to treaty benefits; preventing double taxation (with the exception of residence of companies, where dual residency remains currently possible); determining source of income under the allocation rules; and applying the non-discrimination and mutual agreement articles.

During the study of the concept of tax residency, it became evident that this institution plays an important role in regulating tax relations. Although there are significantly fewer disputes regarding the determination of corporate residency compared to that of individuals, issues related to the tax residence of companies remain unresolved. Unlike the definition of tax residency for individuals, the residency of companies is determined ambiguously. The previous tie-breaker test, which relied on a single criterion, namely the place of effective management (POEM), has been replaced by a procedural rule that may, but does not necessarily, result in a definitive determination of residence for tax treaty purposes. In contrast, the current version requires consideration of several factors, including the place of effective management, place of incorporation, and other important criteria. Thus, tax residence of companies is no longer determined by a single criterion. In addition, current formulation stipulates that tax residence of companies will be settled by the competent authorities separately in each case.

Therefore, the development of Article 4(3) of the OECD MC and the effect of the MLI, which is aimed at updating international tax rules, signify a transition from a purely substantive approach to a procedural mechanism. This change responds to the complexity of the modern international taxation and seeks to prevent both tax evasion and double taxation.

Chapter III – Mechanisms for Resolving Dual Corporate Residence under Bilateral Double Taxation Agreements

3.1. General Overview and Classification of Criteria

Corporate residence is established independently by each country under its domestic law, typically based on one or more criteria. These criteria vary across jurisdictions and function as mechanisms for determining corporate residency. In cross-border situations, the criteria reflected in the OECD MC and bilateral double taxation agreements (hereinafter referred to as DTAs) play a central role in the determination of corporate residence.

Article 4(3) of the OECD MC outlines several underlying factors that the competent authorities are expected to consider when resolving dual residence cases through the mutual agreement procedure. There is no longer a single substantive criterion giving preference to one of the Contracting States.[36] The competent authorities shall take into account the place of effective management, the place where the company is incorporated or otherwise constituted, and any other relevant factors.

The Commentary to the OECD MC, for the purpose of further clarification, supplements these with additional examples, such as: where the meetings of the person's board of directors or equivalent body are usually held; where the chief executive officer and other senior executives usually carry on their activities; where the senior day-to-day management of the person is carried on; where the person's headquarters are located; which country's laws govern the legal status of the person; where its accounting records are kept; and whether determining that the legal person is a resident of one of the Contracting States but not of the other for the purpose of the Convention would carry the risk of an improper use of the provisions of the Convention.[37]

Furthermore, the Commentary notes that 'countries which consider that the competent authorities should not be given the discretion to solve such cases of dual residence without an indication of the factors to be used for that purpose may want to supplement the provision to refer to these or other factors that they consider relevant'.[38] This suggests that the previously specified examples are not exhaustive. Where considered necessary, Article 4(3) in bilateral

[36] Ismer and Blank (n 3) Art 4 m.no. 6.
[37] OECD MC Commentary on Article 4, para 24.1.
[38] Ibid.

agreements may be supplemented with specific criteria at the discretion of the Contracting States.

Thus, the OECD MC enables the Contracting States to take into account both formal and substantive criteria when determining the residence of a company through mutual agreement procedure. Formal criteria include place of incorporation or statutory (legal) seat, place of the head office, whereas substantive criteria include place of effective management, the seat of management (real seat), place of management and control and other criteria of a similar nature.

3.2. Formal Criteria

3.2.1. Definition and Legal Significance of the Place of Incorporation (POI) Concept

An analysis of international practice allows to conclude that one of the main approaches to determining corporate residence is the criterion of the place of incorporation.
Place of incorporation (hereinafter referred to as POI), which is also used in legal literature as place of registration or constitution, represent formal connecting factors. Although the definition of "incorporation" may vary across jurisdictions, POI is the place where residency is determined by the place of state registration and issuance of the relevant documentation. For corporations to come into existence as a legal person they need to have some sort of statute or articles of association, and they have to be registered on the national commercial register. In this regard, they can be distinguished from partnerships that may exist and act without being officially registered.[39]
In the European Union, registration requirements for limited liability companies are harmonized through the Directive (EU) 2017/1132. Under this Directive, LLCs are required to specify where they have their registered office.[40] The registered seat must usually be identical to the statutory seat embodied in the corporation's statute. The location indicated in the corporation's statute or articles of association is decisive for where a company has its seat for national law purposes.[41]

Similar to nationality with respect to individuals, corporate entities can be incorporated according to the laws of a country where they had no factual presence of any kind. Just like

[39] Roland Ismer, 'Corporate Residence for Domestic Law Purposes' in Edoardo Traversa (ed), *Corporate Tax Residency and Mobility* (IBFD 2018) p 34.
[40] Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law [2017] OJ L169/46.
[41] Ismer (n 39) p 34.

nationality, it establishes merely a legal or personal rather than a territorial link. Although they lack a territorial link, they can nevertheless play a role in reaching the mutual agreement.[42]

3.2.2. Application of POI Concept and Case Law in Different Countries

Common-law countries (besides the United States) have always followed the incorporation theory. This is due to the fact that, in the United Kingdom, there was no need for any rules preventing companies from incorporating abroad and carrying on business in the United Kingdom. At the time that the incorporation theory was developed in the 19th century, British company law was not restrictive. The protection of British law was considered beneficial.[43]

Initially, most corporations operated only within a single country. However, due to the earlier start of the industrial revolution, the United Kingdom attracted investors from abroad. Consequently, many companies governed by British directors and incorporated in the United Kingdom emerged, carrying on business completely abroad.[44]

In the 1870s, English courts, when considering tax disputes involving companies engaged in cross-border activities, were faced with the fact that neither the legislation nor previous precedents established rules that would determine the legal connection of a company with the English tax jurisdiction. The courts had to develop their own criteria for determining tax residency.[45]

The first case in which corporate residency was determined based on the incorporation criterion was *Attorney-General v. Alexander*, heard by the courts of the United Kingdom.[46] In that case, in 1874, the Court of Exchequer decided that the Imperial Ottoman Bank, incorporated in Turkey, was a tax resident of that country, where its registered office was located, according to the clear wording of its charter. At the same time, it was not taken into account that the bank was actually managed by directors based on a branch established in London, since branches and representative offices are not institutions, banks as such. Thus, the court determined the company's residency based on the provisions of its charter, without

---

[42] Ismer and Blank (n 3) Art 4 m.no. 142.
[43] Ismer (n 39) p 37.
[44] Ibid.
[45] V.V. Eremenok, 'Zarubezhnyi opyt: Nalogovoe rezidentstvo kompanii v Velikobritanii: podkhody sudebnoi praktiki' ("Nalogoved", 2013) <https://e.nalogoved.ru/325270> accessed 28 July 2025.
[46] Attorney-General v. Alexander (1874) LR 10 Exch 20.

considering the place of effective management. However, later judicial practice developed in the opposite direction.

The incorporation criterion is currently codified in the UK Corporation Tax Act 2009, which provides that a company which is incorporated in the United Kingdom is UK resident for the purposes of the Corporation Tax Acts.[47]

Nowadays, there are only a few countries that use a purely formal approach to determine corporate residence. These include the United States[48], Argentine[49], Indonesia[50], Estonia[51], and Japan.[52]

Many countries, such as Azerbaijan, Hungary, Czechia, Italy, Ukraine, Serbia, Ireland, Russia, Netherlands, Denmark, Portugal, Finland, Sweden and Switzerland, recognize incorporation as a relevant criterion, alongside substantive criteria.[53] In Luxembourg, the relevant criterion *siège statuaire* refers to the *statutory seat sede.*, i.e. a company's registered office.[54] The Polish seat (*siedziba*) will also generally refer to the statutory seat which has to be entered on the National Court Register.[55] The relevant residence criterion in Turkey is *registered head office, which* refers to an office which is designated in the law of establishment, legislation, charter or contract of the entity subject to corporation tax.[56]

---

[47] Corporation Tax Act 2009, s. 14(1).

[48] OECD, US – *Information on Residency for Tax Purposes,* Section II <https://www.oecd.org/content/dam/oecd/en/topics/policy-issue-focus/aeoi/united-states-tax-residency.pdf> accessed 30 July 2025.

[49] OECD, Argentine – *Information on Residency for Tax Purposes,* Section II <https://www.oecd.org/content/dam/oecd/en/topics/policy-issue-focus/aeoi/argentina_tax_residency.pdf> accessed 30 July 2025.

[50] OECD, Indonesia – *Information on Residency for Tax Purposes,* Section II <https://www.oecd.org/content/dam/oecd/en/topics/policy-issue-focus/aeoi/indonesia-residency.pdf> accessed 30 July 2025.

[51] OECD, Estonia – *Information on Residency for Tax Purposes,* Section II <https://www.oecd.org/content/dam/oecd/en/topics/policy-issue-focus/aeoi/estonia-tax-residency.pdf> accessed 30 July 2025.

[52] OECD, Japan – *Information on Residency for Tax Purposes,* Section II <https://www.oecd.org/content/dam/oecd/en/topics/policy-issue-focus/aeoi/japan-tax-residency.pdf> accessed 30 July 2025.

[53] OECD Global Forum on Transparency and Exchange of Information for Tax Purposes, 'Tax Residency' (AEOI Implementation Portal) <https://www.oecd.org/en/networks/global-forum-tax-transparency/resources/aeoi-implementation-portal/tax-residency.html> accessed 30 July 2025.

[54] OECD, *Luxembourg – Information on Residency for Tax Purposes,* Section II <https://www.oecd.org/content/dam/oecd/en/topics/policy-issue-focus/aeoi/luxembourg-tax-residency.pdf> accessed 30 July 2025.

[55] OECD, Poland – *Information on Residency for Tax Purposes,* Section II <https://www.oecd.org/content/dam/oecd/en/topics/policy-issue-focus/aeoi/poland-tax-residency.pdf> accessed 30 July 2025.

[56] OECD, Türkiye – *Information on Residency for Tax Purposes,* Section II <https://www.oecd.org/content/dam/oecd/en/topics/policy-issue-focus/aeoi/turkiye-tax-residency.pdf> accessed 30 July 2025.

The Austrian[57] and the German[58] provisions on the residence criterion are nearly identical and, in addition to the substantive criterion, refer to the statutory seat (*Sitz).* "Seat" is defined as the place determined by, inter alia, law, a contract, statutes, deed of foundation or similar provisions.[59]

Therefore, despite the differences in terminology, the purpose of formal criteria is to determine the statutory seat of a company.

In some DTAs, decisive importance is given to the incorporation criterion. For example, instead of a mutual agreement procedure, the Austrian treaty with Spain prescribes that the place of the statutory seat is decisive, if the place of effective management cannot be determined.[60]

The DTA between the Netherlands and the UK reflects the modern standard MLI clause with reference to the mutual agreement procedure. However, notwithstanding this alignment with the MLI, the treaty gives preference to the incorporation test. Under the treaty, the company is deemed to be a resident of the Contracting State in which it is incorporated, provided it has its primary stock exchange listing in that State.[61]
This means that if a company is incorporated in the United Kingdom and its shares are primarily listed on the London Stock Exchange, it is deemed to be a resident of the UK only, even if part of its management is carried out from the Netherlands, and vice versa.

3.2.3. Practical Issues Arising from the Application of the Incorporation Principle

Using the POI concept as a tie-breaker rule for determining corporate residency in bilateral tax treaties has both significant practical advantages and disadvantages.

One of the main advantages of the incorporation approach is its simplicity and clarity. It provides legal certainty in the residence status of a company in bilateral treaties. In some countries, such as Estonia, Lithuania, UAE, the UK, companies currently can pass the registration procedure online by submitting all relevant documents, signing them digitally,

[57] Körperschaftsteuergesetz (KStG) 1988 (BGBl Nr 401/1988, as amended) [Corporate Income Tax Act], § 1(2).
[58] Körperschaftsteuergesetz (KStG) 1977 [Corporate Income Tax Act] *BGBl I* 1977, 1681 (as amended), § 1(2).
[59] See *Germany*: Abgabenordnung (AO) 1977 [TaxCode], as amended, *BGBl I* 1977, 613, § 11; *Austria*: Bundesabgabenordnung (BAO) 1961 [Federal Tax Code], as amended, *BGBl* Nr 194/1961, § 27(1).
[60] DTA Austria-Spain (1966) Art 4(3).
[61] DTA UK-Netherlands (2008) Art 4(5).

opening bank account from abroad and paying registration fees. This possibility is known as e-residency (in Estonia) and it has been quite successful in attracting foreign investors.[62]

Incorporation approach could also promote a greater competitiveness among countries wishing to attract foreign investment through the establishment of companies in their jurisdictions. From a general point of view incorporation theory could help to reach an integrated worldwide market.[63]

Another advantage is that a company can only be incorporated under the laws of one country, unless a country provides for exceptions to this rule.[64] The *Apple* case illustrates how such exceptions may be used for aggressive tax planning purposes: Until 2013, a company incorporated under Irish law was for tax purposes considered to be an Irish resident, unless (i) it was ultimately controlled by a person that was resident in a EU Member State or a tax treaty country, (ii) it or its subsidiaries had a trading activity in Ireland and (iii) its central management and control was located outside of Ireland. In the *Apple* case, two of Apple's subsidiaries, namely Apple Operations Europe (AOE) and Apple Sales International (ASI) were incorporated in Ireland, but their head offices (Apple Inc.) were located overseas, i.e., in the United States. The residence of the subsidiaries, however, was not claimed by the United States, since they were incorporated in Ireland and not in the US. Ireland, in turn, did not claim residence either, because management was allegedly located outside of Ireland. Moreover, ASI's and AOE's head offices lacked any physical presence or employees and were not located in any jurisdiction. Consequently, most of the subsidiaries' substantial residual profits were not taxed in any jurisdiction.[65]

Hence, the Apple case illustrated the limitations of the incorporation principle in allocating taxing rights under DTAs. When not paired with a substantive criterion for corporate residence, it can result in stateless income and double non-taxation.

As can be seen, reliance on solely formal criteria leads to huge risks. When residence is based on the POI, companies may choose incorporation jurisdictions strategically, not for

[62] See Borbála Kolozs 'Corporate Tax Residence and Mobility in the European Union' in Edoardo Traversa (ed), *Corporate Tax Residency and Mobility* (IBFD 2018) p 112.
[63] Luciana Gambi, 'Dual Residence and Corporate Law' in Matthias Hofstätter and Patrick Plansky (eds), *Dual Residence in Tax Treaty Law and EC Law* (Linde 2009) p 327.
[64] Adema, Burgers and de Wilde (n 19) p 111.
[65] See Commission Decision (EU) 2017/1283 of 30 August 2016 on State aid SA.38373 (2014/C) (ex 2014/NN) implemented by Ireland to Apple, [2017] OJ L187/1.

commercial reasons. Accordingly, dual residence may arise more frequently as the result of BEPS strategies.

One of major consequences is double non-taxation, which occurs when income is not taxed in any jurisdiction despite being earned.[66] This situation typically arises due to the gaps or mismatches in domestic tax laws of different countries. One practical example could be that one state determines tax residency based on the POI criterion, while another applies the POEM. In such cases, companies establish their POEM in a country that applies the POI test to determine tax residence and register in the jurisdiction that applies the POEM test in similar cases. Another example is the mismatch in the rules on the source of income. This occurs when one state assumes that the profit was received in the other state, and vice versa. As a result, neither jurisdiction collects tax, leaving the income entirely untaxed.

Furthermore, it is common for companies to set up shell companies in offshore jurisdictions, so-called tax havens, to take advantage of lower or zero tax rates, lighter regulations, limited transparency, and other benefits offered by these zones. These shell companies are also referred to in legal literature as "letterbox companies".[67] As the name suggests, these companies exist only on paper and have no physical presence in the country of incorporation.

This practice is facilitated by the fact that some jurisdictions do not require any form of linkage with the place where the actual business activities of the company take place. Thus, so-called "office hotels" as well as "wholly fictitious statutory seats" are allowed. In consequence, in jurisdictions applying the incorporation theory, corporations can choose their residence independently from any business activities undertaken at the place of registration.[68] This means that a company can be registered in one country solely for tax purposes but operate entirely elsewhere.

It is important to mention that considering economic reality and activity when determining corporate residence in cross-border cases appears reasonable. The POI principle is static and cannot change. However, the POEM or other similar substantive criteria are dynamic and can be relocated. They directly reflect a company's actual economic nexus with a country, especially through its management, employees, business activities and commercial operations.

---

[66] See Michael Lang, *Introduction to the Law of Double Taxation Conventions* (3rd edn, IBFD 2021) p. 9.
[67] European Commission**,** *Letterbox companies: overview of the phenomenon and existing measures – Executive Summary* (Publications Office of the European Union 2021).
[68] Ismer (n 39) p 35.

Another major limitation of the incorporation principle is his ineffectiveness when the company is incorporated in a third country, i.e. a state that is not a party to the relevant tax treaty.[69] For instance, if a company is incorporated in State A but has dual residency claims in States B and C under their respective domestic laws, the POI test fails to resolve the residency conflict between States B and C. Therefore, purely formal criteria are insufficient, and substantive criteria are essential to consider in resolving residency issues.

3.3. Substantive Criteria

3.3.1. Legal Interpretation of the Place of Effective Management (POEM) Criterion

Place of effective management (hereinafter referred to as POEM) is the most widely used criterion in civil law jurisdictions for resolving cases of dual corporate residency under many bilateral DTAs. Common law jurisdictions apply a similar criterion which is called "central management and control" test. The POEM criterion is a factual test, following the 'substance over form' principle, and reflects the jurisdiction where the company's economic nexus is strongest.[70]

Until the 2017 amendments of the OECD MC and its Commentary, POEM was understood as "the place where key management and commercial decisions that are necessary for the conduct of the entity's business as a whole are in substance made".[71]

For a clearer understanding of the above definition, it is necessary to define more precisely the basic concepts it contains. In particular, "key management and commercial decisions" are major decisions that determine the main directions of the business in the long term. They relate to the global strategy and policy of the company's activities and are made by its senior management and key management personnel. Examples of such decisions include approving annual business plans or budgets; setting corporate policies; making investment or financing decisions; deciding on mergers, restructuring or expansion; and other key commercial decisions.

For the purposes of this definition, the term "senior management and key management personnel" includes the company's executives and employees holding key managerial positions in the company. Senior management and key decision-making bodies of the company may include the board of directors, CEO, sole executive body, managing director,

---

[69] See Ismer and Blank (n 3) Art 4 m.no. 176.
[70] Ibid m.no. 137.
[71] OECD MC Commentary 2014 on Article 4, para 24.

chief financial officer (CFO), chief accountant, chief operating officer (COO), as well as heads of various divisions and departments (e.g., heads of sales and marketing departments). It should be noted that this list of members of the senior management and key decision-makers is non-exhaustive. The exact list of these persons, as well as the extent of their influence over the key management and decision-making processes related to the commercial activities of the company, will depend on the jurisdiction in which they operate and on the founding documents of the company.

Another important definition is "entity's business as a whole", which refers to the entire business of the entity, not just its local branches or departments. Although certain functions, such as sales or accounting, are performed in one country, the POEM may be located elsewhere if the key strategic decisions are made there.

It is necessary to distinguish POEM criterion and place of management criterion, reflected in the article 4(1) of the OECD MC. While the place of management criterion is determined under the national tax laws of the Contracting States and serves as a basis for unlimited tax liability with respect to persons other than individuals, the POEM provides a key criterion to resolve cases of dual corporate residence.[72]

The previous version of the OECD MC Commentary asserted that an entity may have more than one place of management, but it can have only one POEM at any one time. The designation of a single POEM and, thus, its assignment exclusively to one of the Contracting States with which the entity has closer economic relations, was indeed imperative, given that the POEM test is the only tie-breaker criterion under DTAs.[73]

The term POEM is not defined in the OECD MC, its Commentary or in the majority of DTAs. As a result, countries rely on their domestic tax laws to interpret POEM criterion, which may lead to qualification conflicts and, consequently, double taxation. Therefore, a common understanding of treaty terms is necessary in order to avoid such conflicts.

Despite this problem, some states consider that it is preferable to deal with cases of dual residence of entities through the POEM rule. When states agree on the interpretation of the POEM concept, they are free to include in their bilateral treaty POEM clause.[74]

Few DTAs include an explanation of the POEM criterion. For example, the Belgian tax treaty with Russia describes the place of effective management as *"the place where the general conduct of business is concentrated and where the superior control on activities is carried*

[72] Ismer and Blank (n 3) Art 4 m.no. 136.
[73] Ibid m.no. 164.
[74] OECD MC Commentary on Article 4, para 24.5.

on". Moreover, it indicates that the following criteria are relevant in determining the place of effective management:

– the place where the board of directors or equivalent body meets;

– the place where the senior day-to-day management is carried on; and

– the place where the senior executives carry on their activities.[75]

Similar descriptions of the POEM appear in a few other treaties, such as the Dutch tax treaty with Albania[76], Luxemburg tax treaty with Russia[77].

There is a consensus in the literature that the term requires an autonomous definition and without recourse to the domestic law of the Contracting States. The POEM test must be understood as a preference criterion. This implies that the test must take facts in both Contracting States into account and the test must be confined to the two states so that the POEM cannot lie in a third state even though this state has the best claim to be the place where the key decisions are taken.[78]

3.3.2. Application of POEM Concept and Case Law in Different Jurisdictions

As was concluded, the meaning of the POEM concept varies significantly across jurisdictions. However, in certain countries the interpretation aligns with the OECD's approach that the POEM is the place where the key commercial decisions concerning a company are taken. The Czech Republic, Switzerland, Liechtenstein, Russia, Norway and Portugal follow this approach.

In *Austria*[79] and *Germany*[80], the place of management *(Ort der Geschäftsleitung)* is used as a corporate residence criterion. The national concept of the 'place of management' is similar to that of 'place of effective management'. In these jurisdictions, the place of management is defined as the centre of senior (executive) business management.[81]

The *German* place of management criterion consists of three elements. First, "senior business management" means that the criterion refers to executive management (i.e. business steering activities) instead of mere day-to-day management or the types of pivotal decisions that are usually in the shareholders' responsibility. Second, the management is exercised by the chief

[75] DTA Russia–Belgium (2015) Art 4(3).
[76] DTA Albania-Netherlands (2004), Paragraph III of the Protocol.
[77] DTA Russia–Luxembourg (1993) Art 4(4).
[78] Ismer (n 39) p 62.
[79] Körperschaftsteuergesetz (KStG) 1988 (BGBl Nr 401/1988, as amended) [Corporate Income Tax Act], § 1(2).
[80] Körperschaftsteuergesetz (KStG) 1977 [Corporate Income Tax Act] *BGBl I* 1977, 1681 (as amended), § 1(2).
[81] See *Germany*: Abgabenordnung (AO) 1977 [Tax Code], as amended, *BGBl I* 1977, 613, § 10; *Austria*: Bundesabgabenordnung (BAO) 1961 [Federal Tax Code], as amended, *BGBl* Nr 194/1961, § 27(2).

executive body, as opposed to a supervisory board. Third, the place of management is the place where the decisions are taken irrespective of the place where they have practical effects (executed). Where these criteria apply to more than one place, other circumstances have to be taken into account in order to determine the centre of management.[82]

According to the Italian Consolidated Income Tax Code (TUIR), a company is considered tax resident in Italy if, for more than half of the tax period, either the place of incorporation, POEM or the principal place of activities is located in Italy.[83] Thus, Italy applies two substantive criteria that may trigger corporate residence.

The POEM refers to the continuous and coordinated making of strategic decisions concerning the company as a whole. The principal place of activities means the continuous and coordinated execution of day-to-day management activities relating the company as a whole.[84]

Moreover, Italy has a rule of deemed residency. Under this rule, corporate tax residence in Italy may also be created due to a combination of holding a majority interest in an Italian entity and either being majority owned by Italian residents or their board of directors being composed mainly of Italian resident directors.[85] This criterion is intended to counter the use of holding companies in low-tax jurisdictions.

In *Luxemburg*, substantive criterion is *central administration*.[86] It refers to the place where the most important decisions for the company are taken. Depending on who decides on those issues, this can be the place where the management body meets or the place where the shareholders gather in order to take these decisions.[87]

After examining the corporate residence criteria in Luxembourg and Italy, it is important to analyse the *Italy v Dolce & Gabbana* case.[88]

The Italian fashion group Dolce & Gabbana transferred ownership of its trademarks to a Luxembourg subsidiary. The Italian Revenue Agency challenged the structure as wholly artificial, arguing that all key decisions were made at the Italian headquarters of Dolce &

---

[82] Ismer (n 39) p 49.
[83] Presidential Decree No 917 of 22 December 1986 (Italy), Testo Unico delle Imposte sui Redditi (TUIR) [Consolidated Income Tax Act], Art 73(3).
[84] Ibid.
[85] Ibid Art 73(5-bis).
[86] Loi concernant l'impôt sur le revenu (LIR) (Luxembourg) [Income Tax Law] Art 159(1).
[87] Ismer (n 39) p 50.
[88] *Italy v Dolce & Gabbana***,** Supreme Court (Cass. civ.), 21 December 2018, Case No. 33234/2018 (Italy) <https://tpguidelines.com/italy-vs-dolce-gabbana-december-2018-supreme-court-case-no-33234-05-2018/> accessed 4 August 2025.

Gabbana in Milan, while the Luxembourg entity lacked administrative structure and had only one employee with mere secretarial duties.

Lower courts decided in favor of the tax authority, but the Italian Supreme Court overturned those decisions. It ruled that establishing a company in another EU country to benefit from favorable tax rules is not, by itself, abusive**.** For abuse to be found, the structure must be entirely artificial and lacking economic reality**.**

The Court highlighted that merely adhering to the instructions of the Italian parent company did not automatically transfer the POEM to Italy. A thorough evaluation of real operations in Luxembourg was necessary, and the Court determined that some substance was present.

In the *Netherlands*, corporate residency is determined based on the POEM. The Dutch tax authorities consider a range of facts and circumstances to establish whether the POEM is located in the Netherlands. These include the place where the important business decisions are made, the place where the directors work and meet, and the place where the business records are kept and the financial statements are prepared. There is also a set of secondary importance criteria, such as the place of incorporation and the place where the shareholders live and meet.[89]

In *Spain*[90] *and Türkiye*[91], POEM criterion is described as the *business headquarters* of the company. Business headquarter refers to an office in which transactions with respect to business are virtually gathered and conducted.

An entity is considered tax resident in France if it is operated in France, regardless of its nationality. The term "operated in France" means an entity which conducts a regular business activity in France.[92]

Japan and *Korea* have reserved their position on the use of the term ‘place of effective management’, opting instead for the term ‘place of the head or main office’ in their treaties.[93]

Other elements contained in the domestic tax legislation of countries to determine the POEM include the place of principal activity, the nationality or residence of the company’s

---

[89] OECD, Netherlands – *Information on Residency for Tax Purposes,* Section II <https://www.oecd.org/content/dam/oecd/en/topics/policy-issue-focus/aeoi/netherlands-tax-residency.pdf> accessed 30 July 2025.

[90] OECD, Spain – *Information on Residency for Tax Purposes,* Section II <https://www.oecd.org/content/dam/oecd/en/topics/policy-issue-focus/aeoi/spain-tax-residency.pdf> accessed 30 July 2025.

[91] Kurumlar Vergisi Kanunu, Law No. 5520 (Türkiye) [Corporate Tax Law] Art 3(1).

[92] OECD, France – *Information on Residency for Tax Purposes,* Section II <https://www.oecd.org/content/dam/oecd/en/topics/policy-issue-focus/aeoi/france-tax-residency-en.pdf> accessed 30 July 2025.

[93] OECD MC Commentary on Art 4, para 28 (Reservations).

shareholders and the location of the company's most valuable assets. Since each element has its own advantages and shortcomings, it is common for states to determine corporate tax residence based on a mixed approach, combining several elements.[94]

3.3.3. Application of the "Central Management and Control" Concept in Common Law Jurisdictions and Case Law

Central management and control (hereinafter referred to as CMC) test is a substantive criterion used to determine corporate residence, primarily in common law jurisdictions (except US). It is applied in countries such as the United Kingdom, Canada, Australia, New Zealand, and Singapore.

The CMC criterion emerged from UK case law at the beginning of the 20th century. In the 1906 landmark case *De Beers Consolidated Mines Ltd. v. Howe (Surveyor of Taxes)*, it was decided that a company resides where its real business is carried on.[95]

De Beers was a company incorporated and headquartered in South Africa, which conducted business in the mining and sale of diamonds. It opened an office in London, where meetings of the board of directors were held, although such meetings also took place in South Africa, with the majority of board members being permanent residents of the UK. This board had the authority to make all major management decisions for the company, including matters such as control over contract approvals, establishing rules for the sale of diamonds and other assets, profit distribution, and the appointment of directors. According to the company's articles of association and the factual circumstances of the case, the decisions made at the board meetings held in London carried greater weight.

On this basis, the House of Lords concluded that the real business is carried on where the CMC actually resides, and that the question of its location is "a pure question of fact to be determined, not according to the construction of this or that regulation or bye-law, but upon a scrutiny of the course of business and trading".[96] Thus, the court looked beyond the founding documents and assessed the substantive nature of the company's business activities.

It was accordingly held that the company was resident in England, as the majority of directors and life governors lived there, and the real control of the company was exercised in practically all the important business of the company, except the specifics of its mining operations, at meetings of directors in London.[97]

---

[94] Traversa (n 8) p 8.
[95] Ismer (n 39) p 50.
[96] De Beers Consolidated Mines Ltd. v. Howe [1906] AC 455 (HL).
[97] Ibid.

The practical importance of the *De Beers* precedent is that it serves as a main reference in resolving disputes over corporate tax residence in the case law of common law jurisdictions.

Further, the issue of transferring the CMC of a company incorporated in the United Kingdom abroad arose. Two major cases are important in this regard.

The first case is *Swedish Central Railway Co., Ltd. v Thomson (1925).* This company had been incorporated in the UK to construct and operate a railway in Sweeden. In 1920, the CMC had been transferred from England to Sweden through the relocation of the head office and corresponding amendments to the articles of association. As a result, the company became a tax resident of Sweden based on the criterion established in the *De Beers* precedent. However, this did not preclude the possibility that Swedish Central Railway could simultaneously be considered a UK resident, as several "vital organic operations" were still carried out in the UK, including: the company seal being held there, maintenance of the securities register and bank account, the conduct of audits, and the payment of dividends and interest.[98]

The House of Lords (majority) concluded that central management and control were exercised in both countries, and therefore, Swedish Central Railway was simultaneously resident in both England and Sweden. Judge Atkinson dissented, maintaining that under De Beers a company can have only one residence, namely where control abides.[99]

Second notable case is *Egyptian Delta Land and Investment Co., Ltd., Appellant v. Todd, Respondent (1928)*. In this case, the company's English managers were replaced by Egyptian managers. Moreover, the company's seal, all accounting books, minutes of meetings, and bank account were transferred to Cairo. As a result, the court held that the company was not a tax resident of the United Kingdom, since the company's real business was exercised exclusively in Cairo.[100]

The following case will illustrate how the tax residence was determined in group constellations. In *Unit Construction v Bullock (Inspector of Taxes) (1960)*, the British parent company owned three subsidiary companies incorporated and operating in Kenya. According

[98] *Swedish Central Railway Co., Ltd v Thompson* (Inspector of Taxes) (House of Lords, 13 March 1925), Case no. [1925] UKHL TC_9_342 <https://www.casemine.com/judgement/uk/5a938cec60d03e601f973204> accessed 30 July 2025.

[99] See Nirupa Padia and Warren Maroun, 'Determining the Residency of Companies: Difficulties in Interpreting "Place of Effective Management"' (2012) 5(1) *Journal of Economic and Financial Sciences* 119–134**,** 127.

[100] *Egyptian Delta Land and Investment Co Ltd v Todd* (Inspector of Taxes) (1928) House of Lords 14 TC 119 <https://www.casemine.com/judgement/uk/5a938cec60d03e601f97321d> accessed 30 July 2025.

to their articles of association, the powers of control and management were vested in their respective boards of directors, and all board meetings were, in fact, held in Kenya. However, during the proceedings, it was established that the authority of the subsidiaries' directors was merely nominal. In practice, they played no real role in decision-making on important matters and merely rubber-stamped decisions made by the UK-based board of parent company, which had effectively usurped control. Consequently, the court held that the subsidiaries were UK tax residents, since their business activities were *de facto* controlled from the UK. The judgment reaffirmed that determining corporate residence is a pure question of fact, in line with the principle set out in the *De Beers* case.[101]

The issue of distinguishing between mere influence over a company's board of directors and the actual usurpation of the board's authority has been addressed in several cases in Australia and the United Kingdom.

In the case of *Esquire Nominees Ltd v Federal Commissioner of Taxation (1972)*, the High Court of Australia held that a company incorporated in the Norfolk Islands, whose board of directors was entirely composed of residents of the Norfolk Islands and whose meetings were conducted exclusively there, was a tax resident of the Norfolk Islands. The board met on the Islands to review resolutions to ensure their legality and consistency with the company's interests. The place of central management and control remained in the Islands, even though the resolutions considered at board meetings and recommendations guiding their decisions had been prepared by an Australian accounting firm based in Melbourne, acting on behalf of the Australian resident beneficiary. The court ruled that the directors might have been influenced or given instructions by Australian advisers, but that alone was insufficient to shift the CMC to Australia. The directors' decisions were found to be in the best interests of the company, and since they would not have acted unlawfully, the CMC was held to be in Norfolk Island.[102]

A similar issue arose in the UK in the recent case of *Wood v Holden (Inspector of Taxes) (2006),* which concerned a Danish company, Eulalia Holdings BV, managed by a sole director – the Dutch company ABN AMRO. Eulalia carried out a major securities transaction

---

[101] *Unit Construction Co Ltd v Bullock* (Inspector of Taxes) (House of Lords, 30 November 1959) [1960] AC 351< https://www.casemine.com/judgement/uk/5a938cec60d03e601f97323f> accessed 30 July 2025.
[102] *Esquire Nominees Ltd v Federal Commissioner of Taxation* (High Court of Australia, 31 May 1972) 73 ATC 4076; (1973) 129 CLR 177 <https://jade.io/article/188339> accessed 30 July 2025.

with the counterparty based in the British Virgin Islands and conducted no other business activity.

The income from the disposal of shares ultimately belonged to the Wood spouses, who were UK residents and taxpayers. The transaction and all necessary documentation were prepared in the UK by PricewaterhouseCoopers (PwC) at the request of the business owners.

The UK tax authorities argued that the sale of shares via Eulalia was conducted with the purpose of avoiding UK taxation and that Eulalia should, in substance, be considered a UK tax resident. Their position was that the company's sole director (ABN AMRO) had merely followed instructions received from PwC and the Woods in the UK, and therefore, central management and control was exercised in the United Kingdom.

The court ruled in favor of the taxpayer, holding that Eulalia was a resident of the Netherlands. The judgment emphasized that all key management decisions were made by the sole director in the Netherlands. While those decisions were influenced by the wishes of the Wood family and the guidance of PwC, the court found that the consultants had influenced the director but had not exercised control over the company. Subsequently, the *Esquire Nominees* principle was confirmed.

The court also emphasized the distinction from Unit Construction Co Ltd v Bullock, noting that in the present case, the directors of Eulalia were not bypassed or usurped by the parent company or its advisers, but made decisions through their constitutional organs.[103]

Another well-known case of *Laerstate BV v Revenue and Customs Commissioners and other appeals (2009)* highlights the critical importance of assessing the degree of control exercised by shareholders over a company's activities. The case involved Laerstate BV, a company incorporated in the Netherlands. According to its articles of association, the company was managed by two directors: one was a UK resident (Mr. Bock) and also a shareholder, while the other was a Dutch resident (Mr. Trapman). Each director was authorised to act independently.

The company had acquired and later sold shares in a subsidiary, generating a profit. Immediately prior to the conclusion of the transaction, the UK shareholder resigned from his position as director. The UK tax authority argued before the court that the company should be regarded as a UK tax resident. As a result, it was necessary to determine the place of effective

[103] *Wood & Anor v Inspector of Taxes Rev 1* ([2006] EWCA Civ 26, [2006] STC 443) <https://www.casemine.com/judgement/uk/5a8ff7b260d03e7f57eb14d9> accessed 30 July 2025.

management and to establish whether the board meetings, which often were held outside the UK, constituted the place of central management and control.

The board minutes revealed that the director who was also the company owner had not attended most board meetings. Nevertheless, the court found that during the period in which he was a director, all decisions were effectively made by him, and these decisions were made outside the formal board meetings. Furthermore, the court found that even after he ceased to be a director, the decision-making structure remained unchanged, and he continued to make the key decisions. The second director merely signed the documents without independent consideration.

As a result, Laerstate BV was held to be a UK tax resident. This decision was not based on the fact that the owner of the legal entity was a UK tax resident, but rather because the UK was the place where actual decision-making took place. The court not only determined that the CMC was exercised in the UK but also concluded that the UK was the company's POEM under the terms of the tax treaty between the United Kingdom and the Netherlands, as the real top-level management was conducted there.[104]

A close analysis of the preceding cases supports the conclusion that it is crucial to distinguish between the concepts of control and influence. The board of directors may act under the influence of another person while still exercising central management and control.

Ireland also uses the CMC criterion for companies incorporated outside of Ireland. The Irish doctrine was strongly influenced by UK case law. The Irish High Court first found that the principles established in *De Beers Consolidated Mines Ltd v. Howe* were applicable in Ireland in 1947. In order to determine where the CMC is located, Irish Revenue will take into account factors such as where the key decisions on the company's policies are taken, the residence of the majority of directors, the location of the company's head office, the place where major contracts are negotiated, the place where the accounts are prepared, examined and audited, where the share register as well as the minute book or company seal is kept, or the place of declaration of dividends.[105]

In conclusion, there is no strictly defined list of criteria by which the tax residency of a legal entity can be determined with certainty based on the CMC test. The determination of the place of central management and control is the result of an assessment of all relevant facts

---

[104] *Laerstate BV v Revenue & Customs Commissioners* (First-tier Tribunal (Tax), 11 August 2009) [2009] UKFTT 209 (TC) <https://www.casemine.com/judgement/uk/5b5055bf2c94e04d9c5ad3fd> accessed 30 July.

[105] Ismer (n 39) p 50, 51.

and circumstances. Over time, a number of key factors influencing this determination have been developed through case law. The most decisive factor is the location where key decisions related to the company's strategy, oversight of core operations, and financial management are actually made.

In addition to this, several secondary factors, while not determinative on their own, may contribute to identifying the place of central management and control. These include:

– the place where meetings of the company's executive body, i.e. its board of directors, are held (this will be relevant only where board meetings genuinely serve as the forum for decision-making and the exercise of control);

– the location of shareholders' general meetings;

– the place where the company maintains bank accounts;

– the location of accounting records and the corporate seal.

3.3.4. Key Factors and Practical Challenges in Applying the POEM Concept

Although the POEM serves as the tie-breaker criterion in most DTAs, there is no unanimity as to which facts are to be considered and what weight should be given to them.[106]

The OECD draft on the *Impact of the Communications Revolution on the Application of 'Place of Effective Management'* as a tie-breaker rule summarizes the following factors for determining the POEM of a company, including: where the directors meet to make decisions relating to the management of the company; where the centre of top-level management is located; where the business operations are actually conducted; where certain legalities have been fulfilled, such as the place of incorporation, the location of the registered office, the location of the public officer; where controlling shareholders make key management and commercial decisions in relation to the company; where the directors reside; where is the headquarters of the person and what functions are performed there; and what is the relative importance of the functions performed in each of the two States.[107]

An examination of case law and national legislation across various jurisdictions indicates that, in general, the POEM is considered to be the place where key management and commercial decisions are made. This position was also noted as decisive in the OECD

[106] Ismer and Blank (n 3) Art 4 m.no. 137.

[107] OECD, *The Impact of the Communications Revolution on the Application of 'Place of Effective Management' as a Tie Breaker Rule* (2001) p 148.

Commentary 2014.[108] Countries that rely solely on the POEM criterion in most cases follow this interpretation.

The place where key decisions are made will ordinarily be the place where the executive body meets to decide on the company's management. In the Anglo-Saxon one-tier model, this role is performed by the board of directors, whereas in the German two-tier model by the management board or managing directors.

In the past, it was much easier to determine the place where key management and commercial decisions were made. Senior managers typically worked and met in a single location, such as the company's head office. This location often coincided with the place of incorporation, the registered office, the main business operations, and the residence of the directors or senior managers.[109]

Nowadays, rapid technological advancements and new communication tools have fundamentally changed business operations. With videoconferencing or online discussion platforms, members of the executive body no longer need to be physically present or meet in one specific location to manage a company. While such mobility can facilitate internal processes, it also increases the risk of a company being regarded as a dual resident and affect the application of the POEM concept.

In this context, the following problems could arise in practice:

First Situation. The managing director may be constantly on the move, making decisions while flying over the ocean or visiting sites in different jurisdictions where his business is conducted. Similarly, a board of directors may meet in various places throughout the year, such as rotating between the offices of a multinational enterprise around the globe. It is known as "fly-in, fly-out" management[110]. This can result in a mobile place of effective management.

To address this, the "minimum contact" principle used in the US can be applied to allocate a company to a specific jurisdiction. Under this approach, the "minimum contacts" threshold is met where a corporation has 'substantial' or 'continuous and systematic' connections with that jurisdiction, such as making sales, soliciting or engaging in business. By contrast,

[108] OECD MC Commentary 2014 on Article 4, para 24.
[109] OECD, *The Impact of the Communications Revolution on the Application of 'Place of Effective Management' as a Tie Breaker Rule* (2001) p 149.
[110] Adema, Burgers and de Wilde (n 19) p 124.

minimal contact, such as a one-time meeting, is not sufficient.[111] This principle coincides with identifying the place where the company's economic nexus is strongest.

In addition, if the meeting is held in a place unrelated to the company's normal business activities (for example at home, hotel, airport, private office) but significant decisions are made there or major contracts are concluded and signed, that location could still be regarded as the POEM, potentially making the company a tax resident in that jurisdiction. This creates a risk of tax avoidance, particularly in shifting residence from high-tax to low- or zero-tax jurisdictions.

Therefore, "minimum contacts" threshold, particularly the regularity of decision making, is decisive. If the board of directors holds only a one-off meeting with no signs of regularity, this would not generally establish the company's place of effective management.

However, if the board systematically makes key decisions, regularly holds meetings in another country, the latter will most likely treat the company as its tax resident. As a result, repeated managerial activity in another jurisdiction can lead to tax residence there, since the POEM is located where the real control of the company is exercised.

Second situation is the case when directors reside in different countries. The determination of the POEM can be challenging, when senior managers conduct online meetings and are located across multiple jurisdictions. In this situation, place where the majority of directors in one country make key management and commercial decisions could play a decisive role. This will usually be the country in which the headquarter of the company is located.

If a company has even number of directors, with half residing in one country and the other half in another, several factors become important. In such cases, there may be several places of management, but only one place of effective management at any given time. A place of management may be considered to exist in each jurisdiction where a manager is located when operational decisions are made. However, the POEM will be the place where the top strategic decisions essential to the company's overall direction are taken at a specific moment. Thus, the weight of each type of decision will be analyzed to determine which of them has greater significance for the company.

If difficulties arise in identifying this, the next step would be to examine who actually coordinates the company and performs the most essential management functions, i.e. where the chairman of the board and the CEO are located. Ultimately, documentary evidence also plays a huge role, such as the place where minutes are drawn up, corporate records are

[111] Ismer (n 39) p 36.

maintained, bank accounts are held, accounting records are kept, and the corporate seal is located.

It is worth noting that the POEM may shift over time, but there will still be only one at any given moment. In practice, this could occur when the board of directors meets periodically and makes key decisions in one country, and then, for instance, the headquarter, where such decisions are taken is moved to another country, thereby shifting the POEM to that second country.

Additionally, the distinction between actual decision-making and rubber-stamping should be made clear. The independent will and vision of directors play an important role. Directors shall actively consider and make informed, well-founded decisions in the best interests of the company for their actions to constitute effective management.

Several court decisions emphasize that the meetings of directors which are no more than mere window dressing, serving only to rubber-stamp decisions actually made by others in another place, cannot be regarded as the POEM or CMC.[112] If key decisions are made by persons other than the board of directors, the POEM will be the place where those other people make their decisions.

To avoid these problems, a company shall demonstrate the active involvement of its board. Therefore, the minutes of the meeting should clearly demonstrate the level of discussion and consideration given to the key decisions taken at the meeting. In this regard, it is also important to ensure that the directors tasked with taking such decisions have the requisite experience and expertise to do so.[113]

Considering decision-making in parent-subsidiary relations, a common feature of most countries applying a POEM test is that, in group constellations, corporate residence generally is assessed at the level of the subsidiary rather than the parent company, unless the subsidiary factually has no decision-making power.[114]

In such a context, it is likely that the parent company exercises a certain degree of influence over the strategy of its subsidiaries. Consolidated accounts, standardized instructions, etc. may blur the boundaries between the management of the parent and the subsidiary, but the

[112] See *Bywater Investments Ltd & Ors v Commissioner of Taxation* [2016] HCA 45, paras 62-66; *Unit Construction Co Ltd v Bullock* (n 101); Esquire Nominees Ltd (n 102); *Wood v Holden* (n 103); Laerstate BV (n 104).

[113] Aidan Lucey and Gerardine Doyle 'Ireland' in Edoardo Traversa (ed), *Corporate Tax Residency and Mobility* (IBFD 2018) p 342.

[114] Ismer (n 39) p 48.

mere existence of such group management instruments should not lead to the conclusion that the parent company takes over the subsidiary's effective management.[115]

For example, the Austrian tax treaty with Switzerland (1974) provides that the mere fact that a person is a shareholder of a company or that it, as member of a group, makes group wide management decisions does not constitute a center of effective management for the subsidiary at the place where those decisions are made or the person is resident.[116]

If it is actually the board of directors of the parent company that makes the key management decisions, and, in doing so, usurps control of the subsidiary, the CMC or POEM may lie with the parent company. Conversely, the CMC or POEM remains with the subsidiary if its board can still exercise discretion, meaning if it can refuse to carry out instructions for valid reasons.[117] Thus, although the subsidiary intends to implement the plans of its parent company, this does not relieve the directors of the subsidiary of their obligation to independently evaluate decisions and act in the interests of the subsidiary.

To summarize, the legislation of most countries, as well as the OECD MC Commentary, lists factors that can help determine the POEM but does not provide a clear hierarchy indicating the relative importance of these factors. Establishing such a hierarchy of tests would assist competent authorities in resolving corporate residence issues between countries that apply the POEM criterion exclusively.

As judicial practice demonstrates, the primary factor for determining POEM is the place where the key management and commercial decisions are made in substance. This is established by identifying where actual management is exercised, for example, where strategic decisions on investments, mergers, or projects are taken. The place where meetings of the board of directors are regularly held may be considered alongside this factor, provided that genuine decisions are made at those meetings. Next significant factor is the place of the executive management's permanent activity and their residence, meaning where key individuals responsible for day-to-day management are located, such as the CEO and top managers.

There are also supplementary indicators that play a supportive role and confirm or challenge the POEM. These include the place where key corporate documents (articles of association, board minutes, accounting records) are kept and used for decision-making; the location of the

[115] Niels Bammens and François Henneaux 'Belgium' in Edoardo Traversa (ed), *Corporate Tax Residency and Mobility* (IBFD 2018) p 196.

[116] DTA Austria–Switzerland (1974) Art 4(5).

[117] See Ismer (n 39) p 50.

corporate seal; the place where bank accounts are held and where the company's main assets and employees are situated.
Tax authorities will consider the overall picture and analyze all relevant facts, taking into account the particularities of the company's activities, in order to determine the corporate residence according to the place of effective management concept.

3.4. Consideration of Other Relevant Criteria

Based on the current context of Article 4(3) OECD MC, when resolving corporate dual residence through the mutual agreement procedure, the competent authorities shall consider the POEM, POI, or any other relevant criteria. In practice, tax authorities mostly apply the POEM criterion, and in case of ambiguity between the two residences, they may use additional criteria to select the primary jurisdiction for taxation.
The lack of a definite list of criteria and a ranking of such criteria suggests that the outcome cannot be considered as fully determined by law. This means that the competent authorities enjoy a wide margin of appreciation.[118]
The OECD Commentary states that competent authorities are expected to take into account all relevant factors. It lists the following criteria in an exemplary manner: the place where the meetings of the person's board of directors or equivalent body are usually held, where the chief executive officer and other senior executives usually carry on their activities, where the senior day-to-day management of the person is carried on, where the person's headquarters are located, which country's laws govern the legal status of the person, where its accounting records are kept, whether determining that the legal person is a resident of one of the contracting states but not of the other for the purpose of the Convention would carry the risk of an improper use of the provisions of the Convention etc.[119]
Thus, it remains unclear how such diverse criteria are to be amalgamated into one single solution. This grants the competent authorities wide discretion and will most likely turn the determination into an exercise of horse-trading.[120]

[118] Ismer and Blank (n 3) Art 4 m.no. 134.
[119] OECD MC Commentary on Article 4, para 24.1.
[120] Ismer (n 39) p 66.

3.5. Mutual Agreement Procedure (MAP)

3.5.1. General Overview of MAP under Article 4(3) OECD MC

The 2017 Update to the OECD MC brought a significant change in the structure of the Article 4(3) by replacing the previous POEM tie-breaker test with a two-tier mutual agreement procedure. Under the new procedural rule, the competent authorities shall endeavour to resolve the problem of dual residence of companies on a case-by-case basis through the mutual agreement procedure, considering also POEM, POI and other relevant criteria. Thus, Article 4(3) refers to the application of the Article 25 of the OECD MC, which describes the steps for general mutual agreement procedure (hereinafter referred to as MAP). In addition, the new procedure no longer guarantees the determination of corporate residence for tax treaty purposes.

The underlying reason for this change was the occurrence of a number of tax-avoidance cases involving dual-resident companies.[121] In such cases, dual residence often resulted from aggressive tax planning aimed at obtaining treaty benefits to which the company would not otherwise be entitled. Consequently, denying dual-resident companies automatic access to the benefits of a DTA can be seen as an attempt to encourage the controller or controllers of dual-resident companies to take appropriate measures to prevent double residence.[122]

In stark contrast to Article 4(2)(d) OECD MC, the competent authorities are under no obligation to reach an agreement for resolving dual residence of companies.[123] This implies that the resolution of the dual residence is not certain. While the OECD MC is intended to prevent double taxation, and by extension, double residence, its provisions for companies are more restrictive, reflecting the concern that some companies deliberately structure their affairs to create dual residence for the purposes of strategic tax avoidance. Consequently, the aim is to discourage such tax-driven arrangements. The only available option for the taxpayer to settle the dispute is to demand a mandatory arbitration process pursuant to Article 25(5) OECD Model if implemented in a respective DTA.

Although the MAP was included only in 2017 to the OECD MC, several older treaties opted for this procedural solution, instead of the POEM, to resolve dual residence. Austria has a

[121] OECD MC Commentary on Article 4, para 23.
[122] Ismer and Blank (n 3) Art 4 m.no. 128.
[123] Ibid m.no. 6.

long-standing history of making use of the MAP to resolve dual residence, judging by its tax treaties with Canada, the Philippines, Thailand and the United States.[124]

Several DTAs deviate from the wording of Article 4(3) of the OECD MC. In particular, some countries choose to resolve the issue of dual-resident of companies through MAP without including the tie-breaker rules.[125] In some treaties, the second tier of the MAP is omitted altogether. These contain a presumption that, in the absence of such an agreement, the person other than an individual is resident in neither of the Contracting States and, hence, is not entitled to treaty benefits.[126] A special case exists in the US, where the US Model 2016 provides that all dual-resident companies are excluded from treaty benefits, with no detailed mechanism for resolving such instances of dual residence.[127]

3.5.2. First Tier of the MAP

As a first step, the competent authorities are encouraged to resolve, by mutual agreement, all cases of dual residence of persons other than individuals.

According to the general MAP rule, where a person considers that the actions of one or both countries' tax administrations result or will result in taxation not in accordance with the OECD MC, that person may request assistance from the competent authority of either State. The case must be presented within three years from the first notification of the action resulting in such taxation.[128]

In practice, the MAP will normally be requested by a dual-resident company. The company may approach either Contracting State, although it is preferable to contact the competent authority of the State in which it claims residency. Notwithstanding this, the competent authorities may also address the issue of dual-resident companies without a request from the taxpayer.[129]

A company may submit a request as soon as it becomes probable that it will be considered a resident of each Contracting State. The three-year notification period starts from the first notification to that person of taxation measures taken by one or both States that indicate that

[124] DTAs Austria–Canada (1981), Austria–Philippines (1982), and Austria–Thailand (1986), art 4(3); DTA Austria–US (1998) Art 4(4).
[125] DTA Canada–Japan (1986), DTA Austria–Finland (2000), DTA Germany–Mexico (2008), DTA UK–Estonia (1994), DTA Canada–Hong Kong (2012).
[126] DTA UK–US (2001), DTA Austria–Türkiye (2009), DTA Austria–Vietnam (2008), DTA Netherlands–Canada (1986), DTA Canada–Belgium (2002), DTA Canada–France (1975), DTA France–US (1994), DTA Germany–Estonia (1996), DTA Germany–Canada (2001).
[127] US MC (2016), Arts 4(4) and 4(5).
[128] OECD MC 2017 Art 25(1).
[129] Ibid Art 25(3).

reliefs or exemptions have been denied to that person because of its dual-residence status without the competent authorities having previously endeavoured to determine a single State of residence.[130]

According to Ismer and K. Blank, the three-year notification period is not applicable to dual-resident companies, since the provision requires taxation that is ‘not in accordance with the Convention’. Under Article 4(3), the absence of a mutual agreement simply results in the denial of treaty benefits, which is fully in line with the Convention.[131]

It is important to emphasize that while the existence of dual residence of companies is technically permissible when the Contracting States fail to reach an agreement, the concept is generally not welcomed and runs counter to the overall objective of the OECD MC, as it results in double taxation.

Dual-resident companies may approach the competent authorities not only to determine a single State of residence, but also to eliminate double taxation, clarify the source of income, and secure the application of treaty benefits, such as reliefs or reduced tax rates, that have been denied due to unresolved residence status.

If, in order to initiate the MAP, a company is required under domestic law to pay taxes in both countries in advance, this creates the risk of double taxation. To avoid this, the states may agree to use escrow accounts, bank guarantees, or to collect only the difference between the amount paid to the other state, and that which it claims, if any. If the tax has already been paid in advance, the state will be obliged to refund the excess amount together with interest at the conclusion of the MAP.[132]

The competent authorities of both Contracting States shall enter into direct negotiations, establish joint commissions, if necessary, exchange information concerning the company, and scrutinize all relevant connecting factors to determine with which state the company has stronger economic ties.

In the resolution of MAP cases, the competent authority should engage in discussions with other competent authorities in a principled, fair, and objective manner, with each case being decided on its own merits and not by reference to any balance of results in other cases. As part of a principled approach to MAP cases, competent authorities should be consistent and

[130] See OECD MC Commentary on Article 4, para 24.2.
[131] Ismer and Blank (n 3) Art 4 m.no. 131.
[132] OECD MC Commentary on Article 25, para 48.1.

reciprocal in the positions they take and not change position on an issue from case to case, depending on which side of the issue produces the most revenue.[133]

The competent authorities should deal with a request expeditiously and should communicate their response to the taxpayer as soon as possible.[134] This, however, does not prevent the risk of a multi-year agreement process. During this period, the company is not entitled to any benefits offered by the DTA and faces the risk of double taxation.

If the tax authorities are able to agree on which country the company is a resident of, such an agreement shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.[135] Where no such agreement can be reached, the taxpayers concerned are not entitled to any relief or exemption from tax provided by the tax treaty, unless there is a second tier of the mutual agreement.[136]

If the first tier of the MAP fails, the company remains a resident of both Contracting States, leaving the issue of dual-residence unresolved. Both Contracting States will continue to tax the company's worldwide income in accordance with their domestic law, bringing it to full tax liability.

For convention purposes other than granting treaty reliefs or exemptions to that person, i.e. in particular for determining the source of income, the person is a resident of each Contracting State.[137]

This situation creates significant complications, as the source State can no longer be uniquely determined. Consequently, difficulties also arise in the application of bilateral tax treaties, since the company would operate as a dual-resident in relation to a third state acting as the source state. This will undoubtedly lead to a severe tax burden: the company would be liable to pay taxes as a resident in two states and, at the same time, to pay withholding taxes.

Notably, Article 4(3) does not empower the competent authorities to determine the source of income. Such issues may instead be resolved through a separate MAP under Article 25(3) of the OECD MC.

In a practical example, this will mean, that the condition in subparagraph b) of paragraph 2 of Article 15 will not be met with respect to an employee of that person who is a resident of either Contracting State exercising employment activities in the other State. Similarly, if the

[133] OECD (2007), Manual on Effective Mutual Agreement Procedures (MEMAP), OECD Publishing, Paris, p 11.
[134] OECD MC Commentary on Article 4, para 24.2.
[135] See OECD MC 2017 25(3).
[136] OECD MC 2017 Art 4(3).
[137] Ismer and Blank (n 3) Art 4 m.no. 155.

person is a company, it will be considered to be a resident of each State for the purposes of the application of Article 10 to dividends that it will pay.[138]

Along with the MAP, companies also have the right to resort to national legal remedies. The dual-resident company, after receiving notification from one of the tax authorities of the Contracting States, may also file a claim challenging the legality of this decision before domestic courts. In this case, the lapse of the time period for requesting a MAP has no impact on substantive law.[139] However, the statute of limitations for filing such a claim will be of key importance.

Most countries adopt the approach that, where the MAP is first pursued and a mutual agreement has been reached, the taxpayers are offered the possibility to reject the agreement and pursue the domestic remedies that had been suspended. Conversely, if they prefer to have the agreement apply, they will have to renounce the exercise of domestic legal remedies as regards the issues covered by the agreement.[140]

Thus, the first tier of the mutual agreement is about establishing which of the two contracting states' connecting factors take precedence for the individual case. This means that tax treaty residence remains a binary criterion: agreement implies that the dual-resident company is a resident in one state and not in other in any given period. Therefore, partial agreements are, again for any given time periods, not possible.[141]

Since the facts on which a decision will be based may change over time, the competent authorities that reach a decision under that provision should clarify which period of time is covered by that decision.[142] Indication of the temporal scope is essential, as residence status may change over time due to factors such as relocation of POEM, changes in organizational structures and other decisive factors.

This also implies that the mutual agreement has no precedential value neither for other time periods nor other taxpayers.[143] A resolution reached for one company cannot be invoked as binding authority for another company, even in a factually similar situation. Each period and each case is evaluated on its own merits prevailing at the relevant time by the competent authorities. The absence of precedential effect reflects the nature of the MAP and is justified

---

[138] OECD MC Commentary on Article 4, para 24.4.
[139] Ismer and Blank (n 3) Art 4 m.no. 131.
[140] OECD MC Commentary on Article 25, para 76(b).
[141] Ismer and Blank (n 3) Art 4 m.no. 133.
[142] OECD MC Commentary on Article 4, para 24.3.
[143] Ismer and Blank (n 3) Art 4 m.no. 133.

since MAP is an administrative, negotiated resolution rather than a judicial decision creating case law.

3.5.3. Second Tier of the MAP

As a second step, an exception can be made, again through mutual agreement. Article 4(3) of the OECD MC provides that in the absence of a determination by the competent authorities, the dual-resident person shall not be entitled to any relief or exemption under the Convention except to the extent and in such manner as may be agreed upon by the competent authorities.[144]

It is important to distinguish the first and second tier of MAP, as they have different effects. The first tier of MAP is directed at a unique determination of residence, which is of relevance for the whole tax treaty, whereas the second tier only deals with treaty benefits for dual residents.

Partial agreements are possible. Although the competent authorities do not resolve the residence issue as a whole**,** but they still may reach agreement on some aspects of treaty application. For instance, two States may agree that a dual-resident company will be entitled to reduced withholding tax rates on dividends received from a third State, even though its overall residence status remains unresolved. Similarly, they may agree that one State will provide relief for double taxation on royalties or apply a reduced withholding tax rate on interest payments.

Where dual residence is not resolved and no mutual agreement is reached in the second step, dual residence taxpayers profit neither from the allocation rules nor from the method article.

3.5.4. Arbitration Procedure during the MAP

When the MAP is not reached within two years from the date when all the information required by the competent authorities in order to address the case has been provided to them, the dispute could be submitted to arbitration at the written request of the taxpayer. The purpose of arbitration is to allow the competent authorities to reach a conclusion on the unresolved issues that prevent a mutual agreement from being reached.[145]

This process is not dependent on prior authorisation by the competent authorities: once the requisite procedural requirements (two-year period) have been met, the unresolved issues

[144] OECD MC 2017 Art 4(3).
[145] OECD MC Commentary on Article 25, para 78.

may be submitted to arbitration.[146] However, arbitration may only be initiated if the applicable DTA expressly includes an arbitration clause in line with Article 25(5) OECD MC.

Moreover, it is presently not fully clear whether cases of dual residence by persons other than individuals can be resolved through arbitration. It could be argued that the denial of benefits under Article 4(3) OECD MC is in accordance with the convention, as long as there is no mutual agreement determining residence for purposes of the convention.[147] Nevertheless, the OECD Commentary seems to consider that the MAP under Article 4(3) OECD MC falls within the ambit of Article 25(1) OECD MC. Therefore, arbitration under Article 25(5) OECD MC would be feasible.[148]

In addition, arbitration for dual-resident companies could in particular aim at the clarification that benefits under the allocation rules or method article should be granted as they were not excluded under Article 4(3) OECD MC.[149]

For the arbitration process to be effective and to avoid the risk of conflicting decisions, a person should not be allowed to pursue the arbitration process if the issues submitted to arbitration have already been resolved through the domestic litigation process of either State.[150]

Once a legal decision has been rendered in a particular case by domestic court or administrative tribunal of one of the Contracting States, most countries consider that it is impossible to override that decision through the MAP and would therefore restrict the subsequent application of the MAP to seeking relief in the other State.[151]

Unless a person directly affected by the case does not accept the mutual agreement that implements the arbitration decision, that decision shall be binding on both States and shall be implemented notwithstanding any time limits in the domestic laws of these States.[152]

Acceptance requires the abandonment of any remaining domestic legal remedies, whereas rejection allows the company to continue pursuing such remedies.

Accordingly, the taxation of any person directly affected by the case will have to conform with the decision reached on the issues submitted to arbitration and the decisions reached in

---

[146] See ibid para 63.
[147] Ismer and Blank (n 3) Art 4 m.no. 14.
[148] Ibid m.no. 152.
[149] Ibid m.no. 76.
[150] OECD MC Commentary on Article 25, para 76.
[151] Ibid para 76(c).
[152] OECD MC 2017 Art 25(5).

the arbitration process will be reflected in the mutual agreement that will be presented to those persons.[153]

Furthermore, any information received in the course of arbitration proceedings must not be disclosed or made publicly available, since it includes confidential information about the taxpayer, such as internal management documents, details of actual management, financial data, tax filings, audits and other sensitive materials. This approach is shared by states, which rely on specific provisions of the MLI to prohibit the disclosure of confidential information received from either competent authority or the arbitration panel.[154]

The competent authorities of the Contracting States shall, by mutual agreement, settle the mode of application of the arbitration process.[155] Some states may prefer to incorporate into the Convention itself certain of the procedural aspects of the arbitration process, while other states may want to deal with them through a protocol or through an exchange of diplomatic notes. The MLI provides a good example, as it sets out many procedural aspects of the arbitration process, such as the rules concerning the appointment of the arbitrators, the confidentiality of information communicated to them and the agreement on a resolution.[156]

3.5.5. Advantages and Limitations of the MAP

The implementation of the MAP may be simultaneously advantageous and problematic in determining the residence of dual-resident companies for treaty purposes.

The inclusion of MAP reflects a more flexible, case-by-case approach, recognising that corporate residency cannot be determined by a uniform rule. This procedure is also considered to incentive taxpayers to set up companies in a manner that reduces the likelihood of dual residence.

Although this approach allows the competent authorities to carefully examine the tax position of a particular company in order to determine its country of residence, it also reduces predictability, as there is no binding obligation to reach an agreement. This results in several problematic aspects.

First, the MAP grants significant discretion to the competent authorities. They may apply a non-exhaustive list of relevant factors or fail to resolve the dual-residence problem, which in turn decreases legal certainty.[157] The resulting uncertainty is further aggravated by the fact

[153] OECD MC Commentary on Article 25, para 81.
[154] BEPS MLI 2016 Art 23, para 5.
[155] OECD MC 2017 Art 25(5).
[156] BEPS MLI 2016 pt VI.
[157] See Ismer (n 39) p 68.

that the taxpayer does not know exactly which criteria will ultimately be applied by the competent authorities to determine its residence and has no influence on the outcome of a MAP under Article 25 OECD MC. In terms of legality and legal certainty, this constitutes a significant drawback, as the taxpayer is dependent on the negotiating skills of the competent authorities.

Second, since MAP relies on the same criteria that cause dual residency, the question arises as to whether this procedure is effective in resolving such cases. Before the 2017 Update, the OECD MC applied POEM as the tie-breaker rule for determining corporate residence and referred to the MAP only when issues related to the determination of POEM arose. In that context, the sole question was whether the POEM is located in the first or the second jurisdiction. By contrast, under the current wording, the competent authorities must consider all relevant factors, including POEM, to determine the country of residence. Additionally, the provision may result in a company being treated as a resident of both states, thereby exposing it to serious tax disadvantages.

This may be one of the reasons that a MAP is often considered to be a lengthy and costly affair. However, the Dutch State Secretary for Finance recently informed the Dutch parliament that the MAP in the Dutch-UK tax treaty resolved dual residence within several months. Others are more critical, e.g. the Italian scholars mention that it is not unusual for a MAP to last eight to ten years.[158]

According to OECD statistics, in 2023 the average resolution time for MAP cases increased to 27.3 months, while other cases (including, but not limited to, dual-residence cases) averaged 23.4 months. Moreover, 52% of pending MAP cases are less than two years old, whereas 24% have been ongoing for more than four years, highlighting the need to address older cases.[159]

Thus, while the MAP provides greater flexibility in selecting connecting factors for individual situations, its application under Article 4(3) OECD MC does not guarantee legal certainty and predictability for taxpayers, which prolongs the procedure and limits its effectiveness as a reliable mechanism for resolving corporate dual-residence disputes.

[158] Adema, Burgers and de Wilde (n 19) p 118.

[159] OECD, *'OECD releases information and statistics on Mutual Agreement Procedures and Advance Pricing Arrangements'* (OECD Tax Certainty Day, 15 November 2024) <https://www.oecd.org/en/about/news/announcements/2024/11/oecd-releases-information-and-statistics-on-mutual-agreement-procedures-and-advance-pricing-arrangements.html> accessed 30 July 2025.

3.6. Conclusion

The second chapter examines the various criteria for determining the dual residency of companies as reflected in DTAs. The consideration of DTAs is essential, as they prevent double taxation and set uniform standards for corporate residency in cross-border cases. An analysis of domestic concepts of residence of legal entities shows that terminology varies considerably across jurisdictions.

An analysis of the two-tier MAP, as well as the main connecting factors, such as POEM, POI, CMC, their definitions in national legislation, in the OECD Commentary, and relevant case law, was conducted.

Since each criterion has its own advantages and shortcomings, it is common for states to determine corporate tax residence based on a mixed approach, combining several connecting elements.[160] It has been demonstrated that the state with which the company has the closer economic ties is the residence state for the purposes of the OECD MC.

It was also observed that many countries currently apply POEM as the sole tie-breaker rule in DTAs for resolving dual-residence disputes. However, there is no universally accepted definition of POEM in the OECD MC, which makes its practical application difficult.

Given the absence of such a definition in the convention and the lack of a hierarchy of factors for determining POEM, it has been proposed to use a certain sequence of factors that would ultimately determine the POEM and thereby significantly facilitate the resolution of dual residence issues.

Within the framework of POEM, different practical issues were analyzed, including the determination of the place where management board decisions are made, especially when directors are located in different jurisdictions, or in parent-subsidiary relations; differences between usurpation of management and the expression of independent will of the board of directors; and other essential practical issues.

Moreover, the two-tier mutual agreement procedure in connection with Article 25 OECD MC was examined, with particular attention to its features in resolving issues of corporate residency. The current version of the Article 4(3) OECD Model explicitly allows for a no agreement scenario between the competent authorities when determining corporate residence. Although dual residence contradicts the fundamental objective of the convention, this approach is intended to prevent treaty abuse by companies.

[160] Traversa (n 8) p 8.

If the competent authorities of the Contracting States concerned do not reach an agreement within prescribed time period, the arbitration stage will be initiated. An arbitral decision becomes binding on the states only if the taxpayer agrees to the mutual agreement implementing that decision. This is because arbitration serves as a mechanism for states to eliminate double taxation.

The intersection between MAP and domestic legal remedies, as well as the possibilities for their use, was also analysed. If the company rejects the mutual agreement implementing the arbitral decision and at the same time refrains from pursuing judicial or administrative remedies, the elimination of double taxation becomes impossible, and the taxes levied in both states are considered lawful under domestic law.

Chapter IV – National Approach: Azerbaijan's Position on Dual Residency of Companies

4.1. National and International Legal Framework Governing Taxation of Legal Entities in Azerbaijan

The need to regulate the taxation of dual-resident companies in Azerbaijan arises from the active foreign economic activities of domestic entities and their interaction with international counterparts. At present, the number of dual-resident companies is increasing due to the expansion of global trade, technological developments, the improvement of inter-state relations, the introduction of visa-free regimes, and the inflow of foreign capital driven by a favorable investment climate. These developments create a risk of double taxation.

The national approach to determining the residency of legal entities is reflected in the Tax Code of the Republic of Azerbaijan (hereinafter referred to as Tax Code). Since Azerbaijan applies the principle of "worldwide income", tax residents of Azerbaijan are obligated to pay taxes on their worldwide income in Azerbaijan.[161] The Tax Code provides that, any legal entity established in accordance with the legislation of the Republic of Azerbaijan (hereinafter referred to as Azerbaijan) and carrying out entrepreneurial activity, or having its place of management in the Republic of Azerbaijan, is considered a resident in Azerbaijan.[162]Accordingly, tax legislation adheres to two main approaches in determining the residency of legal entities, both formal and substantive criteria.

[161] Caspian Legal Center, 'Tax Residency in Azerbaijan' (Caspian Legal Center, 4 July 2024) <https://www.caspianlegalcenter.az/insights/more/tax-resident> accessed 30 July 2025.

[162] Tax Code of the Republic of Azerbaijan (adopted 11 July 2000) Art 13.2.5.3.

In this regard, a legal entity registered in Azerbaijan is regarded as a resident regardless of its place of management. Conversely, even if not registered in Azerbaijan, legal entities managed from Azerbaijan are also considered residents.[163]

For the purposes of identifying the corporate residence, the place of management of a legal entity is defined as the principal place of activity where the commercial decisions necessary for management are made and where day-to-day practical management is conducted, regardless of the location of the main supervisory bodies.[164]

Therefore, if the founders or the supervisory board are located abroad, but the key management decisions are made in Azerbaijan, the company will be considered a resident of Azerbaijan. Moreover, it makes no difference whether the business activity itself is carried out in Azerbaijan or in another country. In other words, if the actual commercial activity is conducted abroad, but the commercial decisions necessary for the activity of this legal entity are made in Azerbaijan, meaning that the managers (executive body, director, or other persons with management authority) are in Azerbaijan, then the legal entity must be considered an Azerbaijani resident.[165]

Azerbaijan is also active in improving international taxation standards and in fostering international cooperation in this field. Although Azerbaijan is not a member of the OECD, it cooperates closely with the organisation. As of July 2025, Azerbaijan had signed 58 bilateral DTAs.[166]

In addition, Azerbaijan ratified the OECD and Council of Europe Joint Convention on Mutual Administrative Assistance in Tax Matters (Strasbourg Convention) in 2003, as well as its Protocol in 2015.[167] Azerbaijan also signed the "Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting" on 20 November 2023. The Multilateral Convention entered into force in relation to Azerbaijan on 1 January 2025, and from that date, appropriate amendments were made to the texts of international

---

[163] Fərid Nəbili, *Vergi Hüququ: Azərbaycan vergi hüququ müqayisəli və beynəlxalq vergitutma kontekstində* [*Tax Law: Azerbaijani Tax Law in the Context of Comparative and International Taxation*] (Bilnet Matbaacılık ve Yayıncılık A.Ş. 2023) p. 173

[164] Tax Code of the Republic of Azerbaijan (adopted 11 July 2000) Art 13.2.5.3., second sentence.

[165] Nəbili, *Vergi Hüququ* (n 163) 173.

[166] State Tax Service of the Republic of Azerbaijan, 'Double Taxation Treaties' (State Tax Service, n.d.) <https://www.taxes.gov.az/en/page/ikiqat-vergitutmanin-aradan-qaldirilmasina-dair-beynelxalq-sazisler> acessed 30 July 2025.

[167] OECD, *Jurisdictions Participating in the Convention on Mutual Administrative Assistance in Tax Matters: Status – 31 July 2025* (OECD, 31 July 2025) <https://www.oecd.org/content/dam/oecd/en/topics/policy-sub-issues/convention-on-mutual-administrative-assistance-in-tax-matters/status_of_convention.pdf/_jcr_content/renditions/original./status_of_convention.pdf> accessed 31 July 2025.

agreements on the elimination of double taxation concluded by Azerbaijan with a number of states.[168]

International treaties to which the Republic of Azerbaijan is a party constitute an integral part of the legal system of the Republic of Azerbaijan.[169] In the event of a conflict between the normative legal acts forming part of the legal system of the Republic of Azerbaijan (with the exception of the Constitution of the Republic of Azerbaijan and acts adopted by referendum) and international treaties to which the Republic of Azerbaijan is a party, the provisions of the international treaties shall prevail.[170] Accordingly, in cases of inconsistency, the provisions of DTAs take precedence over national tax legislation.

The competent authorities that sign DTAs and participate in MAP on behalf of Azerbaijan are the State Tax Service under the Ministry of Economy and the Ministry of Finance.

A study of DTAs concluded by Azerbaijan with other Contracting States shows that the applicable criteria can be classified as follows. The overwhelming majority of agreements refer to one specific criterion of corporate residence: POEM, POI or MAP. Most treaties designate POEM as a sole tie-breaker rule.[171] Old treaties mainly apply POI rule[172], while newer treaties (with some exceptions) tend to include MAP.[173]

There are also treaties that use a combination of criteria to resolve corporate dual residency. For instance, several DTAs stipulate that a person other than an individual shall be deemed resident in the State where it is registered and where its POEM is located. If these are in different States, the competent authorities shall endeavour to resolve the issue by MAP.[174]

---

[168] State Tax Service of the Republic of Azerbaijan, 'Double Taxation Treaties' (State Tax Service, n.d.) <https://www.taxes.gov.az/en/page/ikiqat-vergitutmanin-aradan-qaldirilmasina-dair-beynelxalq-sazisler> accessed 30 July 2025.

[169] Constitution of the Republic of Azerbaijan 1995 Art 148(II).

[170] Ibid Art 151.

[171] DTA Azerbaijan–Germany (2004), DTA Azerbaijan–Italy (2004), DTA Azerbaijan–China (2005), DTA Azerbaijan–Luxembourg (2006), DTA Azerbaijan–Qatar (2007), DTA Azerbaijan–Netherlands (2008), DTA Azerbaijan–Slovenia (2011), DTA Azerbaijan–Croatia (2012), DTA Azerbaijan–Montenegro (2013), DTA Azerbaijan–Spain (2014), DTA Azerbaijan–Saudi Arabia (2014).

[172] DTA Azerbaijan–Türkiye (1994), DTA Azerbaijan–Uzbekistan (1996), DTA Azerbaijan–Kazakhstan (1996), DTA Azerbaijan–Russia (1997), DTA Azerbaijan–Moldova (1997), DTA Azerbaijan–Georgia (1997), DTA Azerbaijan–Poland (1997), DTA Azerbaijan–Ukraine (1999), DTA Azerbaijan–Belarus (2001), DTA Azerbaijan–Romania (2002), DTA Azerbaijan–Hungary (2008).

[173] DTA Azerbaijan–UK (1994), DTA Azerbaijan–France (2001), DTA Azerbaijan–Belgium (2004), DTA Azerbaijan–Canada (2004), DTA Azerbaijan–Finland (2005), DTA Azerbaijan–Estonia (2007), DTA Azerbaijan–Serbia (2010), DTA Azerbaijan–Sweden (2016), DTA Azerbaijan–Japan (2022), DTA Azerbaijan–Slovakia (2023).

[174] DTA Azerbaijan–Austria (2000), DTA Azerbaijan–Switzerland (2006), DTA Azerbaijan–Greece (2009) Art 4(3).

There is also a DTA with the Czech Republic, which establishes a combination of POI and MAP.[175]

As for the arbitration procedure, it is explicitly mentioned only in the DTA with San Marino.[176] In DTAs with Austria and the Netherlands, reference is made to the peaceful settlement of disputes according to any internationally accepted procedures[177] (which most likely refers to arbitration). Other DTAs do not contain provisions for arbitration within the framework of MAP.

It is necessary to highlight three special DTAs which stipulate that the competent authorities shall settle the problem of dual residency of companies by MAP. This implies that competent authorities are obliged to reach an agreement.[178]

According to the OECD 2022-2023 statistics, as of 31 December 2023, five pending MAP cases in Azerbaijan were less than 2 years old, with no older cases remaining.[179] Furthermore, since 1 January 2022, two cases were closed. One was closed with the denial of MAP access, while in the other, an agreement fully eliminating double taxation was reached.[180]

4.2. Azerbaijan's Legal Framework in Relation to Offshore Jurisdictions

The existence and activities of offshore jurisdictions raise serious concerns for international organisations and national governments, primarily due to unfair tax competition and the outflow of capital from countries of origin.

The 1998 OECD Report sets out a framework for approaching the problem of how certain no or only nominal tax jurisdictions ("tax havens" as they were then referred to in the 1998 Report) and harmful preferential tax regimes affect the location of financial and other service activities, erode the tax bases of other countries, distort trade and investment patterns and undermine the fairness, neutrality and broad social acceptance of tax systems.[181]

---

[175] DTA Azerbaijan–Czech Republic (2005) Art 4(3)(a) and (b).
[176] DTA Azerbaijan–San Marino (2015) Art 25(5).
[177] DTA Azerbaijan–Austria (2000), DTA Azerbaijan–Netherlands (2008) Art 25(5).
[178] DTA Azerbaijan–Finland (2005), DTA Azerbaijan–Jordan (2008), DTA Azerbaijan–San Marino (2015) Art 4(3).
[179] OECD, *Mutual Agreement Procedure Statistics per Jurisdiction – Azerbaijan* (2023) 7 <https://www.oecd.org/content/dam/oecd/en/topics/policy-issue-focus/map-statistics/map-statistics-azerbaijan.pdf> accessed 30 July 2025.
[180] Ibid 1–3.
[181] OECD, *Harmful Tax Practices – 2018 Progress Report on Preferential Regimes: Inclusive Framework on BEPS: Action 5*(OECD Publishing 2019) p 41 <https://www.oecd.org/content/dam/oecd/en/publications/reports/2019/01/harmful-tax-practices-2018-progress-report-on-preferential-regimes_g1g9dd68/9789264311480-en.pdf> accessed 30 July 2025.

An offshore jurisdiction (also called as tax havens) can be defined as a state or part of a state's territory in which a zero or extremely low level of taxation is established for legal entities and other persons conducting business outside that state or its territory. The distinctive features of the legal regulation of offshore companies include:

— confidentiality (guarantee of banking and corporate secrecy);

— exemption from taxation or an extremely low level of taxation;

— simplicity and rapidity of company registration in an offshore jurisdiction;

— exemption from the audit of financial statements. [182]

According to various estimates, the number of offshore jurisdictions in the world ranges from 69 to 100. In Azerbaijan, the list of offshore jurisdictions has been officially approved and includes 47 jurisdictions. Among the most well-known are the Virgin Islands (USA), Seychelles, Monaco, Liechtenstein, Maldives, Cayman Islands, Hong Kong (PRC), Bermuda, and the Bahamas.[183]

According to the Tax Code, the term "foreign country or territory with preferential taxation" shall mean the following countries or territories:

- countries or territories where the tax rate amounts to 75 percent or less of the rate established by this Code; and/or

- countries or territories that do not exchange information with the Republic of Azerbaijan in accordance with the relevant standards under international treaties; and/or

- countries or territories where legislation provides for the confidentiality of company information, thereby allowing the preservation of financial information or secrecy regarding the beneficial owner of property or the recipient of income (profit).[184]

The Tax Code also contains specific anti-offshore provisions designed to mitigate the risks of capital flow to other country. If a payment for goods or services is made to a non-resident included in the "List of Countries and Territories with Preferential Taxation", and the payment is directed to a non-resident company incorporated or registered in a preferential tax jurisdiction, an additional withholding tax of 10% shall be deducted from the amount paid and transferred to the state budget.[185]

---

[182] Polyakova and Kotlyarenko, 'Понятие "Международное налоговое право"' [The Concept of "International Tax Law"]' (n 1) 485.

[183] *Decree of the President of the Republic of Azerbaijan on the Approval of the List of Countries and Territories with Preferential Taxation* ("Güzəştli vergi tutulan ölkələrin və ərazilərin siyahısının təsdiq edilməsi haqqında"), Decree No. 1505, Baku, 11 July 2017, as amended by Presidential Decree No. 724 of 11 June 2019 <https://e-qanun.az/framework/36016> accessed 30 July 2025.

[184] Tax Code of the Republic of Azerbaijan (adopted 11 July 2000) Art 128.2.

[185] Ibid Arts 125-1 and 13.2.16.14-1.

Azerbaijan does not maintain DTAs with any of these tax havens. In the absence of DTAs between states, the questions of double taxation and dual residency remain unresolved, and a company would be liable for its worldwide income in two or more jurisdictions with which it has an economic nexus. Each of the states would consider the company its own resident and tax it in accordance with its domestic law. Thus, the company would be denied treaty benefits altogether and would face a double tax burden.

4.3. Conclusion

This chapter explores the concept of corporate tax residency in Azerbaijan, highlighting the criteria and requirements specified by the Tax Code of Azerbaijan.

The provisions contained in specific tax treaties between Azerbaijan and other jurisdictions create a particular legal framework for determining tax residency.

In Azerbaijan, the primary rules for determining corporate tax residency are based on registration, the POEM, and the two-tier MAP criteria. These rules provide that, in cases where a legal entity is recognised as a resident in more than one country, a detailed analysis of the applicable treaty provisions must be carried out. Such an approach helps to eliminate uncertainty and potential conflicts.

The DTAs concluded by Azerbaijan apply different approaches to residency determination. Most treaties rely on a single criterion; some adopt a combination of criteria. A limited number of treaties resolve the issue of dual residency by obliging the competent authorities of the contracting states to reach an agreement through MAP.

The residence criteria create incentives for companies to move to jurisdictions with more favourable tax regimes, thereby increasing tax competition. Accordingly, the national tax regulations governing offshore jurisdictions are also analyzed.

Chapter V – Conclusions and Recommendations

5.1. Key Findings

The concept of tax residence plays a decisive role in resolving most international tax disputes. It is necessary to correctly determine tax residence, as it determines the scope of an individual's or a legal entity’s tax obligations. In the international context, tax residence of legal entities is determined by the reference to connecting factors or criteria established in the OECD MC and in double taxation agreements (DTAs). These criteria also play a significant role in allocating taxing rights between the Contracting States.

Within this paper, procedural, substantive and formal criteria are deeply examined. These connecting factors include the place of effective management, place of incorporation, central management and control, the mutual agreement procedure, and other relevant factors. Neither the OECD MC nor most DTAs establish a clear hierarchy between these criteria.

The analysis of the legislation of various countries and judicial practice shows that each of the criteria contains certain practical shortcomings.

Formal criteria (such as the place of incorporation or place of legal seat) provide a simple and clear rule for resolving cases of dual residence. However, these criteria are subject to treaty abuse and may be used in tax avoidance schemes, such as double non-taxation.

Although the place of effective management is the most widely applied substantive criterion in DTA practice, it lacks a common and unambiguous definition in both the OECD MC and its Commentary. The vague definition and uncertainty of the constituent elements of the POEM contributes to the problem of dual residence, since countries interpret and apply this criterion differently under their domestic laws.

At present, the two-tier mutual agreement procedure remains the only mechanism to resolve the issue of dual residence. Therefore, a parallel analysis of Articles 4(3) and 25 of the OECD MC is considered appropriate and necessary. Unlike the previous versions of the Convention, the current version allows for the possibility that the case of corporate dual residence may persist as a result of the MAP, since the competent authorities are not obliged to reach an agreement. In particular, when the competent authorities fail to reach an agreement in both the first and second tier of the MAP, the company is not entitled to any relief or exemption from tax. Consequently, the company will be considered resident and subject to worldwide taxation in both states. While the new approach aims to prevent aggressive tax planning, it also reduces predictability and legal certainty for taxpayers.

Special attention is devoted to Azerbaijan’s treaty practice and national legislation on determining the residence of companies. Azerbaijan applies both formal and substantive criteria in the domestic taxation system and has five different types of tie-breaker rules in DTAs with Contracting States: 1) POEM as the sole tie-breaker rule; 2) POI as the sole tie-breaker rule; 3) MAP; 4) a combination of POEM and MAP; and 5) a combination of POI and MAP. Furthermore, given the easy procedure for establishing companies and the significant outflow of capital to offshore jurisdictions, where tax regimes are most favourable to taxpayers, Azerbaijan’s approach and national legislation are of particular interest.

5.2. Recommendations for Resolving the Issue of Dual Corporate Residency

The central problem in the practice of taxing dual-resident companies is the difficulty of determining their residence due to unclear criteria. Therefore, potential adjustments and improvements to these provisions could be made to ensure the effective application of these criteria.

First, it is important to develop a unanimous definition of the place of effective management concept in the OECD MC and expand its meaning in the OECD Commentary. Alternatively, the OECD Commentary could at least encourage the states to implement a bilateral definition of the POEM within their tax treaties to increase legal certainty for the taxpayer.

As has been demonstrated in this study, the POEM is still applied predominantly in DTAs. Considering that countries apply different factors to identify the POEM in their domestic legislation, it seems nearly impossible to rely on a single factor which would resolve all dual residence issues. Consequently, it is proposed to apply a sequence of several factors when determining the POEM:

1) the primary factor is the place where key management and commercial decisions that are necessary for the conduct of the entity's business as a whole are in substance made. This definition was included in the previous version of the OECD Commentary. It is established by identifying where actual management is exercised, for example, where strategic decisions on investments, mergers, or projects are taken.
2) the place where meetings of the board of directors are regularly held may be considered alongside the first factor, provided that genuine decisions are made at those meetings.
3) the place of the executive management's permanent activity and their residence, meaning where key individuals responsible for day-to-day management are located, such as the CEO and top managers.

There are also supplementary indicators that play a supportive role in determining the POEM:

4) the place where key corporate documents (articles of association, board minutes, accounting records) are kept and used for decision-making;
5) the location of the corporate seal;
6) the place where bank accounts are held; and
7) the place where the company's main assets and employees are situated.

Thus, the closer economic relations with the Contracting States would have to be considered when determining the POEM.

Second, after reviewing case law and different positions on the modification of the Article 4(3) OECD MC, it was concluded that determining the residence of dual-resident companies will remain difficult. As it has been ascertained, the connecting factors should be distinct, difficult to circumvent and robust against manipulation. Moreover, the criteria should apply alternatively rather than not cumulatively.

Therefore, it is recommended to use a hierarchy of tests. The consecutive application of POEM, at the first stage, and MAP at second stage, within a two-step hierarchical test, is presented as a preferred solution.

This hierarchical test in Article 4(3) OECD MC could be a viable way to determine treaty residence for dual-resident companies, as proposed in the following:

Where, by reason of the provision of paragraph 1, a person other than an individual is resident of both Contracting States then it shall be deemed to be a resident only of the Contracting State:

(1) In which the POEM is situated. The POEM is the place where key management and commercial decisions that are necessary for the conduct of the entity's business as a whole are in substance made.

(2) If the POEM cannot ultimately be determined in one of the Contracting States, the competent authorities shall endeavour to determine by mutual agreement the Contracting State of which such person shall be deemed to be a resident for the purposes of the Convention, having regard to a conclusive list of factors which shall be determined by the Contracting States within their Convention. In the absence of such agreement, such person shall not be entitled to any relief or exemption from tax provided by this Convention except to the extent and in such manner as may be agreed upon by the competent authorities of the Contracting States."

Thus, the hierarchy test would effectively address the interpretation of the POEM criterion by applying a MAP in cases in which the POEM does not lead to an effective determination of residence.

Additionally, the deficiencies of the MAP as a sole mechanism could be mitigated, as the taxpayer would have more legal certainty regarding which criteria will be applied first. Furthermore, this version preserves the idea that the competent authorities are not obliged to reach an agreement. Although the application of MAP with an unpredictable outcome would still have a deterrent effect on companies, this is a more balanced approach of addressing abusive arrangements in the context of dual resident companies.

Bibliography

Books

1. Bammens N and Henneaux F, ‘Belgium’ in Edoardo Traversa (ed), *Corporate Tax Residency and Mobility* (IBFD 2018).
2. Gambi L, ‘Dual Residence and Corporate Law’ in Matthias Hofstätter and Patrick Plansky (eds), *Dual Residence in Tax Treaty Law and EC Law* (Linde 2009).
3. Hofstätter M and Plansky P (eds), *Dual Residence in Tax Treaty Law and EC Law* (Linde 2009).
4. Ismer R and Blank K, ‘Article 4: Resident’ in Ekkehart Reimer and Alexander Rust (eds), *Klaus Vogel on Double Taxation Conventions*, 5th edn (Kluwer Law International 2021).
5. Ismer R, ‘Corporate Residence for Domestic Law Purposes’ in Edoardo Traversa (ed), *Corporate Tax Residency and Mobility* (IBFD 2018).
6. Kolozs B, ‘Corporate Tax Residence and Mobility in the European Union’ in Edoardo Traversa (ed), *Corporate Tax Residency and Mobility* (IBFD 2018).
7. Lang M, *Introduction to the Law of Double Taxation Conventions*, 3rd edn (IBFD 2021).
8. Lucey A and Doyle G, ‘Ireland’ in Edoardo Traversa (ed), *Corporate Tax Residency and Mobility* (IBFD 2018).
9. Nəbili F, *Vergi Hüququ: Azərbaycan vergi hüququ müqayisəli və beynəlxalq vergitutma kontekstində* (Bilnet Matbaacılık ve Yayıncılık A.Ş. 2023).
10. Plakhin Y, ‘The Place of Effective Management as a Tie-Breaker Criterion’ in Matthias Hofstätter and Patrick Plansky (eds), *Dual Residence in Tax Treaty Law and EC Law* (Linde 2009).
11. Polyakova VV and Kotlyarenko SP, ‘Понятие “Международное налоговое право” [The Concept of “International Tax Law”] in SG Pepelyaev (ed), *Nalogovoe pravo: Uchebnik dlya vuzov* (Alpina Publisher 2016).
12. Traversa E, ‘Corporate Tax Residence at the Crossroads between International Competition and Convergence: Outlining the Debate’ in Edoardo Traversa (ed), *Corporate Tax Residency and Mobility* (IBFD 2018).

Journal Articles

13. Burgstaller E and Haslinger K, ‘Place of Effective Management as a Tie-Breaker-Rule-Concept, Developments and Prospects’ (2004) 32 *Intertax* 376.
14. Eremenok VV, ‘Zarubezhnyi opyt: Nalogovoe rezidentstvo kompanii v Velikobritanii: podkhody sudebnoi praktiki’ (2013) *Nalogoved* <https://e.nalogoved.ru/325270> accessed 28 July 2025.
15. Padia N and Maroun W, ‘Determining the Residency of Companies: Difficulties in Interpreting “Place of Effective Management”’ (2012) 5(1) *Journal of Economic and Financial Sciences* 119.

Official Documents and Reports

16. European Commission, *Letterbox Companies: Overview of the Phenomenon and Existing Measures – Executive Summary* (Publications Office of the European Union 2021).

17. OECD, *Commentary of the Model Tax Convention on Income and on Capital: Full Version 2017*(OECD Publishing 2019).
18. OECD, *Manual on Effective Mutual Agreement Procedures (MEMAP)* (OECD Publishing 2007).
19. OECD, *Model Tax Convention on Income and on Capital: Full Version 2017* (OECD Publishing 2019).
20. OECD, *The Impact of the Communications Revolution on the Application of "Place of Effective Management" as a Tie Breaker Rule* (OECD 2001).
21. OEEC, *The List of Working Parties*, Paris, 24 May 1956, TFD/FC/2.
22. OEEC, *The Report on the Concept of Fiscal Domicile*, Working Party No. 2 of the Fiscal Committee, Paris, 2 October 1956, FC/WP2(36)1.
23. OEEC, *Fourth Report on the Concept of Fiscal Domicile*, Working Party No. 2 of the Fiscal Committee, Paris, 5 November 1957, FC/WP2(57)3.

Webpages

24. OECD, *US – Information on Residency for Tax Purposes, Section II* <https://www.oecd.org/content/dam/oecd/en/topics/policy-issue-focus/aeoi/united-states-tax-residency.pdf> accessed 30 July 2025.
25. OECD, *Argentina – Information on Residency for Tax Purposes, Section II* <https://www.oecd.org/content/dam/oecd/en/topics/policy-issue-focus/aeoi/argentina_tax_residency.pdf> accessed 30 July 2025.
26. OECD, *Indonesia – Information on Residency for Tax Purposes, Section II* <https://www.oecd.org/content/dam/oecd/en/topics/policy-issue-focus/aeoi/indonesia-residency.pdf> accessed 30 July 2025.
27. OECD, *Estonia – Information on Residency for Tax Purposes, Section II* <https://www.oecd.org/content/dam/oecd/en/topics/policy-issue-focus/aeoi/estonia-tax-residency.pdf> accessed 30 July 2025.
28. OECD, *Japan – Information on Residency for Tax Purposes, Section II* <https://www.oecd.org/content/dam/oecd/en/topics/policy-issue-focus/aeoi/japan-tax-residency.pdf> accessed 30 July 2025.
29. OECD Global Forum on Transparency and Exchange of Information for Tax Purposes, *Tax Residency* (AEOI Implementation Portal) <https://www.oecd.org/en/networks/global-forum-tax-transparency/resources/aeoi-implementation-portal/tax-residency.html> accessed 30 July 2025.
30. OECD, *Luxembourg – Information on Residency for Tax Purposes, Section II* <https://www.oecd.org/content/dam/oecd/en/topics/policy-issue-focus/aeoi/luxembourg-tax-residency.pdf> accessed 30 July 2025.
31. OECD, *Poland – Information on Residency for Tax Purposes, Section II* <https://www.oecd.org/content/dam/oecd/en/topics/policy-issue-focus/aeoi/poland-tax-residency.pdf> accessed 30 July 2025.
32. OECD, *Türkiye – Information on Residency for Tax Purposes, Section II* <https://www.oecd.org/content/dam/oecd/en/topics/policy-issue-focus/aeoi/turkiye-tax-residency.pdf> accessed 30 July 2025.
33. OECD, *Netherlands – Information on Residency for Tax Purposes, Section II* <https://www.oecd.org/content/dam/oecd/en/topics/policy-issue-focus/aeoi/netherlands-tax-residency.pdf> accessed 30 July 2025.

34. OECD, *Spain – Information on Residency for Tax Purposes, Section II* <https://www.oecd.org/content/dam/oecd/en/topics/policy-issue-focus/aeoi/spain-tax-residency.pdf> accessed 30 July 2025.
35. OECD, *France – Information on Residency for Tax Purposes, Section II* <https://www.oecd.org/content/dam/oecd/en/topics/policy-issue-focus/aeoi/france-tax-residency-en.pdf> accessed 30 July 2025.
36. Caspian Legal Center, 'Tax Residency in Azerbaijan' (Caspian Legal Center, 4 July 2024) <https://www.caspianlegalcenter.az/insights/more/tax-resident> accessed 30 July 2025.
37. State Tax Service of the Republic of Azerbaijan, 'Double Taxation Treaties' (State Tax Service, n.d.) <https://www.taxes.gov.az/en/page/ikiqat-vergitutmanin-aradan-qaldirilmasina-dair-beynelxalq-sazisler> accessed 30 July 2025.
38. OECD, *Jurisdictions Participating in the Convention on Mutual Administrative Assistance in Tax Matters: Status – 31 July 2025* (OECD, 31 July 2025) <https://www.oecd.org/content/dam/oecd/en/topics/policy-sub-issues/convention-on-mutual-administrative-assistance-in-tax-matters/status_of_convention.pdf/_jcr_content/renditions/original./status_of_convention.pdf> accessed 31 July 2025.
39. OECD, *Mutual Agreement Procedure Statistics per Jurisdiction – Azerbaijan* (2023) <https://www.oecd.org/content/dam/oecd/en/topics/policy-issue-focus/map-statistics/map-statistics-azerbaijan.pdf> accessed 30 July 2025.
40. OECD, *Harmful Tax Practices – 2018 Progress Report on Preferential Regimes: Inclusive Framework on BEPS: Action 5*(OECD Publishing 2019) <https://www.oecd.org/content/dam/oecd/en/publications/reports/2019/01/harmful-tax-practices-2018-progress-report-on-preferential-regimes_g1g9dd68/9789264311480-en.pdf> accessed 30 July 2025.
41. OECD, 'OECD releases information and statistics on Mutual Agreement Procedures and Advance Pricing Arrangements' (OECD Tax Certainty Day, 15 November 2024) <https://www.oecd.org/en/about/news/announcements/2024/11/oecd-releases-information-and-statistics-on-mutual-agreement-procedures-and-advance-pricing-arrangements.html> accessed 30 July 2025.
42. OECD, 'Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI)' <https://www.oecd.org/en/topics/beps-multilateral-instrument.html> accessed 15 July 2025.

Table of Legislation

Model Conventions

1. OECD, *Model Tax Convention on Income and on Capital: Full Version 2017* (OECD Publishing 2019).
2. US, *Model Income Tax Convention 2016.*
3. Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (2017) OECD Doc C(2017)39.
4. The 1943 Mexico Model Tax Convention.
5. The 1946 London Model Tax Convention.

EU legislation

6. Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law [2017] OJ L169/46.

Bilateral DTAs

7. DTA Albania–Netherlands (2004)
8. DTA Austria–Canada (1981)
9. DTA Austria–Finland (2000)
10. DTA Austria–Philippines (1982)
11. DTA Austria–Spain (1966)
12. DTA Austria–Switzerland (1974)
13. DTA Austria–Thailand (1986)
14. DTA Austria–Turkey (2009)
15. DTA Austria–US (1998)
16. DTA Austria–Vietnam (2008)
17. DTA Azerbaijan–Austria (2000)
18. DTA Azerbaijan–Belgium (2004)
19. DTA Azerbaijan–Belarus (2001)
20. DTA Azerbaijan–Canada (2004)
21. DTA Azerbaijan–China (2005)
22. DTA Azerbaijan–Croatia (2012)
23. DTA Azerbaijan–Czech Republic (2005)
24. DTA Azerbaijan–Estonia (2007)
25. DTA Azerbaijan–Finland (2005)
26. DTA Azerbaijan–France (2001)
27. DTA Azerbaijan–Georgia (1997)
28. DTA Azerbaijan–Germany (2004)
29. DTA Azerbaijan–Greece (2009)
30. DTA Azerbaijan–Hungary (2008)
31. DTA Azerbaijan–Italy (2004)
32. DTA Azerbaijan–Japan (2022)
33. DTA Azerbaijan–Jordan (2008)
34. DTA Azerbaijan–Kazakhstan (1996)
35. DTA Azerbaijan–Luxembourg (2006)

36. DTA Azerbaijan–Moldova (1997)
37. DTA Azerbaijan–Montenegro (2013)
38. DTA Azerbaijan–Netherlands (2008)
39. DTA Azerbaijan–Poland (1997)
40. DTA Azerbaijan–Qatar (2007)
41. DTA Azerbaijan–Romania (2002)
42. DTA Azerbaijan–Russia (1997)
43. DTA Azerbaijan–San Marino (2015)
44. DTA Azerbaijan–Saudi Arabia (2014)
45. DTA Azerbaijan–Serbia (2010)
46. DTA Azerbaijan–Slovakia (2023)
47. DTA Azerbaijan–Slovenia (2011)
48. DTA Azerbaijan–Spain (2014)
49. DTA Azerbaijan–Sweden (2016)
50. DTA Azerbaijan–Switzerland (2006)
51. DTA Azerbaijan–Türkiye (1994)
52. DTA Azerbaijan–Ukraine (1999)
53. DTA Azerbaijan–UK (1994)
54. DTA Azerbaijan–Uzbekistan (1996)
55. DTA Canada–Belgium (2002)
56. DTA Canada–France (1975)
57. DTA Canada–Hong Kong (2012)
58. DTA Canada–Japan (1986)
59. DTA France–US (1994)
60. DTA Germany–Canada (2001)
61. DTA Germany–Estonia (1996)
62. DTA Germany–Mexico (2008)
63. DTA Netherlands–Canada (1986)
64. DTA Russia–Belgium (2015)
65. DTA Russia–Luxembourg (1993)
66. DTA UK–Estonia (1994)
67. DTA UK–Netherlands (2008)
68. DTA UK–US (2001)

National legislation

Austria

69. Bundesabgabenordnung (BAO) 1961 [Federal Tax Code], as amended, *BGBl* Nr 194/1961.
70. Körperschaftsteuergesetz (KStG) 1988 (BGBl Nr 401/1988) [Corporate Income Tax Act].

Azerbaijan

71. Constitution of the Republic of Azerbaijan 1995.
72. Tax Code of the Republic of Azerbaijan (adopted 11 July 2000).

73. *Decree of the President of the Republic of Azerbaijan on the Approval of the List of Countries and Territories with Preferential Taxation* ("Güzəştli vergi tutulan ölkələrin və ərazilərin siyahısının təsdiq edilməsi haqqında"), Decree No. 1505, Baku, 11 July 2017, as amended by Presidential Decree No. 724 of 11 June 2019 <https://e-qanun.az/framework/36016> accessed 30 July 2025.

Germany

74. Abgabenordnung (AO) 1977 (BGBl I 1977, 613) [General Fiscal Code].

75. Körperschaftsteuergesetz (KStG) 1977 (BGBl I 1977, 1681) [Corporate Income Tax Act].

Italy

76. Presidential Decree No 917 of 22 December 1986, Testo Unico delle Imposte sui Redditi (TUIR) [Consolidated Income Tax Act].

Luxembourg

77. Loi concernant l'impôt sur le revenu (LIR) [Income Tax Law].

Türkiye

78. Kurumlar Vergisi Kanunu, Law No. 5520 [Corporate Tax Law].

UK

79. Corporation Tax Act 2009.

Table of Cases

EU

1. Commission Decision (EU) 2017/1283 of 30 August 2016 on State aid SA.38373 (2014/C) (ex 2014/NN) implemented by Ireland to Apple, [2017] OJ L187/1.

UK

2. *Attorney-General v Alexander* (1874) LR 10 Exch 20
3. *De Beers Consolidated Mines Ltd v Howe* [1906] AC 455 (HL)
4. *Swedish Central Railway Co., Ltd v Thompson* (Inspector of Taxes) (House of Lords, 13 March 1925), Case no. [1925] UKHL TC_9_342 <https://www.casemine.com/judgement/uk/5a938cec60d03e601f973204> accessed 30 July 2025.
5. *Egyptian Delta Land and Investment Co Ltd v Todd* (Inspector of Taxes) (1928) House of Lords 14 TC 119 <https://www.casemine.com/judgement/uk/5a938cec60d03e601f97321d> accessed 30 July 2025.
6. *Unit Construction Co Ltd v Bullock* (Inspector of Taxes) (House of Lords, 30 November 1959) [1960] AC 351 <https://www.casemine.com/judgement/uk/5a938cec60d03e601f97323f> accessed 30 July 2025.
7. *Wood v Inspector of Taxes* [2006] EWCA Civ 26, [2006] STC 443
8. *Laerstate BV v Revenue & Customs Commissioners* (First-tier Tribunal (Tax), 11 August 2009) [2009] UKFTT 209 (TC) <https://www.casemine.com/judgement/uk/5b5055bf2c94e04d9c5ad3fd> accessed 30 July.

Australia

9. *Esquire Nominees Ltd v Federal Commissioner of Taxation* (High Court of Australia, 31 May 1972) 73 ATC 4076; (1973) 129 CLR 177
10. *Bywater Investments Ltd & Ors v Commissioner of Taxation* [2016] HCA 45, paras 62-66

Italy

11. *Italy v Dolce & Gabbana* Supreme Court (Cass civ, 21 December 2018) Case No 33234/2018

Abstract

The problem of dual-resident companies emerged in the 19th century and remains one of the most complex challenges in international taxation. The growing number of companies conducting transnational business, coupled with the rapid improvement of technology and global transportation systems, has exacerbated this problem and increased the number of such companies.

The subject of the research is the rules for determining the tax residence of dual-resident companies.

The issue of double taxation is widely reflected in the OECD Model Tax Convention on Income and on Capital, as well as in bilateral agreements on the avoidance of double taxation that are based on the Convention. Currently, the OECD MC provides only one mechanism to resolve the issue of dual residency of companies, namely the mutual agreement procedure. This procedural mechanism is aimed at preventing treaty abuse and aggressive tax planning.

Based on the analysis of national legislation and case law, the study explains the basic criteria for determining tax residency. In domestic law, the tax residence of legal entities is determined independently by each state on the basis of one or more connecting factors. Thus, the object of this paper is the criteria for determining tax residence of companies.

Furthermore, special attention is given to the national legislation and international treaties of Azerbaijan with other Contracting States, and the consequences in the absence of such agreements are determined.

The practical significance of this research lies in the fact that, based on its findings, a combined set of criteria for determining the residency of dual-resident companies is proposed. Applying these criteria will allow for a clearer identification of the state in which a company should be treated as tax resident and, correspondingly, the state that qualifies as the source state. This, in turn, will make it possible to determine the appropriate scope of taxation. The proposed framework may serve as a practical tool both for tax administrations, when resolving residency disputes, and for companies seeking greater legal certainty in cross-border operations.

Abstract
Das Problem der Doppelresidenz von Unternehmen entstand im 19. Jahrhundert und stellt nach wie vor eine der komplexesten Herausforderungen im internationalen Steuerrecht dar. Die zunehmende Zahl von Unternehmen mit grenzüberschreitender Geschäftstätigkeit, verbunden mit dem raschen Fortschritt in Technologie und globalen Transportsystemen, hat dieses Problem verschärft und die Zahl solcher Unternehmen erhöht.
Gegenstand der Untersuchung sind die Regeln zur Bestimmung der steuerlichen Ansässigkeit von Unternehmen mit Doppelresidenz.
Das Problem der Doppelbesteuerung wird im OECD-Musterabkommen über Einkommen und Vermögen sowie in den auf diesem Abkommen beruhenden bilateralen Doppelbesteuerungsabkommen umfassend behandelt. Derzeit sieht das OECD-Musterabkommen nur einen Mechanismus zur Lösung der Doppelansässigkeit von Unternehmen vor, nämlich das Verständigungsverfahren. Dieses Verfahrensinstrument dient der Verhinderung von Missbrauch von Abkommen und aggressiver Steuerplanung.
Auf der Grundlage der Analyse nationaler Rechtsvorschriften und der Rechtsprechung werden in dieser Arbeit die grundlegenden Kriterien zur Bestimmung der steuerlichen Ansässigkeit erläutert. Im nationalen Recht wird die Steueransässigkeit juristischer Personen von jedem Staat unabhängig anhand eines oder mehrerer Anknüpfungsmerkmale bestimmt. Somit bilden die Kriterien zur Bestimmung der steuerlichen Ansässigkeit von Unternehmen den Gegenstand dieser Arbeit.
Darüber hinaus wird besonderes Augenmerk auf die nationale Gesetzgebung und die internationalen Abkommen Aserbaidschans mit anderen Vertragsstaaten gelegt sowie auf die Folgen, die sich aus dem Fehlen solcher Abkommen ergeben.
Die praktische Bedeutung dieser Untersuchung liegt darin, dass auf Grundlage ihrer Ergebnisse ein kombinierter Kriterienkatalog zur Bestimmung der Ansässigkeit von Doppelresidenten vorgeschlagen wird. Die Anwendung dieser Kriterien ermöglicht eine klarere Bestimmung des Staates, in dem ein Unternehmen als steuerlich ansässig gilt, sowie des Staates, der als Quellenstaat zu qualifizieren ist. Dies wiederum macht es möglich, den Umfang der Besteuerung angemessen festzulegen. Der vorgeschlagene Rahmen kann sowohl den Steuerverwaltungen bei der Lösung von Ansässigkeitskonflikten als auch den Unternehmen, die in grenzüberschreitenden Geschäftsvorgängen größere Rechtssicherheit anstreben, als praktisches Instrument dienen.