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TAXING NOMADS: REVIVING CITIZENSHIP-BASED TAXATION FOR THE 21st CENTURY

Reuven Avi-Yonah[1]

ABSTRACT

The Covid pandemic and the rise of zooming has increased the ability of many people (primarily the rich) to work remotely. This in turn has led to more people moving to other countries to benefit from the ability to work remotely while enjoying other benefits such as lower housing prices, a more leisurely lifestyle, and in some cases greater political stability. Many Americans have used their newfound freedom to move overseas, e.g., to Italy. They and others like them are the new nomads.

Such a move is not tax motivated because Italy has higher personal tax rates than the US. It does, however, raise interesting tax issues because the US (uniquely) imposes worldwide taxation on its citizens wherever they live, while Italy (like most countries) does not tax nonresident citizens but taxes its residents on worldwide income regardless of their citizenship status.

The question is whether the US or the Italian regime is preferable in a world in which rich people can freely choose their residence jurisdiction regardless of their citizenship. Most of the literature (including my own) condemns the US approach as a historical anachronism and accepts the Italian approach as obvious. But this question requires reconsideration under changing conditions.

The tax policy choice (whether a country should tax non-resident citizens or non-citizen residents on global income) raises issues that would have been very familiar to Erwin Seligman and his colleagues on the 1923 League of Nations report. A key issue in the US debate on adopting the Sixteenth Amendment (1913) to authorize an income tax was whether federal taxes should be based on the benefits provided to the taxpayer by the government (the benefits or exchange principle) or on the taxpayer's ability to pay taxes (the ability to pay principle). Seligman was a major advocate of the ability to pay principle, and of the consequent insistence that Congress has the power to tax all income "from whatever source derived," since all income contributes to ability to pay. The ability to pay principle was also behind the adoption of the foreign tax credit and the rejection of exemption for foreign source income in 1918. The 1923 report is based on the benefits principle ("economic allegiance"), but the

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[1] Irwin I. Cohn Professor of Law, the University of Michigan. I would like to thank Tsilly Dagan, Michael Kirsch, Wolfgang Schoen…

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insistence that the residence jurisdiction must have the right to tax the income of its residents on a worldwide basis while allowing for credits for source-based taxes is derived from the ability to pay principle.

Which principle is better suited for taxing nomads? In my opinion, it is the ability to pay principle and not the benefits principle. A US citizen living permanently abroad does not derive sufficient benefits from their US passport (and may in some cases not even have one and not be aware of her US citizenship if that resulted from being born in the US). But if taxation is based on ability to pay, the relevant ability to pay is that of adult members of a political community, who get to vote and thereby determine the appropriate tax rates and the degree of progressivity of the tax rate schedule. And since US citizens abroad can vote in US elections, they should be subject to US taxes based on their ability to pay, i.e., on global income from whatever source derived.

Taxation of non-citizen residents, on the other hand, should be based on the benefits principle since they do not get to vote and therefore are not members of the political community in which they reside. Therefore, Italy should only tax US citizens residing in Italy on Italian source income, which reflects the benefits conferred on them by Italy, and not on foreign source income, which does not reflect such benefits. The US should credit those Italian benefits (source) based taxes in accordance with the priority of benefits (source) over ability to pay (residence) established by the 1923 report (the "first bite at the apple" rule).

The problem with this proposal, of course, is that it encourages taxpayers to obtain passports in tax havens and live permanently in other countries, and if those residence countries will only tax them on domestic source income, the result is massive under-taxation of the rich. Such "non-dom" regimes are a serious problem under current rules because countries like the UK (and many others) have adopted them to attract the rich. But there are ways to address this issue since non-dom regimes are politically unpopular and therefore ripe for legislative change in democratic countries. First, a residence country should be able to impose tax on its residents on worldwide income if the country of citizenship does not do so at all. Second, while the country of citizenship should be able to impose any non-zero tax rate it wants on its citizens (that is the point of taxation based on voting in a democratic political community), that choice should be respected by the country of residence only if the citizenship is meaningful, i.e., if the resident non-citizen has real links to their country of citizenship and not just a nominal passport (under the well-established *Nottebohm* test adopted by the ICJ). Finally, the country of residence should respect the primacy of the country of citizenship only if its citizens (including non-resident citizens) are given a meaningful right to vote in free and democratic elections in the country of citizenship (as determined by outside observers).

Hannah Arendt defined citizenship as "the right to have rights." In today's deglobalizing world, citizenship has become more important than ever because an increasing number of people (refugees) are effectively stateless and do not have either diplomatic protection or the right of abode in their country of citizenship. In addition, the ability to work remotely has significantly increased the ability of the rich to move permanently to other countries without obtaining citizenship rights and obligations. In this context, I believe the US approach of taxing its citizens

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on global income regardless of where they live is justified by the ability to pay principle (but not by the benefits principle), and that the current practice of the US and most countries to tax non-citizen residents on global income is not justified (within the limits of the anti-avoidance rules outlined above). This may not be a drastic change from current rules for resident non-citizens because most of them do not have foreign source income. But for those that do (like the rich nomads of the pandemic), ability to pay (citizenship) is a better basis for taxation than benefits (residence). Seligman, I believe, would have approved.

1. Introduction: The New Nomads

On July 20, 2022, Bloomberg published a story about "Americans Who Can't Afford Homes Are Moving to Europe Instead."[2] The story explained that "[p]rohibitive housing prices, a strong dollar and political rancor have contributed to a wave of Americans relocating to Europe." The reporter interviewed several such Americans, who relocated to sunny, relatively quiet locations like Sicily, but continued to work remotely at their previous jobs.

Global mobility of relatively affluent people (as opposed to economic and political migrants, who tend to be less well off) has been a reality for many years.[3] The ability of the rich to migrate legally has in fact undermined the traditional view that in the current age of globalization capital is more mobile than labor from the perspective evading taxation. In this century, capital has increasingly been subject to strict enforcement such as FATCA and the Common Reporting Standard for automatic exchange of tax information (CRS). These regimes and a series of well publicized leaks have meant that even though capital is mobile, it is hard for individuals (as opposed to multinationals) to use this mobility to illegally evade taxation in their country of residence. At the same time, the rise of "golden visas" and other schemes intended to attract rich migrants (such as the UK and other countries' non-dom schemes under which rich migrants are only subject to tax on locally derived income) have made it quite easy for the rich to immigrate. Typically, these rich migrants do not acquire citizenship in their new country of residence, retaining their previous citizenship, because other than the US their country of citizenship will not tax non-resident citizens on global income. As a result, their foreign source income (derived from locations other than their new country of residence) is not subject to taxation anywhere. In addition, the OECD has found that such migrants can more easily avoid CRS reporting because it is linked to their former country of residence and they declare to banks that they are resident only in their new country of residence, where they have no income.[4]

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[2] politicalwire.com/2022/07/20/more-americans-are-moving-to-europe/

[3] See Tsilly Dagan and Talia Fischer, State, Inc., 27 Cornell J. Law and Pub. Pol'y 661 (2018); Reuven Avi-Yonah, And Yet It Moves: Taxation and Labor Mobility in the Twenty-First Century, 67 Tax L. Rev. 169 (2014); Reuven Avi-Yonah and Joel Slemrod (eds.), Taxation and Migration (Kluwer, 2015).

[4] 4 https://www.oecd.org/tax/exchange-of-tax-information/consultation-document-preventing-abuse-ofresidence-by-investment-schemes.pdf. See also Reuven Avi-Yonah and Gianluca Mazzoni, Due Diligence in International Tax Law, in Due Diligence in the International Legal Order, edited by Heike Krieger, Anne Peters, and Leonhard Kreuzer, (Oxford Univ. Press, 2020).

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For US citizens, this tax avoidance scheme does not work because for historical reasons (described below) they are subject to tax on global income wherever they reside, and if they give up their citizenship, they are subject to an "exit tax" based on a deemed sale of all their assets. It may still be worth while for such US migrants to give up citizenship because the present value of their future income and estate taxes exceeds the exit tax, but this is still relatively rare.[5]

However, as the Bloomberg story indicates, an increasing number of US citizens are in fact migrating to other countries because they want to avoid the high housing prices in the US as well as its current political turmoil. These new nomads are not driven by tax considerations since they typically are not rich enough to qualify for a golden visa and the tax rate in their new country of residence (e.g., Italy) usually exceeds the tax rate in the US. Instead, what makes such migrations possible is the newfound ability to work remotely that has grown exponentially during the COVID-19 pandemic and shows no sign of stopping even though pandemic restrictions in the US have mostly been lifted.

A US migrant to a rich country like Italy typically is subject to two residence-based global tax regimes: That of the US based on citizenship, and that of Italy based on residence. The US-Italy tax treaty, like most tax treaties, contains provisions designed to prevent such residence-residence double taxation, because the foreign tax credit only helps avoid residence-source double taxation.[6] But these provisions do not always work because they require judgement on issues like the taxpayer's "permanent home" or "place of habitual abode" (what if the taxpayer keeps a home in the US, and stays there frequently?) or "centre of vital interests" (which could be the US because of the taxpayer's place of work), and the two countries may disagree (and there is no provision for binding arbitration to resolve such disagreements). In those cases, what might prevent double taxation is the US exclusion of about $120,000 in earned income, but many US taxpayers that are not rich enough to qualify for golden visas earn more than that.[7]

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[5] The number of American citizens expatriating each year has been rising since 2008 but is not above 10,000, while the number of US citizens living overseas is estimated to be closer to 4 million. See Ruth Mason, Citizenship Taxation, 89 S. Cal. L. Rev. 169 (2016); Michael S. Kirsch, Taxing Citizens in a Global Economy, 82 N.Y.U. L. REV. 443 (2007); Edward A. Zelinsky, Citizenship and Worldwide Taxation: Citizenship as an Administrable Proxy for Domicile, 96 IOWA L. REV. 1289 (2011); Cynthia Blum & Paula N. Singer, A Coherent Policy Proposal for U.S. Residence-Based Taxation of Individuals, 41 VAND. J. TRANSNAT'L L. 705, 705 (2008); Reuven Avi-Yonah, The Case Against Taxing Citizens, 58 Tax Notes Int'l 389 (May 3, 2010).

[6] See US Model Tax Convention (2016), Art. 4; OECD Model Tax Convention (2021), Art. 4.

[7] See Internal Revenue Code, section 911. This section has been widely criticized but is arguably essential to make the citizenship-based tax regime administrable. See, e.g., Walter A. Slowinski & B. John Williams, Jr., The Formative Years of the Foreign Source Earned Income Exclusion: Section 911, 51 Taxes 355 (1973); Philip F. Postlewaite & Gregory E. Stern, Innocents Abroad? The 1978 Foreign Earned Income Act and the Case for Its Repeal, 65 Va. L. Rev. 1093 (1979); Renee Judith Sobel, United States Taxation of Its Citizens Abroad: Incentive or Equity, 38 Vand. L. Rev. 101 (1985). See also Joint Comm. on Taxation, "Review of the Present-law Tax and Immigration Treatment of Relinquishment of Citizenship and Termination of Long-Term Residency", JCS-2-03, p.79 (Feb. 2003).

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This article, however, focuses on a different issue. The US is very different from almost every other country in taxing its citizens living permanently elsewhere on global income.[8] 8 Almost every developed country (including Italy as well as the US) and most developing countries tax their residents on global income. The question I want to address is, which regime is better for taxing the new nomads? Most of the literature (including my own previous writing on this topic) condemns the US approach as a historical anachronism and accepts the Italian approach as obvious.[9] But this question requires reconsideration under changing conditions.

The tax policy choice (whether a country should tax non-resident citizens or noncitizen residents on global income) raises issues that would have been very familiar to Erwin Seligman and his colleagues on the 1923 League of Nations committee. A key issue in the US debate on adopting the Sixteenth Amendment (1913) to authorize an income tax was whether federal taxes should be based on the benefits provided to the taxpayer by the government (the benefits or exchange principle) or on the taxpayer's ability to pay taxes (the ability to pay principle). Seligman was a major advocate of the ability to pay principle, and of the consequent insistence that Congress has the power to tax all income "from whatever source derived," since all income contributes to ability to pay.[10] The 1923 report is based on the benefits principle (which it calls "economic allegiance"), but the insistence that the residence jurisdiction must have the right to tax the income of its residents on a worldwide basis while allowing for credits for source-based taxes is derived from the ability to pay principle.[11]

Which principle is better suited for taxing nomads? In my opinion, it is the ability to pay principle and not the benefits principle.[12] A US citizen living permanently abroad does not derive sufficient benefits from their US passport (and may in some cases not even have one and not be aware of her US citizenship if that resulted from being born in the US). But if taxation is based on ability to pay, the relevant ability to pay is that of adult members of a political community, who get to vote and thereby determine the appropriate tax rates and the degree of progressivity of the tax rate schedule.[13] And since US citizens living abroad are subject to US taxes based on their ability to pay, i.e., on global income from whatever source derived, and not based on benefits (unlike US residents), they must be allowed to vote in US elections.

[8] The other country that purports to tax citizens living overseas on global income is Eritrea, but it is doubtful that this tax is enforced. The Philippines abolished a similar tax.

[9] See Mason, Blum &Singer, and Avi-Yonah, supra (arguing against citizenship taxation); Kirsch and Zelinsky, supra (arguing in favor).

[10] E.R.A. Seligman, Progressive Income Taxation (1894).

[11] 1 League of Nations, E.F.S. 73/F. 19 (1923).

[12] 2 For other discussions of the taxation of citizens vs the taxation of residents and the link of both to voting and to benefits see Wolfgang Schoen, Taxation and Democracy, 72 Tax L. Rev. 235 (2018); Dagan and Fischer, supra; Tsilly Dagan, Klaus Vogel Lecture 2021: Unbundled Tax Sovereignty – Refining the Challenges, 76 Bulletin for International Taxation No. 7 (2022). For my view that ability to pay (global) taxation is an obligation of membership in a democratic political community whose members vote on the desired size of the government see Reuven Avi-Yonah and Yoseph M. Edrey, Constitutional Review of Federal Tax Legislation, Illinois L. Rev. (2023, forthcoming, available on SSRN).

[13] 3 This emphasis on political participation is a "democratic" view of citizenship as opposed to a "consumerist" view. See Dagan and Fischer, supra; Schoen, supra.

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Taxation of non-citizen residents, on the other hand, should be based on the benefits principle since they do not get to vote and therefore are not members of the political community in which they reside. Therefore, Italy should only tax US citizens residing in Italy on Italian source income, which reflects the benefits conferred on them by Italy, and not on foreign source income, which does not reflect such benefits.[14] 4 The US should credit those Italian benefits (source) based taxes in accordance with the priority of benefits (source) over ability to pay (residence) established by the 1923 report (the "first bite at the apple" rule).

The problem with this proposal is that it encourages taxpayers to obtain passports in tax havens and live permanently in other countries, and if those residence countries will only tax them on domestic source income, the result is massive under-taxation of the rich.[15] Such "non-dom" regimes are a serious problem under current rules because countries like the UK (and many others) have adopted them to attract the rich. But there are ways to address this issue since non-dom regimes are politically unpopular and therefore ripe for legislative change in democratic countries.[16] First, a residence country should be able to impose tax on its residents on worldwide income if the country of citizenship does not do so at all.[17] Second, while the country of citizenship should be able to impose any non-zero tax rate it wants on its citizens (that is the point of taxation based on voting in a democratic political community), that choice should be respected by the country of residence only if the citizenship is meaningful, i.e., if the resident non-citizen has real links to their country of citizenship and not just a nominal passport (under the well-established *Nottebohm* test adopted by the ICJ).[18] Finally, the country of residence should respect the primacy of the country of citizenship only if its citizens (including non-resident citizens) are given a meaningful right to vote in free and democratic elections in the country of citizenship (as determined by outside observers).

Hannah Arendt defined citizenship as "the right to have rights". In today's deglobalizing world, citizenship has become more important than ever because an increasing number of people (refugees) are effectively stateless and do not have either diplomatic protection or the right of

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[14] 4 It can be argued that a residence country enables its residents to earn income overseas, but the source country provides more benefits and has a better right to tax them based on "economic allegiance". See the four economists report, supra.

[15] That is the reason most countries tax residents (and not nationals) on global income, even though that seems inconsistent with either nationality or territoriality jurisdiction. See Reuven Avi-Yonah, The Structure of International Taxation: A Proposal for Simplification, 74 Texas L. Rev. 1301 (1996).

[16] See the recent debate on UK former Chancellor of the Exchequer Rishi Sunak's wife, who enjoyed non-dom status but had to relinquish it under public pressure. Understandably, citizens in a democratic country are unhappy about the unfairness of non-dom regimes for the rich. See Yvette Lind, (Tax) Citizens of the World, working paper (2022).

[17] This limit means that under current law, residents other than US citizens should be taxed on global income, but I would prefer a regime in which all democracies adopt the US position and taxed their citizens on global income (and allowed them to vote) even when they reside elsewhere.

[18] 8 Guatemala vs. Lichtenstein, ICJ 1 (1955). The ICJ defined the parameters of effective citizenship as "becoming wedded to [the country of citizenship] traditions, its interests, its way of life or of assuming the obligationsother than fiscal obligations-and exercising the rights pertaining to the status thus acquired." Note that this does not require residency in the country of citizenship, and that in fact fiscal obligations are other than in the US case not required of non-resident citizens. For a discussion of the meaning of citizenship in a democratic political community see Dagan and Fischer, supra.

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abode in their country of citizenship. In addition, the ability to work remotely has significantly increased the ability of regular people (and not just the rich) to move permanently to other countries without obtaining citizenship rights and obligations. In this context, I believe the US approach of taxing its citizens on global income regardless of where they live is justified by the ability to pay principle (but not by the benefits principle), and that the current practice of the US and most countries to tax non-citizen residents on global income is not justified (within the limits of the anti-avoidance rules outlined above). This may not be a drastic change from current rules for resident non-citizens because most of them do not have foreign source income. But for those that do (like the rich nomads of the pandemic), ability to pay (citizenship) is a better basis for taxation than benefits (residence). Seligman, I believe, would have approved.

The rest of this article proceeds as follows. After this introduction, Part 2 explains the historical debate before 1923 between benefits and ability to pay taxation, and then lays out how this debate influenced the 1923 report. Part 3 recounts the origins of US citizenship-based taxation and argues that it cannot be based on the benefits provided by the US to its citizens, but rather on a political view of progressive taxation based on ability to pay that extends to all eligible US voters wherever they reside. Part 4 argues that the US approach is a better fit for 21st century conditions because it reflects the increased importance of national citizenship as the "right to have rights". Part 5 argues that residents who are not citizens should not be taxed on global income because of the benefits basis of taxing them and addresses the problems of this approach in encouraging non-dom regimes. Part 6 concludes.

2. Seligman, Ability to Pay, Benefits, and the 1923 Report

The US first taxed income during the Civil War, but this tax (which was upheld by the Supreme Court) was allowed to expire in 1872.[19] In 1894, the Democrats in Congress were able to enact another income tax because they argued that existing federal taxes (duties and excises on imported and domestic goods) were regressive and unrelated to ability to pay. This tax, however, was struck down by the Supreme Court in 1895 as an unconstitutional "direct tax" that was not apportioned among the states by population. The result was a long struggle to overcome this decision which culminated in 1913 with the passage of the Sixteenth Amendment, which authorized Congress to levy an income tax.[20] The personal income tax has since then been the main source of revenue of the federal government.

Before 1913, the main tax on the rich was levied by the states and localities. Before the 1890s, these taxes were primarily property taxes, which mostly applied only to real property. However, most of the wealth of the rich consisted by the 1890s of intangible property like stocks and bonds, which were effectively not reached by the property tax because they could easily be moved to another state. Wisconsin was the pioneer of the state level income tax, but theses taxes were based on the benefits theory because they were levied in exchange for the

[19] 9 See a fuller discussion of the historical context in section 3 below.
[20] Steven R. Weisman, The Great Tax Wars (2004).

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benefits provided by the state, such as police protection or the rule of law as applied to contracts, and not based on ability to pay premised on state citizenship.

Edwin R.A. Seligman, the Columbia economics professor (1861-1939), author of Progressive Income Taxation (1894), and the US member of the League of Nations committee of economists (1923), was a major proponent of taxation based on ability to pay. Unlike his colleague Thomas S. Adams (1873-1933), who served on the Wisconsin tax commission (1911-1915) before moving to Yale, Seligman was never involved in state taxation, and never supported benefits-based taxation. A lifelong Democrat (unlike Adams, who was the main tax advisor to the Treasury in both the Wilson administration and in the Republican administrations that followed) Seligman constantly argued in favor of progressive taxation based on ability to pay. When Congress passed the Sixteenth Amendment authorizing taxing “all income from whatever source derived”, i.e., including capital gains (which were exempt in the UK) and foreign source income, this reflected the ability to pay principle advocated by Seligman. As Graetz and O’Hear have shown, Adams was more in favor of sourcebased than residence-based taxation, even though he rejected exemption systems in favor of the foreign tax credit (1918); his position was based on the practical view that the US should not “leave money on the table” by not taxing income that the source country failed to tax.[21] Seligman, on the other hand, favored residence-based taxation of global income because all income contributed to ability to pay.

When Seligman served on the 1923 League of Nations Committee, his views were in the minority. Of the four economists on the committee, Bruins and Einaudi were from capital importing countries (the Netherlands and Italy) and supported benefits-based taxation with an exemption for all foreign source income. Sir Josiah Stamp was from a capital exporting country and favored residence-based global taxation, but not on the basis of ability to pay, since the schedular UK income tax omitted many categories of income of the rich (e.g., capital gains) and was less progressive than the US income tax. Given the makeup of the committee, it is not surprising that it endorsed the benefits view (“economic allegiance”) and the primacy of source-based taxation (the “first bite at the apple” rule that the burden of alleviating double taxation must be primarily on the residence country because it cannot prevent the source country from taxing first). But Seligman scored an important victory for ability to pay taxation when the committee adopted what I have named the Benefits Principle, which states that passive income should be taxed primarily at residence while active income should be taxed primarily at source.[22] While this was based on the benefits theory of taxation, it meant that source countries should reduce taxation at source (i.e., withholding taxes) on passive income (dividends, interest, rents, royalties, and capital gains), and therefore that a country like the US that taxed its citizens globally could tax passive income without granting too many foreign tax credits. Seligman’s achievement was particularly important because almost all the foreign source income of the rich at the time was passive income (they were “coupon clippers”, to use the derogatory term for people who lived off interest coupons).

[21] 1 Michael J. Graetz & Michael M. O'Hear, The “Original Intent” of U.S. International Taxation, 46 Duke Law Journal 1021(1997).

[22] Avi-Yonah, Structure, supra; For the “Benefits Principle” See Reuven Avi-Yonah, International Taxation of Electronic Commerce, 52 Tax L. Rev. 507 (1997).

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Thus, a century ago, the US income tax was based primarily on ability to pay. But how did this apply to US citizens living abroad? For an answer to this question, we should examine the origins of the unique US system of citizenship-based taxation, which go back to the Civil War income tax.

3. The Origins and Debate on US Citizenship Taxation[23]

Citizenship-based taxation of Americans living overseas began during the Civil War. The original Civil War income tax from 1861 was only imposed on residents and on the US-source income of nonresident citizens.[24] The tax on nonresident citizens was imposed at a higher rate and with no exemption amount.[25] In 1864, the tax was amended to apply to the income of "every person residing in the United States, or of any citizen of the United States residing abroad", regardless of whether the income arose "in the United States or elsewhere."[26] 6 The application of the US tax to citizens living overseas continued until the Civil War income tax expired in 1872, was revived in the aborted income tax of 1894, and finally was incorporated into the "modern" income tax of 1913.[27] What was the rationale of taxing citizens living overseas? The original enactors of the provision must have known it would be very difficult to enforce, and in fact negligible tax was collected even from the US-source income of citizens living overseas during the Civil War.[28] The application of tax to citizens living overseas was a symbolic gesture: At a time of severe national crisis, when citizens living in the US were expected not just to pay tax but also to serve in the military and potentially die for their country (or at least pay for a substitute), the perception of rich citizens living overseas was too much for Congress to bear. As stated by a senator who served as a manager in the conference committee that adopted the 1861 tax law (taxing nonresident citizens at a higher rate):

> We do not desire that our citizens who have incomes in this country…should go out of the country, reside in Paris or elsewhere, avoiding the risk of being drafted or contributing anything personally to the requirements of the country at this time, and get off with as low a tax as everybody else… If a man draws his income from our public debt, or from property here, and resides in Paris, skulking away from contributing his personal support to the Government in this day of its extremity, he ought to pay a higher income tax.[29]

The same rhetoric was eventually applied to taxing nonresident citizens on their worldwide income. Senator George Hoar stated in 1894 that—

[23] 3 This section is based in part on Reuven Avi-Yonah, The Case Against Taxing Citizens, 58 Tax Notes Int'l 389 (May 3, 2010).
[24] 4 Act of Aug. 5, 1861, Ch. 45, sec. 49, 12 Stat. 292, 309.
[25] Id.
[26] Act of June 30, 1864, ch. 173, sec. 116, 13 Stat. 223, 281.
[27] Act of Aug. 27, 1894, ch. 349, sec. 27, 28 Stat. 509, 553; Act of Oct. 3, 1913, ch. 16, sec. II(A)(1), 38 Stat. 114, 166.
[28] Kirsch, n. 32 (from 1863 to 1865 US citizens living overseas paid $230,470 of $84,015,918 of income tax collected, or 0.003%).
[29] Kirsch, 451.

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> There are a great many people, I am sorry to say, who go abroad for that very purpose [of avoiding tax], and some of them went abroad during the late [Civil W]ar. They lived in luxury, at the same time at less cost, in a foreign capital; they had none of the voluntary obligations which rest upon citizens, of charity, or contributions, or supporting churches, or anything of that sort, and they escaped taxation.[30]

The origin of US taxation of non-resident citizens should thus be understood as stemming from a period in which only the rich paid the income tax (the $800 exemption excluded most resident citizens), against the background of the most severe crisis in the history of the country, and at a time when resident citizens could be drafted and when the likelihood of dying in the service of the country was the highest it has ever been in the history of the United States. In that context, it is understandable that Congress would want to appear to impose an equal tax burden on resident and non-resident citizens, since the non-resident citizens were few and likely to be residing overseas for the purpose of avoiding both the draft and the tax. As Sen. Hoar implicitly acknowledged, there was in practice no hope of collecting tax from nonresident citizens, and "they escaped taxation" even though the tax nominally applied to them.

In 1924, the Supreme Court upheld the taxation of nonresident citizens in Cook v. Tait.[31] The case involved a native citizen of the US who lived permanently in Mexico and derived his income from real and personal property located in Mexico. The taxpayer argued that the US lacked jurisdiction to tax because both residence jurisdiction and source jurisdiction were lacking. The Court rejected the argument because—

> [T]he foundation of [plaintiff's argument] is the fact that the citizen receiving the income, and the property of which it is the product, are outside of the territorial limits of the United States. These two facts, the contention is, exclude the existence of the power to tax. Or to put the contention another way, as to the existence of the power and its exercise, the person receiving the income, and the property from which he receives it, must both be within the territorial limits of the United States to be within the taxing power of the United States. The contention is not justified. In United States v. Bennett, 232 U.S. 299, the power of the United States to tax a foreign built yacht owned and used during the taxing period outside of the United States by a citizen domiciled in the United States was sustained.[32]

This analysis is fatally flawed: The plaintiff did not argue that "both" residence and source jurisdiction must apply for the US to have jurisdiction to tax; he argued that either one or the other must exist. Moreover, the case relied upon by the Court supports the taxation of residents on foreign source income, not the taxation of nonresident citizens. But the Court upheld the power to tax non-resident citizens because of the benefits provided them by the US government: "the government, by its very nature, benefits the citizen and his property wherever found and, therefore, has the power to make the benefit complete" by taxing the nonresident citizen.[33]

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[30] Kirsch, 453.
[31] 265 US 47 (1924).
[32] 265 US 55.
[33] 3 265 US 56.

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Cook v. Tait permits Congress to tax nonresident citizens but does not require it to do so. The history of US taxation of nonresident citizens is a dubious basis from which to argue that the practice should continue.[34] The application of the income tax to nonresident citizens stemmed from a great national crisis in which resident citizens were expected not just to pay tax but also to risk their lives for their country. At the same time, nonresident citizens were likely to be few in number, rich (or else they would not be subject to tax) and suspect of living overseas to avoid both the draft and the tax.

None of these conditions apply today. The US is not in crisis, there is no draft, and millions of US citizens live permanently overseas for reasons that have nothing to do with taxation.[35] 5 In many cases, they are citizens merely because they were born in the US, have left the country when they were young, and may be blissfully unaware of their tax obligations. In many more cases, they choose or are assigned to live overseas because of the opportunities of globalization. Under these 21st century circumstances, does the US still have a good reason for taxing citizens living permanently overseas? Prof. Kirsch argues that the answer is yes because of the benefits afforded nonresident citizens by virtue of their citizenship.[36] Prof. Zelinsky rejects these arguments but argues that citizenship is an administrable proxy for domicile, which justifies taxation.[37] I do not believe either of these arguments is persuasive, but as indicated below, I now agree with Prof. Kirsch on his alternative argument in favor of ability to pay taxation of non-resident citizens.[38]

A. The Benefits Argument

Prof. Kirsch lists the following benefits accorded to nonresident citizens: personal protection, property protection, right to vote, right to enter, and past benefits.[39]

As Prof. Zelinsky observes, none of these benefits seems sufficient to justify taxation.[40] The protection afforded by the US to its nonresident citizens and their property is rarely invoked and when it is invoked is frequently ineffective. For example, as shown by the Supreme Court cases

[34] 4 See Mason, supra; but cf. Kirsch, supra

[35] We have no idea how many US citizens live overseas. The GAO conducted an experimental study of expatriate population in three randomly selected countries in 2004 in an attempt to start counting expatriates in the 2010 Census, and concluded that it "would not be cost effective" to do so; it refers to the Census Bureau's acknowledgment that currently "no accurate estimate exists" on the number of Americans abroad. The several reports to Congress by the Census Bureau and the GAO on this issue do not even attempt to give a range or an estimate of the number of Americans overseas. See U.S. Gen. Accounting Office, Report to the Subcomm. on Technology, Information Policy, Intergovernmental Relations and the Census, Comm. on Gov. Reform, House of Representatives, "2010 Census - Counting Americans Overseas as Part of the Decennial Census Would Not Be Cost-Effective", GAO-04-898 (August 2004). See also Mason, supra.

[36] Kirsch, supra.

[37] Zelinsky, supra.

[38] For my previous view see Avi-Yonah, The Case against Taxing Citizens, supra; see also Mason, supra.

[39] Kirsch, supra.

[40] Zelinsky, supra; see also Mason, supra.

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involving foreign citizens on death row, the right to consular assistance when a citizen is accused of a crime in a foreign country is frequently not utilized at all or utilized too late to be effective.[41]

The right to vote argument is upside down. It is legitimate to argue that nonresident citizens must be given the right to vote because they are subject to US tax, although even that "no taxation without representation" tradition is sometimes ignored (just ask DC residents and resident aliens). But it does not follow that because nonresident citizens vote they must be taxed.

Moreover, many countries do not allow nonresident citizens to vote because they do not fully bear the consequences of their votes, and it would be legitimate for the US to follow that route if it stopped taxing nonresident citizens, like it does for residents of Puerto Rico.[42]

The right to enter is a tenuous basis for taxation. Having US citizenship overseas does give you the peace of mind that you can enter the US at any time, but before it is exercised this option seems a weak basis for such a heavy price as worldwide taxation. It is true that many nonresident aliens would like to obtain US citizenship, and worldwide taxation can be seen as a "price" to be paid for it, but that is because they want to live and work in the US, not because of citizenship per se.

Finally, even Prof. Kirsch acknowledges that the past benefit argument is weak. Nonresident citizens may or may not have received benefits from the US while living there; in many cases they left at too young an age to receive significant benefits, and in other cases they lived in the US long enough to pay tax for their benefits.

To see why the benefits argument for taxing nonresident citizens is wrong, one should compare the benefits conferred by citizenship to the benefits conferred by residency to US residents. The latter are much more significant. US residents benefit from first-class government protection, the rule of law, an outstanding educational system, and the many opportunities of a free market economy. These benefits are the reason the US is still the top choice of immigrants from other countries, and they are all paid for by tax dollars. Nonresident citizens do not receive these benefits or at best receive them in a much weaker form.

Finally, it should be noted that the same benefits cited by Prof. Kirsch as supporting taxation of nonresident citizens (protection of self and property, right to vote, right to enter, past benefits) are also afforded to nonresident citizens by every other major democracy, and yet no other country taxes its nonresident citizens. It is hard to argue that the protections of US citizenship are significantly more valuable than those of EU or Swiss citizenship- in fact, in many places carrying a US passport is more burdensome (because of visa requirements) and potentially more dangerous than an EU or Swiss passport. If the other democracies do not impose worldwide

[41] 1 See Medellín v. Texas, 552 U.S. 491 (2008).

[42] The United Kingdom, Switzerland, Ireland, Israel, India, Chile and Greece are among the democratic countries that do not allow most nonresident citizens to vote, while Canada only allows them to do so if their nonresident status has lasted for 5 years or less. http://aceproject.org/epic-en/CDTable?question=VO004. For a normative discussion of whether this is justified see Schoen, supra (arguing that it is if they are not subject to tax, but not otherwise).

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taxation on their nonresident citizens because of the benefits they provide, it is unclear why the US should exact such a high price for its benefits.

B. The Administrability Argument

Prof. Zelinsky, after acknowledging that the traditional benefit rationale for taxing nonresident citizens is weak, advances a new and ingenious argument: Citizenship is an administrable proxy for domicile.[43]

It is true that many countries base their worldwide tax on residents in part on fiscal domicile. Domicile is a standard, not a rule, and is embodied in the tax treaties (including US tax treaties) as a tie-breaker in cases of dual residency. As defined in the treaties, domicile requires weighing of several factors, including where the taxpayer's "permanent home" is, her "habitual abode", her "centre of vital interests", and her "nationality".[44] Except for nationality (citizenship), all of these terms are not defined and tax administrations take different approaches to defining them.

Prof. Zelinsky correctly notes that the fiscal domicile standard is hard to administer, and in fact the US abandoned this standard in its federal law in 1984 and replaced it with a physical presence rule. But Prof. Zelinsky's suggestion that citizenship be used as a proxy for domicile is misplaced, because it is so clearly overbroad.

For citizens who are US residents, there is no need to base taxation on citizenship because they would be taxed on worldwide income as residents. For nonresident citizens, citizenship is a very poor proxy for domicile because so many of them live permanently overseas and do not have any of the other indicia of US domicile other than citizenship. At the extreme, citizenship-based taxation applies to someone who was born in the US but has no other US connections at all and may even be unaware that he is a US citizen.

If the US was looking for an administrable definition of residency, it already has one in the physical presence test. Unlike corporations, individuals cannot be in more than one place at the same time, and therefore the US and every other country base residency on physical presence, which is easily monitored using entry and exit records. With certain exceptions, any individual who is physically present in the US for over half a year (183 days) is subject to worldwide taxation regardless of her citizenship status.

The argument against basing residency solely on physical presence is that it encourages individuals to "count days" and maintain their permanent home in the US while being absent for enough days to escape worldwide taxation. Therefore, the US also counts days in previous years, so that it is not possible to be in the US 182 days in every year and avoid residency status. Because

[43] Zelinsky, supra

[44] See US Model Tax Treaty (2016), art. 4; OECD Model Tax Treaty (2021), Art. 4.

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physical presence is perfectly administrable, administrability is not an argument for taxing nonresident citizens.

In fact, administrability is perhaps the strongest argument for not taxing nonresident citizens. Imagine for a moment that section 911 is repealed (as many critics have advocated). In that case every US citizen living permanently overseas would in theory be subject to full tax on the first dollar of income and would need to claim the foreign tax credit (if applicable) to prevent dual taxation, but that would not help for cases in which the country of residence taxes the US citizen on US source income.

Even with the current resources of the IRS, the only nonresident citizens the US is likely to tax in this scenario are temporary expatriates working for US multinationals. In other cases, the only way to administer the tax is to condition the renewal of US passports on reporting the tax ID number to the IRS so they can check if returns have been filed. This system works in many cases today because section 911 ensures that many nonresident citizens do not owe any US tax and are therefore willing to file returns. If they had to actually pay tax, many of them might simply forego renewing their US passports, since they usually have other passports as well. I seriously doubt the IRS could catch most of them under that scenario. A law that cannot be enforced is a bad law.

As a practical matter, taxing nonresident citizens is possible because (a) some of them work for large US employers who aid the IRS in enforcing the tax, (b) most others do not owe any US tax because of section 911. Although there are no data I am aware of, I am doubtful the US collects much tax from nonresident citizens living permanently overseas.[45] The cost of what the US does collect is having to administer section 911, a very complex provision that imposes significant transaction costs on both taxpayers and the IRS.

Blum and Singer (and more recently Mason) argued convincingly at the time that the taxation of nonresident citizens is unadministrable.[46] Attempting to tax them imposes a burden on the IRS that it is unable to meet. The result is a statute that is not complied with in many cases, that imposes heavy transaction costs on those taxpayers that do comply, and that is saved from being completely ignored by a complicated provision (IRC 911) that could be drastically simplified or abandoned if we did not tax nonresident citizens.

Having said that, I do believe that today, it is possible to administer the taxation of non-resident US citizens by relying on FATCA. The question is whether we should tax them on ability to pay grounds.

4. Ability to Pay and Citizenship Taxation in the 21st Century

Historically, progressive taxation has been defended on benefits grounds. The rich, it was said, derive more benefits from e.g., police protection or the sanctity of contracts than the poor, and

[45] See JCT report, supra.
[46] Blum and Singer, supra. Mason, supra.

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therefore they should pay more in tax. But this argument has been debunked by Blum and Kalven a long time ago because it is hard to show a correlation between the progressive tax and the benefit.[47] Moreover, it is hard to establish what benefits justify taxing global income since as explained above the benefits derived by non-resident citizens from the US government are minimal. More recently progressive taxation has been based on the declining marginal utility of money, but that too has been cogently criticized because of the difficulty is making inter-personal comparisons of utility.[48] 8 It is plausible for example that Elon Musk, the richest man in the world, derives more utility from having additional money and the power it confers than a relatively poorer person. As Henry Simons observed in 1938, progressivity is ultimately a political decision made by a community of citizens voting on the degree of inequality they are willing to tolerate, and on the desirable limits to the power that the rich derive from their wealth.[49]

The ability to pay argument for taxing nonresident citizens is that they are part of a political community with resident US citizens and therefore should share in the tax burden imposed on that community. That is also why the US allows them to vote, because as part of the community they must be permitted to share in the decision (that is contested in every US election) of how large the government should be, and consequently what tax burden the community should impose on itself, and on how progressive those taxes should be. As discussed below, the inability of residents to vote is a strong argument for not taxing them on an ability to pay basis, i.e., taxing them only on domestic income.

It could be argued, however, that the US is not truly able to tax citizens living overseas on an ability to pay basis. In the case of the poorer ones, in many instances the IRS does not even know they exists, and they may not know that either- hence the inability to count them in the decennial census. In the case of most of the richer ones, the US needs to concede the primary right to tax them to their country of residence (which gets the ”first bite at the apple”) and to either exempt their income from taxation or grant a foreign tax credit. Thus, their income is not available to be taxed by the US, because it has already been taxed by another country.[50]

But this argument (which I have made previously) is less convincing under current conditions, in which an increasing number of US citizens live permanently overseas. It is true that their country of residence gets to tax them first. But that does not mean the US should not tax them as well on an ability to pay basis. The point of ability to pay is not that the tax must be paid to the US. The point is that all members of the US political community pay tax in proportion to their ability to pay. The fact that the US has to concede the tax revenue to the residence country to prevent double taxation does not mean that they are not taxed based on ability to pay, and it is taxation based on ability to pay and not benefits that was chosen by the US political community in 1913

[47] Blum, Walter J. and Kalven, Harry Jr., "The Uneasy Case for Progressive Taxation," 19 University of Chicago Law Review 2 (1952).
[48] Blum and Kalven, supra; see generally Reuven Avi-Yonah, Why Tax the Rich? Efficiency, Equity, and Progressive Taxation (Review of Slemrod, Does Atlas Shrug? The Economic Consequences of Taxing the Rich), 111 Yale L J 1391 (2002).
[49] Henry Simons, Personal Income Taxation (1938).
[50] See Avi-Yonah, Case, supra.

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as the basis for US income taxation. The idea is to base the tax burden on vertical and horizontal equity, and for equity it does not matter who collects the revenue.

As for administrability, conditions have changed since my 2010 article (and the other articles cited above).[51] The enactment of FATCA means that it is no longer easy for US citizens living overseas to evade US taxation, and they are also much more aware of their US citizenship. Any US citizen that has tried to open a bank account overseas after 2010 is made aware of their US tax obligations by the bureaucratic hurdles the foreign bank imposes under FATCA and the Intergovernmental Agreements implementing FATCA. Moreover, section 911 and the foreign tax credit significantly alleviate the US tax burden, so it is only the new nomads that derive US source earned income above $120,000 that are really affected. Even in those cases, a treaty would usually solve the problem by treating them solely as residents of the residence country, unless there is no treaty, and in that case there usually is no double taxation either (but section 911 unfortunately still applies to create double non-taxation on $120,000 of income, which is unjustifiable on ability to pay grounds, and which is why section 911 should be limited to treaty jurisdictions).

As Seligman argued over a century ago, progressive taxation based on ability to pay is a political decision, made by a political community of citizens that vote to tax themselves.[52] US citizens living permanently overseas are part of that community (as indicated by their ability to vote in US elections) and should share the burden of taxation to finance the government even if they choose to derive fewer benefits from its services.

However, this analysis also means that the US and every other country is wrong in taxing non-citizen residents on global income, because global taxation is based on ability to pay, and the taxation of residents must be based not on ability to pay (since residents do not get the vote and are not members of the political community) but on benefits, and benefits-based taxation is inherently local.

5. Benefits Taxation of Residents: Solving the Non-Dom Problem

If membership in a political community (citizenship) is the basis for taxation based on ability to pay (global taxation), then it follows that resident non-citizens who cannot vote and are not members of the political community in which they live should not be taxed based on ability to pay.[53] Instead, taxation of residents is based on the benefits principle, i.e., it is justified by the benefits provided to residents by the country in which they reside. These benefits are local, i.e., confined to the territory of the state of residence: The relatively tenuous benefits provided to non-resident citizens (diplomatic protection and the right to abode) do not apply to non-citizen

[51] See Blum and Singer, supra; Mason, supra. The same argument applies to most countries that can use CRS to tax non-resident citizens, so a citizenship-based tax has become administrable.
[52] See Avi-Yonah and Edrey, supra.
[53] This creates a motivation for them not to become citizens, but there are other reasons to become citizens that may outweigh this. Under the current regime, they have a motivation to leave and not be subject to global taxation. US citizens have a motivation to expatriate, but that carries a price, both symbolically (they are denounced as traitors and their names are published) and financially under the exit tax.

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residents who cannot invoke the diplomatic protection of the state of residency and who cannot be assured of being able to return if they leave.[54]

Taxing citizens on global income and residents on local (domestic) income is also more congruent with the traditional bases of jurisdiction in international law, namely nationality and territoriality. A state has jurisdiction over its nationals regardless of where they live, but it only has jurisdiction over non-nationals within its territorial borders (although this has been construed to justify global taxation of residents).

The reason tax has always been applied differently by being based on residence and (except in the US) not on citizenship is because it is easy for the rich to acquire a foreign passport and give up their citizenship of the country they live in but continue living there and enjoying its benefits. If these rich are not taxed on a global basis and their new country of citizenship does not tax them either, then their foreign source income escapes tax altogether. Such a result used to be considered acceptable in territorial states before globalization because there were limits on the ability of individuals to earn foreign source income without migrating, but in the age of globalization in which such limits (e.g., exchange controls) have mostly disappeared, most countries tax residents on a global basis.

The exception is those countries like the UK and many others that have non-dom regimes. Under non-dom regimes, a resident who is not a citizen can legally avoid tax on foreign source income even if their country of citizenship does not tax them. For example, the co-founder of Facebook, Eduardo Saverin, was a dual Brazilian-US citizen when as a student at Harvard he gave Mark Zuckerberg the initial funds to found the company. Saverin ended up with a 4% stake in Facebook, which was worth $4 billion when the company went public. As a US citizen, Saverin would have been subject to tax had he sold those shares, regardless of residency. But Saverin gave up his US citizenship before the Facebook IPO and moved to Singapore. He had to pay an exit tax to the US, but this was based on a reduced (pre-IPO) valuation of the shares, and thereafter he could sell the remaining shares without tax since as a non-dom he was not subject to tax in Singapore on foreign source income, and Brazil like most countries does not tax nonresident citizens. Under the regime proposed in this article, however, he would have been taxable in Brazil (and if Brazil refused to tax, he should have been taxable in Singapore, although that is less likely than taxation by Brazil, which like most developing countries suffers from the "brain drain" and would therefore prefer to tax non-resident citizens if it could, which I argue is now possible because of CRS).

The non-dom problem is difficult because it is unlikely that sovereign countries would agree to give up on non-dom regimes to attract the rich because of outside pressure. Taxation of individuals is closely linked to sovereignty because their residency in a sovereign state is meaningful, unlike multinational corporations whose residency is not meaningful because they can be in many places simultaneously. That is why the kind of agreement for a global minimum

[54] 4 And any benefits conferred by the state of residency on foreign source income are outweighed by the benefits conferred by the source country, as the 1923 committee argued.

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tax on corporations that was reached recently to limit tax competition is less likely in the individual context.

However, this does not mean that the non-dom problem cannot be solved. The basic point is that non-dom regimes in democratic countries are unpopular because resident citizens are unhappy that rich non-doms avoid taxes while they must pay. For example, Rishi Sunak had difficulties justifying the previous non-dom status of his wife during the recent UK prime ministerial campaign. UK citizens are understandably unhappy with a regime that allows rich foreigners living amongst them and enjoying the benefits of living in the UK to avoid global taxation, which in their case is most taxation because they are unlikely to have UK source income.

Because of this unpopularity, it is plausible that the UK and other countries would abolish non-dom regimes aimed at the rich. Instead, they can adopt the regime advocated here in which all non-citizen residents are only taxed on domestic source income. For poorer residents, this will not make a difference because typically they will not have foreign source income.

But will this not lead to massive undertaxation? Not if the country of citizenship taxes these non-citizen residents. US residents of Italy are subject to US tax on a global basis, with a credit for Italian taxes.

There is still a risk that residents would transfer their citizenship to countries that do not tax non-resident citizens. Because of this, I would suggest four limits to be adopted by the country of residence. First, as is the case today in some countries (e.g., Canada), there should be an exit tax on residents that leave the country permanently to address the problem of unrealized gains accrued while being a resident.

Second, if the country of citizenship does not tax non-resident citizens at all (e.g., if it is a tax haven with no income tax, or if it simply does not tax non-resident citizens like most countries under the current rule), the country of residence should be able to tax them on a global basis. This rule should not apply to countries of citizenship that have low taxes, because members of a sovereign and democratic political community should be able to establish the rates at which they tax themselves.

Third, if it can be established that the non-citizen residents do not have real ties to their country of citizenship because they only acquired citizenship to avoid global taxation, then the country of residence should be able to tax them on a global basis. For example, if they have never lived in the country of citizenship, even if it taxes them on a global basis at low rates, they could be taxed globally in the country of residence. This rule can be administered using the criteria established by the ICJ in the Nottebohm case (1955), in which the Court stated that—

> Naturalization was asked for not so much for the purpose of obtaining a legal recognition of Nottebohm's membership in fact in the population of Liechtenstein, as it was to enable him to substitute for his status as a national of a belligerent State that of a national of a neutral State, with the sole aim of thus coming within the protection of Liechtenstein but not of becoming wedded to its traditions, its interests, its way of life or of assuming the

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> obligations-other than fiscal obligations-and exercising the rights pertaining to the status thus acquired. Guatemala is under no obligation to recognize a nationality granted in such circumstances. Liechtenstein consequently is not entitled to extend its protection to Nottebohm vis-à-vis Guatemala and its claim must, for this reason, be held to be inadmissible.[55]

Finally, the country of residence should be able to tax non-citizen residents on a global basis if the country of citizenship is not a democracy (e.g., Russia, the origin of many UK non-doms) or does not allow them to vote in free and fair elections (as evaluated by outside observers), because then they are not truly members of a political community that taxes itself.

Overall, therefore, I believe the non-dom problem can be solved, and the regime advocated herein is feasible without giving rise to massive under-taxation of the rich.

6. Conclusion

In today's de-globalizing world, citizenship (the "right to have rights") is more important than it was in the heyday of globalization in the 1990s, when cosmopolitanism was all the rage. One good example is refugees like the Rohingya, who are citizens of Myanmar but residents of Bangladesh, in that their citizenship is worthless because it does not give them either diplomatic protection nor the right to abode in Myanmar (or the right to vote, which is the domestic equivalent). They are effectively stateless.

Another good example are the non-Chinese residents of Honk Kong after the Chinese takeover in 1997. Under the UK-China agreement of 1984, they had the right of abode in Hong Kong but not citizenship because that was limited to ethnic Chinese. However, this right of abode was not guaranteed, and the UK refused for a long time to give them full UK citizenship with the right of abode in the UK. For that reasons, other countries refused to admit them, because they could not deport them to either Hong Kong or the UK. Effectively, they were stateless, until public pressure in the UK forced the government to grant them full UK citizenship.[56]

In a world in which citizenship is once again important but individuals are freer than ever to migrate because they can work remotely, global taxation should be based on membership in a political community and ability to pay, and not on benefits. Non-citizen residents, on the other hand, should only be taxed locally based on the benefits provided by the state of residence, which do not extend beyond its borders. Seligman, I believe, would have approved.

[55] Guatemal vs. Lichtenstein, ICJ 1 (1955).
[56] See Michael Avi-Yonah, The Nation-State that Never Sets, 46 Yale J Int'l L 325 (2021).

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