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VOTING RIGHTS COMPARED TO INCOME TAXATION AND WELFARE BENEFITS THROUGH THE SWEDISH LENS

by

Yvette Lind*

ABSTRACT

Ongoing globalization and increased taxpayer mobility not only exacerbate already existing shortcomings when allocating taxing rights but also legal mismatches with regard to access to welfare benefits and voting rights. All three legal areas (taxation, access to welfare benefits, and voting rights) are of importance for those individuals who choose to work across borders or relocate themselves to another state on a more permanent basis. The extent of this importance will, naturally, vary between taxpayer groups due to individual circumstances and needs. Yet, some more general deductions may still be made.

This Article identifies and analyses, through a traditional legal study, legal mismatches between taxation, access to welfare benefits, and voting rights in Sweden. These three legal areas are analysed through the application of a taxpayer case study consisting of six

* Assistant professor in tax law at Copenhagen Business School. This Article is a part of my project “Political (Tax) Equity in a Global Context,” which was initiated during my stay at the Max Planck Institute for Tax Law and Public Finance as a scholarship recipient in 2019. I am grateful to Wolfgang Schön for scholarship funding and fruitful discussions. For feedback on earlier versions of this Article, I thank Mats Tjernberg, Åsa Gunnarsson, Neil H. Buchanan, Diane Ring, and all the participants of the Cambridge Tax Policy Conference of 2019. I am also grateful to those attending and commenting at my brownbag lunch, which was held at the Max Planck Institute for Tax Law and Public Finance in August 2019. All errors are mine.

classical taxpayer groups commonly found within international taxation. The result of the study illustrates that there are apparent mismatches between taxpayer groups, some more comprehensible than others.

In conclusion, mobile individuals may, as a result of disparities between tax allocation, formal citizenship, and voting privileges, contribute financially to a state yet not have the possibility to exercise influence over their tax situation due to the lack of formal citizenship and voting privileges in that particular state. Those who vote to change taxation and public spending are not always the same as those who pay taxes. This issue is naturally complex as the group of individuals excluded from such political influence is a highly diverse one, reaching from high net value individuals to stateless persons seeking asylum, subject to individual circumstances and needs. The Article is part of a larger body of work, done under the umbrella of Political (Tax) Equity in a Global Context, in which I explore how increased taxpayer mobility challenges not only traditional legal frameworks associated with taxation but also the allocation of political rights and benefits. The traditional perception of citizenship as the basis for voting rights is, as illustrated through various publications linked to the project, inadequate when dealing with mobile taxpayers.

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I. BACKGROUND AND RESEARCH APPROACH

Taxpayers are now more mobile than ever as a result of ongoing globalization. On a global level, increased mobility not only complicates tax

allocation when determining tax nexus¹ but also results in an inclusion or exclusion of taxpayers with respect to the democratic process in individual states, because some will gain access to voting through citizenship programmes (so-called investment citizenships or golden citizenships) or access to local elections due to their EU citizenship while others (primarily those originating from a state outside of the EU) will have no access to voting at all despite them working and contributing with taxes in one or several states other than their residence state. This project, “Political (Tax) Equity in a Global Context,” will not deal with the tax nexus/allocation issue but instead will focus on the problems related to the democratic process. These problems may be identified through three examples. First, it is becoming more common for states to offer so called golden citizenships or golden visas in order to attract high-income earners, high-skilled workers, and high net value individuals,² illustrating how states use citizenship as a tool for tax competition. Second, less fortunate individuals such as immigrants or refugees are refused these privileges, reinforcing the separation between weaker and stronger taxpayers. Third, some states have gone so far in this separation that they introduce tax rules aimed at impeding the immigration of weaker individuals. For example, Hungary has introduced an immigration surtax in order to disincentivise the assistance of immigrants.³

One could, based upon these three examples, identify two issues that have democratic implications on a society: (1) can those with economic leverage secure special tax concessions? and (2) what are the possibilities for poorer non-citizens⁴ to access a state if said state allows

1. A result of the increased number of circumstances in which states are trying to determine which jurisdiction has taxing power, in addition to the taxpayer crossing more than two (or more) jurisdictions.

2. The EU Commission reports every three years on the development of citizenship within the EU. For example, the EU issues reports on the risks of investor citizenship and residence schemes in the EU and subsequently outlines steps to address them. See *EU Citizenship*, EUR. COMMISSION, https://ec.europa.eu/info/policies/justice-and-fundamental-rights/eu-citizenship/eu-citizenship_en (last visited May 18, 2020); see also Allison Christians, *Buying In: Residence and Citizenship by Investment*, 62 ST. LOUIS U. L.J. 51 (2017).

3. See Daniel Deák, *Immigration Surtax as an Emerging Fiscal Hungaricum*, 47 *INTERTAX* 282, 283–85 (2019).

4. Poorer, in this context, would be either a low net worth individual or an individual with a zero income or, alternatively, a low income that results in a low taxing or investment ability.

other noncitizens more access as a result of them contributing financially to the state? These issues are highly relevant and acted as inspiration to this project, resulting in a focus on the increasing global mobility across different taxpayer groups though several studies on how this mobility separates individual taxpayers and as a result leads to deficiencies in social justice and political equity.

Various theories gathered from not only law but also political economics, sociology, and political science are integrated into different parts of the project in order to study the main issue—the impact globalization and taxation have on the democratic process in regard to taxes and public spending in individual states—from different perspectives.⁵ In this Article, theories are mainly referable to social contract and citizenship as they are often contrasted against each other, illustrating that it may be necessary to apply both in order to achieve political equity between individuals. To clarify, citizens may directly influence tax legislation and public spending through voting rights awarded due to their citizenship, resulting in political equity between non-taxpaying citizens and taxpaying citizens as they are equally entitled to vote regardless of whether they have contributed to state finances or not. However, the application of citizenship as the requirement for voting privileges excludes taxpaying noncitizens from influencing regardless of whether they have contributed to state finances through taxation or otherwise contributed to society. This suggests an antagonistic relationship between the social contract and citizenship; yet, in this Article, it becomes evident that they are acting as safeguards supplementing the weaknesses of the other. Both are necessary to be considered when creating tax policy in order to strengthen political equity in a society where individuals are

5. See my other publications within the project: Yvette Lind, *A Critical Analysis of How Formal and Informal Citizenships Influence Justice Between Mobile Taxpayers*, in *TAX JUSTICE AND TAX LAW: UNDERSTANDING UNFAIRNESS IN TAX SYSTEMS* (Dominic de Cogan ed., forthcoming 2020) [hereinafter Lind, *A Critical Analysis*]; Yvette Lind, *Political (Tax) Equity in a Global Context as a Part of Social Sustainability—Some Guidance for Researchers Who Wish to Explore Democratic Implications on Tax and Spend*, in *TAX SUSTAINABILITY IN AN EU AND INTERNATIONAL CONTEXT* 175 (Cécile Brokelind ed., 2020) [hereinafter Lind, *Social Sustainability*]; Yvette Lind, *Political (Tax) Equity in a Global Context—Some Initial Reflections on How Individuals May Indirectly Influence Tax Legislation and Public Spending in Sweden, Germany and the U.S.* (Copenhagen Bus. Sch., Law Research Paper No. 19-34, 2019), <https://ssrn.com/abstract=3474232>.

becoming more mobile and are less restricted by territorial affiliation or formal citizenship.

Part II of this Article briefly introduces the theoretical framework of the entire project and focuses primarily on the concepts of coherence and congruence as applied to the Swedish taxpayer case study. A more detailed examination of the social contract theory is undertaken in the remaining two articles in this series.⁶ Part III describes the design of the taxpayer case study, which is applied throughout the Article. Parts IV and V of this Article describe and analyse taxation and access to welfare benefits in Sweden for each of the taxpayer groups in the case study. Part VI integrates voting privileges in Sweden and links these to the analysis of taxation and distribution of welfare benefits. Part VII elaborates on identified mismatches between legal frameworks comprising with taxation, access to welfare benefits, and voting. Part VIII of this Article provides some final conclusions.

II. SOCIAL CONTRACT THEORY, CITIZENSHIP, COHERENCE, AND CONGRUENCE AS A STARTING POINT FOR ANALYSIS

This Article answers the principal question of whether three major legal regimes in Sweden—taxation, voting, and welfare benefits—are theoretically coherent under formal citizenship or a social contract theory of the state and democracy.⁷ In order to answer the principal question, we must first understand the basics of these legal regimes so that we can determine whether they provide a coherent story of rights, benefits, and burdens and, to the extent they do not, examine whether there are policy reasons that led the legislature to draft these regimes with such inconsistencies.

Previous work done by Wolfgang Schön, Allison Christians, Giorgio Beretta, Mats Tjernberg, Åsa Gunnarsson, and Thomas Erhag has inspired this project and the utilization of social contract theory to encompass both income and expenditure and the possibility of influencing

6. See Yvette Lind, *Initial Findings on How Individuals May Indirectly Influence Tax and Spend in Sweden, Germany and the United States*, 48 *INTERTAX* 482 (2020); Lind, *Social Sustainability*, *supra* note 5.

7. These legal regimes were chosen under the assumption that they were naturally linked through a social contract (the payment of taxes in order to receive access to social welfare benefits and voting rights in order to influence his or her taxing situation).

tax legislation and public spending in a welfare state context.⁸ Researchers such as Schön, Christians, and Beretta apply social contract theory and the role of citizenship to the context of international taxation in order to analyse how the concept of citizenship, when determining tax nexus, has been affected by harmful tax competition and increased cross-border mobility. Swedish scholars such as Tjernberg, Gunnarsson, and Erhag focus on a national level, applying congruence to the obligation of paying taxes and the right of receiving welfare benefits.⁹ In this, the concept of congruence acts as a theoretical tool in describing the contractual exchange with regard to taxation, voting rights, and welfare benefits—i.e., in order for the state to collect taxes, there must be a corresponding benefit, such as taxing rights and/or welfare benefits.

In addition to formal citizenship and social contract theory, a theoretical framework comprised of coherence and congruence is applied as a tool when analysing if and why there may be mismatches between the three regimes of taxation, access to welfare benefits, and voting rights. One could state that the search for coherence in the given material is a central and an unspoken part of legal research in general,¹⁰ nevertheless, emphasis is placed on the concept as it will assist the analysis in addition to identifying mismatches between legal regimes. For instance, a non-resident in Sweden is subject to limited taxation, limited access to the welfare system, and, depending on the case, limited voting

8. See also THOMAS ERHAG, FRI RÖRLIGHET OCH FINANSIERINGEN AV SOCIAL TRYGGHET (2002); ÅSA GUNNARSSON, FÖRDELNINGEN AV FAMILJENS SKATTER OCH SOCIALA FÖRMÅNER (2003); Giorgio Beretta, *Cross-Border Mobility of Individuals and the Lack of Fiscal Policy Coordination Among Jurisdictions (Even) After the BEPS Project*, 47 INTERTAX 91 (2019); Mats Tjernberg, *Frågan om kongruens mellan rätten att erhålla vissa sociala förmåner och skyldigheten att betala skatt*, SKATTENYTT, no. 4, 2009, at 214. See generally Giorgio Beretta, *Citizenship and Tax*, WORLD TAX J., May 2019, at 227 (2019); Allison Christians, *A Global Perspective on Citizenship-Based Taxation*, 38 MICH. J. INT'L L. 193 (2017); Allison Christians, *Sovereignty, Taxation and Social Contract*, 18 MINN. J. INT'L L. 99 (2009); Wolfgang Schön, *Taxation and Democracy* (Max Planck Inst. for Tax Law & Pub. Fin., Working Paper No. 2018-13, 2018), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3267279.

9. Welfare benefits in this context are either residence-based benefits and/or work-based benefits regulated through the Swedish Social Insurance Code.

10. JAN M. SMITS, THE MIND AND METHOD OF THE LEGAL ACADEMIC 1–4 (2012).

rights, which could arguably be a coherent application of the legal frameworks. However, one may also argue that it is incoherent if one considers the fiscal contract—i.e., if he or she pays taxes to the Swedish state and receives in return some access to welfare benefits, but no access or a limited possibility to influence tax legislation and public spending (the voting privileges). This would be where congruence comes in. If the individual pays taxes, then he or she should in this context also receive welfare benefits and voting privileges in order for the contractual exchange to be corresponding.

Reciprocity is often utilized when discussing such an exchange of mutual benefits. For instance, it is often utilized within taxation as a theory or principle when describing the relationship between costs (income taxation) and the ability to deduct costs related to the taxed income.¹¹ This implies a strong link (earmarking) between the cost and the possibility of deducting; hence, some scholars reason that income that does not qualify for deductions should not be taxed at all under the principle of reciprocity.¹²

However, this Article does not discuss reciprocity but instead focuses on congruence as the latter does not imply an immediate exchange but rather a long-term relationship in which the link is weaker than with reciprocity due to the lack of earmarking. To clarify, congruence bears a strong resemblance to the reasoning on which insurance contracts are built upon.¹³ The consumer concludes a contract with an insurance company, and subsequently the consumer pays premiums with the safety and knowledge that the company will step in and reimburse losses if an accident were to happen. The same reasoning is applied within social insurance law—i.e., a taxpayer pays taxes while the state takes on the responsibility to support the individual through various welfare benefits/social benefits if the taxpayer were to suffer a loss of

11. See, e.g., PETER MELZ, *KAPITALVINSTBESKATTNINGENS PROBLEM: FÖRETRÄDESVIS VID FASTIGHETSFÖRSÄLJNINGAR* (1986).

12. Jan Kellgren, *Reciprocitet i inkomstbeskattningen—vad skulle kunna avses med det?*, in *FESTSKRIFT TILL NILS MATSSON 169* (Kristina Ståhl & Per Thorell eds., 2005).

13. Cf. Suzanne Landry et al., *Tax Aggressiveness, Corporate Social Responsibility, and Ownership Structure*, 14 *J. ACCT., ETHICS & PUB. POL'Y* 611 (2013) (discussing the insurance like relationship between company and stakeholders through the application of congruence when assessing the relationship between tax aggressive behaviour and CSR).

income.¹⁴ Congruence is therefore often applied within research that comprises the relationship between taxation and social insurance law.¹⁵ This Article builds on the same reasoning and will as such be applied as a tool when identifying mismatches between legal frameworks comprising taxation, access to welfare benefits, and voting rights. In other words, a baseline is applied in which the assumption is that there will, from a long-term perspective and without any evident earmarking, be an exchange of mutual benefits. In this case, the exchange is built upon the unwritten social contract in which a taxpayer agrees to paying taxes and social security contributions to the state while in return expecting access to welfare benefits if and when so needed—in addition to the possibility of influencing his or her tax situation through voting.

Social contract theory has no single tradition and is instead influenced by a variety of traditions referable to religious duty, personal security, economic welfare, or moral self-righteousness.¹⁶ This Article will not focus on providing a more comprehensive operational definition of the social contract; instead a more simplified theory, adapted for the Nordic welfare state, will be applied. Such a theory would be applied in accordance with the existing legal framework within the welfare systems, i.e., the basic assumption that individuals should be financially independent of others through the support of the state. The individual is assumed to contribute through income and payroll taxes from full-time employment in order to fulfil his or her part of the contract while the state agrees to support the individual through welfare benefits when so needed. To this contractual exchange voting privileges are added, as it would be generally accepted that an individual should be able to influence his or her tax situation through tax legislation and public spending. Such a contract theory would be influenced by the notion of consent (voting rights) and content (material principles), where emphasis is placed on consent and Schön's adaptation of social contract theory utilizing voting rights as safeguards from a bottom-up perspective. As a result, voting rights in this context would include the right of the

14. See also RUTH MANNELQVIST, SAMBAND I SOCIALFÖRSÄKRINGEN (2003).

15. See YVETTE LIND, CROSSING A BORDER—A COMPARATIVE TAX LAW STUDY ON CONSEQUENCES OF CROSS-BORDER WORK IN THE ÖRESUND AND THE MEUSE-RHINE REGIONS (2017); Tjernberg, *supra* note 8.

16. For further descriptions of the varieties, see THE SOCIAL CONTRACT FROM HOBBS TO RAWLS (David Boucher & Paul Kelly eds., 1994).

individual taxpayer to vote in elections at both the municipal and general level in order to influence tax legislation and public spending.¹⁷ Whether a taxpayer invokes this right or not is of less importance.

In a Nordic welfare context, the social contract not only includes voting privileges but also access to the welfare system. As such, there is the notion of a fiscal contract in which the state may utilize its taxing ability while in return offering the taxpayer access to the welfare system in addition to the right to vote as a means to influence fiscal matters of the state (tax legislation and public spending). Despite the lack of a clearly expressed contract between state and taxpayer, there is a generally accepted notion of a fiscal contract in Nordic welfare states as these welfare systems are legitimized upon a fair application of the ability to pay principle (progressive taxation that matches the taxpayers income) as an outcome of vertical equity primarily influenced by Rawls and Wicksell.¹⁸ For instance, payroll taxes in Sweden are levied in order to finance social security, yet these contributions are not earmarked for the individual taxpayer, and, as such, the link between potential benefits and taxes paid is weak yet accepted. Therefore, this Article only considers income taxation and corresponding payroll taxes when applying social contract theory. This is partially as a result of the contractual exchange in the Nordic welfare state context and partially as a result of income taxes being the only taxes in which the taxpayer historically has given his or her expressed consent.¹⁹

III. CASE STUDY

Initially, this case study comprises a set of taxpayer groups, all of them applied continuously throughout the study in order to facilitate the description and analysis of the applicable legal frameworks (taxation, welfare benefits, and voting). They therefore act as a red thread or a map across the three regimes of taxation, voting, and benefits. Specifically, this Article considers six categories of Swedish taxpayers based upon general taxpayer archetypes (see the chart below). These six categories

17. Naturally, one could link this to the possibility of running for office as another aspect of democracy, but this is not dealt with in this Article.

18. This link is discussed in Swedish research such as GUNNARSSON, *supra* note 8, and Tjernberg, *supra* note 8.

19. PETER HARRIS, *INCOME TAX IN COMMON LAW JURISDICTIONS: FROM THE ORIGINS TO 1820*, at 30–31 (2006).

should by no means be considered exhaustive as they are fairly broad categories, which could easily be divided into numerous subcategories. Some overlap between these categories is also to be expected as a result of their general nature. However, for the purposes of this Article, no further separation of the categories should be needed.

Labelling	Tax Residence, Work Situation, and Citizenship Background
Taxpayer A (benchmark)	<i>Swedish citizen, working solely in Sweden, and earning no incomes from abroad.</i>
Taxpayer B (non-resident foreigner)	<i>Non-resident (foreigner and non-citizen) working temporarily in Sweden, i.e., less than six months.</i>
Taxpayer C (resident foreigner)	<i>Resident (foreigner and non-citizen) working in Sweden on a permanent basis, i.e., with the ambition of settling in Sweden.</i>
Taxpayer D (cross-border worker)	<i>Cross-border worker, Swedish citizen working in Norway or Denmark solely (alternatively, in both Sweden and the cross-border state).</i>
Taxpayer E (immigrant)	<i>Immigrant permanently living in Sweden and awaiting citizenship, working solely in Sweden (alternatively, paperless living in Sweden).</i>
Taxpayer F (expatriate)	<i>Swedish citizen, permanently residing abroad, receiving pension from Swedish source (alternatively, earning no income in Sweden and as a result paying no taxes).</i>

IV. TAXATION IN SWEDEN

Tax law and social insurance law in Sweden are strongly linked. One could see them as two sides of the same coin; one collects and the other distributes. Despite the relationship, they are designed according to different policies, resulting in natural mismatches between the

underpinning principles, definitions, rules, and outcomes. For instance, the giving of welfare benefits is considered to be constant and based upon individual needs, while the taking through taxation is based upon the ability to pay principle and as such progressive and all encompassing.²⁰ The Swedish tax system as a whole is based upon the function of a tax being an involuntary contribution without any benefit being received in return. Taxes in Sweden are instead, as of the latest tax reform in the 1990s, legitimized through the notion of the state utilizing the revenues efficiently in addition to designing taxes upon principles such as tax neutrality, the ability to pay, and legality. The area of social insurance law is, on the other hand, founded on sociopolitical goals strongly linked to work strategy, population, equity, and the burden to provide.²¹

Furthermore, some clarifications must be done with regard to taxes included in this study. Taxpayers may contribute to state finances through both direct and indirect taxes. The Swedish Income Tax Code (ITC) states that income tax is paid through both municipal and state tax; the former is only applicable to employment income while the latter is applicable to both employment and business income in addition to capital income.²² The municipal tax is progressive and applies to employment income up to a certain threshold (490,700 SEK in 2019).²³ Employment income above the threshold is taxed progressively in accordance to both municipal and state tax. Individuals in Sweden will also contribute to indirect taxes through consumption. Not only do employees pay taxes on their income, the Swedish Social Insurance Contributions Act (SICA) obliges Swedish employers to pay payroll taxes on the incomes of their employees.²⁴ These payroll taxes correspond to approximately 34–35% of gross salary.²⁵

20. ERHAG, *supra* note 8, at 84.

21. GUNNARSSON, *supra* note 8.

22. 1 ch. 3 § INKOMSTSKATTELAG (Svensk författningssamling [SFS] 1999:1229).

23. For information regarding thresholds, see *Skiktgränser, brytpunkter, prisbasbelopp m.m.*, SKATTEVERKET, <https://www.skatteverket.se/download/18.309a41aa1672ad0c8377632/1545212867218/skiktgranser-brytpunkter-prisbasbelopp-2019.pdf> (last visited May 22, 2020) (information regarding income thresholds and municipal tax).

24. 2 ch. 1 § SOCIALAVGIFTSLAG (Svensk författningssamling [SFS] 2000:980).

25. Fredrik Carlgren, *Arbetsgivaravgift*, EKONOMIFAKTA, <https://www.ekonomifakta.se/Arbetsgivaravgift> (last updated May 11, 2020).

As a result, individuals may contribute to state finances through a variety of income taxes. An inclusion of all these taxes would benefit the analysis of this study. One example is a discussion referable to the immigrant taxpayer group as these individuals may be paying taxes such as VAT while not paying employment income taxes and social security contributions (the Swedish employer pays these contributions through payroll taxes) or, alternatively, may be contributing these taxes but under another identity due to their immigrant status and working permit. However, only direct taxes, specifically employment income taxes along with payroll taxes, will be included due to the limited format of this Article. For example, an individual spending a shorter time in Sweden while contributing through indirect taxes but not income taxes and payroll taxes would not have a legitimate claim to welfare benefits. As a result, such an individual may contribute taxes without receiving anything in return. This illustrates a mismatch in the contractual exchange due to a lack of congruence, yet mismatches such as these will not be dealt with more extensively in this study (see previous discussion on delimitations).

The first step when considering Swedish tax liability is to determine whether the taxpayer is subject to limited or unlimited taxation. Domestic tax rules determine unlimited taxation in accordance to three criteria: (1) residence,²⁶ (2) habitual abode,²⁷ and (3) essential links, or as it occasionally is referred to, considerable ties.²⁸ These criteria assist in determining the strength of the assessed individual's links to Sweden when applying the residence principle. If considered liable for unlimited taxation, the individual is taxed on his or her global income—i.e., the sources of income stemming from both Sweden and abroad.²⁹ If considered liable for limited taxation, the individual is only taxed on income sources stemming from Sweden. The first criterion, residence, clarifies that those individuals who are living in Sweden, and who as such are registered in a Swedish municipality in accordance to the Swedish Population Registration Act (SPRA), are to be considered as liable for unlimited taxation.³⁰

26. 3 ch. 3 § no. 1 INKOMSTSKATTELAG (SFS 1999:1229).

27. *Id.* at 3 ch. 3 § no. 2.

28. *Id.* at 3 ch. 3 § no. 3.

29. *Id.* at 3 ch. 8 §.

30. Rules covering registration are found in 6–13 §§ FOLKBOKFÖRINGSLAGEN (Svensk författningssamling [SFS] 1991:481).

The second criterion, habitual abode, is less straightforward in its application. Preparatory works to SPRA suggests that a stay for a minimum of six months should result in the individual being considered to have his or her habitual abode in Sweden and as such to be liable for unlimited taxation.³¹ The Swedish Tax Agency has clarified that it is of less importance whether this stay takes place in the same year and has further stated that several shorter stays including breaks between should not constitute habitual abode.³² Swedish case law assists in clarifying the current legal position with regard to shorter stays in Sweden. For instance, the Supreme Administrative Court stated in RÅ 1997 ref. 25 that a Dutch citizen who was CEO of a Swedish company and who had his family and residence in the Netherlands still could be considered to have his habitual abode in Sweden as he was stationed in Sweden and resided in Sweden Monday to Friday during normal work weeks. The fact that he spent the weekends in his Dutch residence in addition to occasionally spending time at the company's offices in Norway and Denmark did not weaken the presumption of him having his habitual abode in Sweden. The Supreme Administrative Court clarified this further in RÅ 2008 ref. 16 that a Swedish doctor who regularly spent two weeks in Sweden and two weeks abroad during an 18-month period still could be considered to have his habitual abode in Sweden with reference to his regular stays.

The third and final criterion, essential links, is regulated through Chapter 3, section 7 of the ITC, which lists ten conditions that may result in the individual being liable for full taxation due to the strength of his or her link to Sweden. This criterion is even less straightforward in its application and has as a result been thoroughly dealt with by the Administrative courts, administrative case law stemming from the Swedish Tax Agency, and the Swedish Tax Committee, in addition to the legal doctrine. No elaborate description of these ten conditions will be done other than briefly describing them and illustrating some of their applications. They are: (1) if he or she has Swedish citizenship, (2) the length of his or her stay in Sweden, (3) if he or she is currently

31. See BOSÄTTNINGSBEGREPPET—SKATTERÄTTLIGA REGLER FÖR FYSISKA PERSONER, SOU 1997:75; Prop. 1927:102, app. 3, at 46 *et seq.*

32. See, for instance, Skatteverkets ställningstagande 2005-11-15, Krävs 78 övernattningar för stadigvarande vistelse?, dnr 131 612166-05/111, in addition to Skatteverkets ställningstagande 2005-02-14, Vad är "tillfälligt avbrott" i en stadigvarande vistelse?, dnr 130 92654-05/111.

residing on a more permanent basis abroad, (4) if he or she is currently spending time abroad for studies or health reasons, (5) if he or she owns a residence accommodated for living all year around, (6) if he or she has any immediate family in Sweden, (7) if he or she is conducting any business activities in Sweden, (8) if he or she is financially engaged in Sweden through the possession of assets that directly or indirectly allows him or her to have an essential influence in Swedish business, (9) if he or she has any real estate in Sweden, and (10) similar conditions. An individual who fulfills one of these conditions is not automatically considered liable for full taxation. There is no ranking system attached to the conditions. A more holistic approach must be applied, resulting in a more individual assessment of the taxpayer and his or her situation in question.³³ This lack of ranking and lack of guidance would be one of the reasons for the difficulty in applying the criterion of essential links and, as such, for the extensive amount of case law. Naturally, the increasing globalization and the increase in taxpayer mobility adds to the complexity. Nevertheless, the Supreme Administrative Court has stated in its case law that some conditions weigh more heavily than others, namely, if he or she is currently residing on a more permanent basis abroad, if he or she has any immediate family in Sweden or if he or she is conducting any business activities in Sweden.³⁴ Finally, in order to combat tax evasion through exits under pretense, section 2 of the paragraph (Chapter 3, §3 ITC) regulates a so-called reversed burden of proof, which requires the individual to prove to the Swedish Tax Agency for the first five years after exit that he or she does not fulfill any of the ten conditions. This burden of proof is applicable to those either who hold Swedish citizenship or who have lived in Sweden for more than ten years before exiting.

If an individual does not fulfill any of the three criteria (residence, habitual abode, or essential links), he or she is automatically considered to be liable for limited taxation.³⁵ An individual subject to limited taxation in Sweden may, as a result of EU case law,³⁶ choose to

33. See case law such as Högsta förvaltningsrättens årsbok [HFD] 2013 ref. 4.

34. For further reading, see the extensive amount of publications on the topic written by Katja Cejic, UPPSALA UNIVERSITET, <https://katalog.uu.se/empinfo/?id=N1-669> (last visited May 22, 2020).

35. 3 ch. 17 § INKOMSTSKATTELAG (SFS 1999:1229).

36. C-169/03, Wallentin v. Riksskatteverket, 2004 E.C.R. I-06443.

be taxed in accordance with the ITC or the Swedish Special Income Tax Act (SITA).³⁷ If taxed in accordance to the ITC, due to unlimited taxation or by choice, the individual is subject to a progressive municipal tax in addition to state tax if the income exceeds the mentioned threshold of 490,700 SEK. The individual will in return be entitled to tax deductions in accordance with those regulated in the ITC—e.g., basic deductions and deductions for commuting. An individual subject to limited taxation is also entitled to be taxed in accordance to the SITA if she or he so chooses. SITA applies a flat tax rate of 25% and allows no deductions.³⁸ Sweden justifies lower taxation on source income with reference to the benefit theory—i.e., those who benefit more from government expenditures should pay more taxes to support the expenditures.

As a result,³⁹ taxpayers A (benchmark), C (resident foreigner), and E (immigrant) are all subject to unlimited taxation as a result of them being considered resident in accordance to ITC Chapter 3, section 3, number 1. Taxpayer B (non-resident foreigner) does not fulfill the conditions in the mentioned paragraph and is subject to limited taxation. He or she may therefore choose whether he or she is to be taxed in accordance with the ITC or SITA on his or her Swedish income sources. Taxpayer D (cross-border worker) is subject to unlimited tax liability in Sweden in accordance to the Nordic tax convention if he or she works in Norway.⁴⁰ If he or she instead works in Denmark, he or she is subject to source taxation in Denmark in accordance to the Öresund treaty.⁴¹ Taxpayer F (expatriate) is either subject to limited taxation on his or her Swedish pension payments or subject to no taxation on these pension payments depending on the outcome of the applicable tax treaty.⁴² The criterion of essential links may be relevant in relation to the

37. LAG OM SÄRSKILD INKOMSTSKATT FÖR UTOMLANDS BOSATTA (Svensk författningssamling [SFS] 1991:586).

38. *Id.* at 7 §.

39. For a more pedagogical overview of all taxpayers in regard of taxation, access to welfare benefits and voting, *see infra* Appendix.

40. LAG OM DUBBELBESKATTNINGSAVTAL MELLAN DE NORDISKA LÄNDERNA (Svensk författningssamling [SFS] 1996:1512).

41. *Id.* at 4 app. 1 art.

42. For instance, Article 18 of the 2002 tax treaty between Sweden and Portugal results in Swedish pension payments being untaxed due to the tax treaty allocating taxation rights to Portugal and Portuguese domestic tax

expatriate, depending on the individual situation. For example, has the individual who exited ten years ago settled permanently abroad? Or is the individual a tax refugee who is simply tax planning in order to get the most out of his or her pension? In this context, such an investigation is of less importance.

V. ACCESS TO THE SWEDISH WELFARE SYSTEM

Despite their connections as two sides of a revenue collection and distribution system, tax law and social insurance law in Sweden differ on several accounts due to their parallel but uncoordinated development.⁴³ Criteria and categories utilized for determining tax liability differ from those utilized when determining distribution of welfare benefits. Yet, both tax liability and benefit distribution are based on territorial affiliation. Swedish taxes are not earmarked, making it difficult to argue how, when, or if the contractual exchange could be invoked. Social insurance law, comprising rules on the distribution of welfare benefits, is therefore essential when describing and analysing the contractual exchange in this study.

Initially, some fundamentals regarding social insurance law in Sweden need to be described. In 2010, Sweden reformed the area of social insurance law in order to collect the vast amount of legislation dealing with welfare benefits under one overarching umbrella, the Social Insurance Code (SIC).⁴⁴ The new code seeks to coordinate social insurance legislation and, as a result, to facilitate the application of material rules and lessen the risk of incoherent application of common rules and terminology within social insurance law. In total, 31 legislations within social insurance law were integrated and constitute, as a result, the most comprehensive legal code in the Swedish system. The code in itself contains 123 chapters and over 1800 paragraphs. This Article will not deal with this wide-ranging legal framework comprehensively but will instead focus on rules specifically covering access to welfare benefits.

law not covering the payments. *See infra* note 70 for a discussion of 2019 developments on this issue.

43. For a more detailed account of this development, see HÅKAN GUSTAFSSON, RÄTTENS POLYVALENS. EN RÄTTSVETENSKAPLIG STUDIE AV SOCIALA RÄTTIGHETER OCH SÄKERHET (2002).

44. SOCIALFÖRSÄKRINGSBALKEN [SFB].

As a start, SIC applies two criteria when granting access to welfare benefits:⁴⁵ (1) Swedish domicile (residence-based benefits that are of a social nature),⁴⁶ and (2) the payment of fees⁴⁷ and/or income taxes that can be accounted for (work-based benefits that are of a more general and discretionary nature).⁴⁸

The first criterion, which grants access to residence-based benefits such as parental allowance, childcare benefits, and guaranteed pensions, are provided to those who have their permanent domicile in a Swedish municipality. The criterion bears a resemblance to previously described fiscal residence because it is determined with reference to the individual registered in a Swedish municipality, whether or not the residence is the individual's primary residence.⁴⁹ It would therefore be rather straightforward for a Swedish citizen to access residence-based benefits. A foreigner who has moved to Sweden must, in order to fulfill the domicile criterion, stay in Sweden for at least a year.⁵⁰ Unlike the concept of registering in a Swedish municipality when determining fiscal residence, this criterion is more subjective in nature as the focus lies in the circumstances surrounding the length of the visit—e.g., prisoners in Sweden are exempted from receiving these benefits regardless of their stay in a Swedish prison for longer than a year.⁵¹

Worth noting in this context would also be that the Swedish legislature has chosen to exclude foreigners given Swedish residence permits based upon temporary protection and who are expected to stay in

45. Additionally, some welfare benefits require the individual to pay a fee, but these will not be dealt with in this Article.

46. SOCIALFÖRSÄKRINGSBALKEN [SFB] 5.

47. The differentiation between fees and taxes has been widely discussed within Swedish legal doctrine. Theoretically, there is a clear line between the two; that is, a fee is, unlike a tax, earmarked for a certain purpose. However, the line between the two is in reality rarely clear. It is generally accepted, since the introduction of the 1991 tax reform in Sweden, that social fees are to be considered partially taxes and partially fees. See, for instance, Erik Dahmén, *Tax or Charge. What Is the Difference, If Any?*, in INTERNATIONAL STUDIES IN TAXATION: LAW AND ECONOMICS: LIBER AMICORUM LEIF MUTÉN 105 (Gustaf Lindencrona et al. eds., 1999).

48. SOCIALFÖRSÄKRINGSBALKEN [SFB] 6.

49. *Id.* at 5:2 (in addition to Karnov legal commentary).

50. *Id.* at 5:3.

51. *Id.* (applicable Karnov legal commentary).

Sweden for less than three years.⁵² As a result, a foreigner needs to have a territorial affiliation with Sweden for at least a year in order to be eligible for residence-based benefits. Additionally, the foreigner may be denied access depending on the circumstances of their stay in Sweden. Paperless individuals in Sweden will, in accordance with this reasoning, not be eligible for residence-based benefits as they cannot prove the length of their stay due to the absence of registration or a civic personal number. Even if they would be able to prove the length of their stay, the Swedish government could, based upon the reasoning of the circumstances surrounding the stay, argue that the stay in itself is unlawful and as such would not constitute any claim to welfare benefits.

The second criterion grants access to work-based benefits, such as sickness allowance, income-based pension, and occupational injury compensation, to those who have Swedish employment and as such contribute with taxes on employment income in addition to the employer paying corresponding payroll taxes.⁵³ Still, this criterion does not expressly require the actual payment of taxes in order to receive benefits. Instead, it is sufficient that the individual may prove it likely that he or she has had an income about which the presumption is that income taxes and payroll taxes have been paid. The easiest way to verify this would be to see to the declared income of the individual, which is easily facilitated due to the enforcement of civic personal numbers in Sweden.

Regarding the contractual exchange, some lacking congruence may already be observed as access to the welfare system is not primarily based upon the payment of taxes or citizenship, but instead territorial affiliation. This lack of congruence also illustrates how an individual who contributes no taxes (direct or indirect) is entitled to some welfare benefits if he or she fulfills the domicile criterion (stay for at least one year). Additionally, everyone in Sweden, citizens and foreigners, are entitled to utilize public services such as infrastructure because there is no possibility of exercising control over who would be entitled to use the services and who would not be. Fiscally financed direct benefits, such as contributions, elderly care, and childcare, are easier to control and are only provided to individuals who have paid taxes, because these are classified as work-based benefits.

52. Prop. 2001/02:185 Uppehållstillstånd med tillfälligt skydd vid massflykt.

53. SOCIALFÖRSÄKRINGSBALKEN [SFB] 6.

Furthermore, the international dimension must also be considered in this context. Welfare systems within the Nordic states differ from each other, yet, as a result of the strong unity between the Nordic states, these states agreed as early as in 1955 on a multilateral social security convention.⁵⁴ The Nordic convention aims to ensure that all individuals residing in the Nordic states have access to a minimum level of welfare benefits. Additionally, social security contributions within the EU may not have been harmonized, yet they have been coordinated through EU Regulation 883/2004.⁵⁵ The welfare systems within the individual Member States differ significantly in regard to scope, inclusion, legal principles, and financing. As a result, the regulation attempts to remove barriers to the internal market in order to promote the free movement of workers rather than addressing the underlying issue as to why these systems vary and clash. Its primary function is to coordinate the social security contributions between Member States, setting a minimum level of social services provided by the Member States in addition to allocating the responsibility for providing social security.⁵⁶ The regulation offers some main features: (1) the individual is covered by the legislation in only one state at a time and pays social security contributions in one state, and (2) the individual is entitled to the same rights and obligations as the national of the state where he or she is covered, an outcome of the principles of equal treatment and non-discrimination. As a result, the EU regulation assists in providing individuals with borderless social security as an attempt to integrate the internal market further. Lastly, the former EU regulation relied heavily on the notion of *lex loci laboris*, i.e., the loss of income principle.⁵⁷ This may be seen as an expression of the social contract as it justifies work and payment of taxes as the moral and economical foundation for access to social insurance coverage. The new EU regulation is more inclusive as it extends access

54. LAG OM NORDISK KONVENTION OM SOCIAL TRYGGHET (Svensk författningssamling [SFS] 2013:134).

55. Regulation (EC) 883/2004, of the European Parliament and the Council of 29 April 2004 on the Coordination of Social Security Systems, 2004 O.J. (L 166) 1.

56. For a more elaborate discussion on this topic, see ERHAG, *supra* note 8, at 84; *see also* GUNNARSSON, *supra* note 8.

57. Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the Application of Social Security Schemes to Employed Persons and Their Families Moving Within the Community, 1971 O.J. (L 149) 2.

to social insurance coverage to those with EU citizenship and not only those who work within the EU and suffer loss of income in accordance to the *lex loci laboris* principle.⁵⁸ This emphasizes the significance of citizenship rather than the fulfilment of the contractual exchange in addition to implying another informal citizenship.

The EU regulation will primarily be applicable to taxpayers B (non-resident foreigner), D (cross-border worker), and E (immigrant) in this study. Taxpayers B and E are covered if they originate from another EU state and not from a state outside the EU. Taxpayer D will also be covered by the regulation, as this individual will be included in two systems due to either working solely in the source state or alternatively working in both the residence state and the source state at the same time. However, this is only applicable if taxpayer D works in Denmark as Norway is not an EU member state. In such a case, the individual will be covered by the Nordic social security convention,⁵⁹ an extension of the EU regulation. Of importance in this context is whether the individual is associated with the Swedish welfare system or not.

As a result, taxpayers A (benchmark), C (resident foreigner), and E (immigrant) have full access to the Swedish welfare system, i.e., they have access to residence-based benefits due to them fulfilling the domicile criterion in addition to work-based benefits due to them having Swedish employment (assuming that taxpayer E is working). Regarding taxpayer E, there is also the possibility of this being a so-called paperless individual (someone without a residence permit and Swedish civic personal number), which would result in him or her not being granted access to these benefits as he or she would not be able to prove their rights as they don't have a civic personal number. Taxpayer B (non-resident foreigner) will have limited access to the Swedish welfare system. He or she will not fulfill the domicile criterion and as such will not be eligible to receive residence-based benefits. However, he or she will be eligible for work-based benefits as he or she has a Swedish employment. With regard to access to work-based benefits, the most likely outcome would be for the individual to continue being covered under the welfare system of his or her residence state as the individual is only temporarily working in Sweden.

Taxpayer D (cross-border worker) is more complex. The cross-border worker will be eligible for residence-based benefits as he or she

58. Regulation (EC) 883/2004, *supra* note 55.

59. LAG OM NORDISK KONVENTION OM SOCIAL TRYGGHET (SFS 2013:134).

will fulfil the domicile criterion. The cross-border worker in Norway will also be eligible for work-based benefits as he or she is paying Swedish taxes on employment income as a result of the Nordic tax treaty allocating the taxation rights to Sweden. The cross-border worker who works in Denmark would not normally be eligible for work-based benefits as the Öresund treaty allocates the taxation of employment income to Denmark, yet the EU regulation facilitates D still having access to these benefits in the residence state. Taxpayer F (expatriate) will not be eligible for residence-based benefits as he or she has his or her permanent domicile in another state. Yet, the individual could be eligible for work-based benefits if Sweden has a taxing right with regard to pension payments.

In conclusion,⁶⁰ if we add the dimension of taxation to the distribution of welfare benefits, we may conclude that taxpayers A (benchmark), C (resident foreigner), and E (immigrant) would be the only ones liable for full taxation and have full access to welfare benefits. Taxpayer D may be liable for full taxation and have full access to welfare benefits if he or she works in Norway. However, if D works cross-border in Denmark, he or she will be liable for Danish source taxation in accordance to the Öresund treaty. In addition, the EU social security regulation will allocate the payment of social security contributions to the source state (Denmark) while allocating the distribution of benefits, such as healthcare and unemployment benefits, to the residence state (Sweden). Taxpayer B (non-resident foreigner) would be subject to limited taxation on source income while also having limited access to welfare benefits. Furthermore, taxpayer F (expatriate) would, depending on the applicable tax treaty and domestic tax legislation in the residence state, be either subject to limited taxation or no taxation while having limited access or no access to welfare benefits depending on the tax situation.

With regard to taxation and access to welfare benefits for cross-border workers in Norway and Denmark, we can recognise that there is a mismatch due to a lack of coherence. Employment income from a Norwegian source is taxed in Sweden due to the application of the residence principle while employment income from a Danish source is taxed in Denmark due to the application of the source state principle. The application of the source state principle to cross-border workers residing in Sweden and working in Denmark results in these individuals being liable for taxation in Denmark despite them not having any territorial

60. See *infra* Appendix.

affiliation or claim to benefits. Arguably, this would be a result of involved states intentionally agreeing on how to divide the taxing rights between them through tax treaties and not through the domestic systems and policies. Additionally, taxpayer E could also be an undocumented immigrant who would theoretically be liable for full taxation in accordance to the criterion of permanent stay without any legitimate claim to welfare benefits as he or she will not be able to prove income or length of stay, as they are undocumented and without Swedish civic personal number. Once again, there is a mismatch between tax law and social insurance law. A congruent outcome of this could instead be that territorial affiliation for full tax liability also results in full access to the welfare system and by doing so includes the notion of permanent stay in the domicile criterion that is applied within social insurance law. Finally, the taxation and distribution of welfare benefits referable to the remaining taxpayers (A, B, C, and F) could be considered coherent.

VI. VOTING IN SWEDEN

This Article describes and analyses the possibility for individual taxpayers to influence tax legislation and public spending through voting. In order to understand how taxpayers may exercise such influence, it is necessary to review the power to tax and vote. Sweden is considered a strong unitary state. The mandate to legislate taxes resides exclusively on the state level as the Swedish constitution⁶¹ prohibits municipalities from enacting taxes of their own through the formally expressed principle of legality. In contrast to this, Swedish municipalities still have a strong position, as they are free to set their own municipal tax rates. These rates are proportional and normally somewhere between 29–35%,⁶² depending on the fiscal needs of the individual municipality.

Furthermore, some fundamentals regarding Swedish citizenship may also be necessary to convey in order to fully explain the features of voting in Sweden. An individual may obtain Swedish citizenship on three different grounds: (1) through birth (*jus sanguinis* and *jus soli*),

61. REGERINGSFORMEN [RF] 1:4.

62. *Totala kommunala skattesatser 2020, kommunvis*, SCB, <https://www.scb.se/hitta-statistik/statistik-efter-amne/offentlig-ekonomi/finanser-for-den-kommunala-sektorn/kommunalskatterna/pong/tabell-och-diagram/totala-kommunala-skattesatser-2020-kommunvis/> (last updated January 17, 2020).

(2) through notification, and (3) through application.⁶³ As of 2001, it is possible for individuals to have dual citizenship in Sweden.⁶⁴ The general rule for foreigners to obtain a Swedish citizenship would be to establish his or her residence in Sweden and apply for permanent residence after five years. If the foreigner cohabitates or marries a Swedish citizen, he or she may apply for Swedish citizenship after three years given that they have been together for a minimum of two years. In this context, it is less important to know how you obtain a Swedish citizenship than to know what rights the citizenship conveys. Swedish citizenship is mandatory for individuals who wish to participate in general elections or desire to become judge, prosecutor, or police.

As a result, noncitizens in Sweden are not allowed to participate in general elections. They may, on the other hand, be allowed to vote in municipal elections and influence public spending on a municipal level—e.g., care, schools, public administration, education, and social protection—under the condition that they fulfil the territorial requirement. Noncitizens from an EU state are in such a case obliged to register their residence in the municipality and have done so for a minimum of one year, while noncitizens from a state outside of the EU are obliged to have been registered for a minimum of three years.

In addition to Swedish law, one must, similar to legal regimes dealing with taxation and access to welfare benefits, also take into account the dimension of EU law. Citizens from EU Member States are entitled to vote in local elections in other EU Member States as a result of an EU directive aimed at facilitating the free movement of workers.⁶⁵

As a result, taxpayers A (benchmark), C (resident foreigner), and D (cross-border worker) are allowed to participate in both municipal and general elections. In the case of taxpayer C, this requires the taxpayer to be either a citizen from an EU state registered in a Swedish municipality or a citizen from a state outside of the EU who has been registered in a Swedish municipality for the last three years. Taxpayer E (immigrant) is not allowed to participate in the general election but

63. LAG OM SVENSKT MEDBORGARSKAP (Medborgarskapslagen [MedbL] 2001:82).

64. *Id.*

65. Directive 94/80/EC of 19 December 1994 Laying Down Detailed Arrangements for the Exercise of the Right to Vote and to Stand as a Candidate in Municipal Elections by Citizens of the Union Residing in a Member State of Which They Are Not Nationals, 1994 O.J. (L 368) 38.

may, if fulfilling previously discussed conditions for taxpayer C, vote in the municipal election. Taxpayer B may possibly be entitled to vote in the municipal election if he or she originates from an EU member state, yet not the general election. A temporary worker originating from a state outside of the EU will not be entitled to vote in any election until having been registered in a Swedish municipality for a minimum of three years (resulting in access to voting at the local level) or receiving Swedish citizenship (resulting in access to voting at the state level). Finally, taxpayer F (expatriate) is not allowed to participate in municipal elections as he or she would be registered in a municipality outside of Sweden. He or she may, on the other hand, participate in the general election with reference to his or her Swedish citizenship.

In conclusion,⁶⁶ if we add the dimensions of taxation and the distribution of welfare benefits to voting privileges, we may initially conclude that there are some additional mismatches. Taxpayers A (benchmark) and D (cross-border worker) are the only taxpayers with full access to voting privileges. In the case of taxpayer D, this could be somewhat complex if that individual is working in Denmark. The cross-border worker will live in Sweden and have a claim to welfare benefits in Sweden while working and paying taxes in Denmark due to the application of the source state principle. Enjoying the right to vote in Sweden allows the individual to influence the society in which he or she lives, yet it excludes the possibility of influencing tax legislation and public spending in Denmark, where he or she works, which results in a weakening of congruence and the contractual exchange. Furthermore, taxpayers A and D have their territorial affiliation to Sweden unlike F, who is permanently residing in another state. This exemplifies yet another mismatch and lack of coherence when considering territorial affiliation. A more coherent application would be for foreigners, such as taxpayers C (resident foreigner) and E (immigrant), to have full voting privileges as they are territorially affiliated. However, as this study has shown, less emphasis is placed on territorial affiliation and the payment of taxes or the inclusion in the welfare system as citizenship trumps all of these factors. Additionally, the possession of an EU citizenship (citizenship in another EU state) or a Nordic citizenship (citizenship in another Nordic state) provides additional privileges compared to those originating from outside the EU, as the former will gain access to voting rights at local level directly due to the EU directive and the latter

66. See *infra* Appendix.

will be entitled to dual citizenship, which gives them voting rights in two Nordic states simultaneously.

VII. DISCUSSION ON IDENTIFIED MISMATCHES BETWEEN THE APPLICATION OF LEGAL FRAMEWORKS COMPRISING TAXATION, ACCESS TO WELFARE BENEFITS, AND VOTING

Initially, based upon the discussions in this Article, it may be argued that citizenship establishes rights and obligations and, ultimately, is inclusive. However, noncitizens cannot enjoy equal rights and obligations regardless of them fulfilling the contractual exchange through the payment of taxes. One might say that these foreigners are paying full membership fees yet are not given full membership privileges as they lack formal citizenship. This study illustrates, mainly through taxpayer categories C (resident foreigner) and E (immigrant), that noncitizens in Sweden may in some cases vote in municipal elections even though they are still excluded from participation in general elections. On the other hand, Taxpayer B (non-resident foreigner) is completely without any voting privileges. These foreigners may as a result, at best, have a limited possibility of influencing tax legislation or public spending despite them being liable for taxation in Sweden in addition to being eligible for welfare benefits. In the extreme case, an individual may live in Sweden for the greater part of his or her life,⁶⁷ while paying taxes and receiving welfare benefits as these obligations and rights are dependent on territorial affiliation rather than citizenship. However, he or she may still be excluded from voting privileges (in the general election) as these are still dependent on citizenship instead of on territorial affiliation. This exemplifies how certain taxpayer groups are excluded from voting rights in addition to a mismatch between legal systems if one were to consider the contractual exchange and congruence.

Secondly, if taxpayers who live in Sweden, pay taxes, and receive welfare benefits are not allowed to vote, should taxpayers such as E (expatriate), who no longer live in Sweden in addition to not paying taxes in Sweden (due to applicable tax treaty and domestic legislation in the source state) and having no claim to welfare benefits, still be allowed to vote simply because they have Swedish citizenship? Besides the apparent lack in congruence with regard to the contractual exchange,

67. For instance, an individual who has arrived in Sweden at an early age but has chosen not to apply for Swedish citizenship.

one could also argue that a foreigner who lives in Sweden on a more permanent basis would be more entitled to vote and as such actively influence the society than an individual who no longer is invested in Sweden, financially or otherwise.⁶⁸

Furthermore, taxpayer group B individuals (non-resident foreigners) would still have full access to voting rights in their residence state due to them maintaining their original citizenship. The residence state would also be entitled to tax the lion's share (depending on applicable domestic tax rules and relevant tax treaty) of the individual's worldwide income, resulting in taxpayer B still influencing tax legislation and public spending referable to his or her taxes. As such, it could be argued that there is some congruence with respect to taxes paid by taxpayer B and his or her voting privileges. These privileges do not necessarily need to be provided by Sweden as the taxpayer may factually pay taxes on the Swedish income in the residence state due to the application of domestic tax rules and the relevant tax treaty, making it redundant to have voting rights in Sweden. Additionally, taxpayer group B may also *indirectly* influence their tax situation in Sweden if one were to take into consideration the tax treaty context. In other words, these individuals vote in the residence state, which effectively provides their representation in tax matters in the source state when tax treaty negotiating with the other state.

With respect to taxpayer group C (resident foreigners), these individuals would indeed enjoy voting privileges in their original state similar to taxpayer B if they have chosen to keep their original citizenship. However, there would be a more apparent lack of congruence regarding the payment of taxes and the possibilities of influencing tax legislation and public spending in Sweden, as they would have their fiscal residence in Sweden due to the permanent nature of their stay. Indirect influencing through the original state as agent for tax treaty negotiation would also be of less importance due to them having their fiscal residence in Sweden.

Taxpayer group D (cross-border workers) is one of the more complex groups, as has been argued in previous sections. Some states have, as a result of the complexity, chosen to implement special solutions for citizenship and voting privileges. For instance, Denmark introduced in 2015 the possibility for a Swedish citizen, who has moved to

68. See LAWRENCE ZELENAK, *LEARNING TO LOVE FORM 1040: TWO CHEERS FOR THE RETURN-BASED MASS INCOME TAX* (2013).

Denmark, to apply for Danish citizenship while retaining his or her Swedish citizenship at the same time.⁶⁹ The statute also covers the reverse situation—i.e., a Danish citizen who lives in Sweden and who desires to have a Swedish citizenship while retaining the Danish one. Such a statute strengthens both coherence, as Swedish legislation also allows dual citizenships, and congruence since these individuals will have the possibility to vote in both states as they earn income from both states in the general case of cross-border workers in the Öresund.

Taxpayer groups such as E (immigrants) and F (expatriates) are even more complex mainly due to individual reasons. These two groups also effectively illustrate how social class impacts their obligations and rights. Swedish expatriates, such as pensioners, often maintain their Swedish citizenship when emigrating. These pensioners have generally chosen to emigrate due to tax planning issues—e.g., due to applicable domestic tax rules in Portugal combined with the tax treaty between Portugal and Sweden, Swedish pension payments are tax-free for those who have their fiscal residence in Portugal.⁷⁰ Maintaining their Swedish citizenship does not influence the determination of fiscal residence as citizenship alone is considered a substantially weak link when applying the Swedish criterion of essential links. As a result, they are entitled to vote in Swedish general elections regardless of the lack of territorial affiliation. Taxpayer group E on the other hand differs, as many of these individuals have not freely chosen to leave their state of origin. They may in fact have left their state of origin for a variety of reasons and now aim to establish a new life in Sweden. As a result, they have a territorial affiliation with Sweden with regard to both taxation and access to the welfare state, yet they are not entitled to vote due to the lack of citizenship. In theory, they could be excluded from voting rights in their state of origin depending on the circumstances of their leave. This renders them completely left out of the democratic process

69. BEKENDTGØRELSE AF LOV OM DANSK INDFØDSRET LBK nr 1029 af 10/07/2018 (Den.).

70. As of 2019, Sweden and Portugal have come to an agreement on a new tax treaty, which deals with the issue of Swedish pensions subject to double non-taxation. As a result, this issue will be resolved once the new tax treaty is implemented. Protocol Amending the Convention Between the Kingdom of Sweden and the Portuguese Republic for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, May 16, 2019.

in a global context (not having voting rights in any state) while still complying with the obligation to pay taxes.⁷¹

Moreover, these discussions lead to additional questions, which may not be answered in this Article. For instance, would it be a more coherent application of the rights and benefits of citizenship if those with dual citizenship would pay taxes in two states, rather than one, regardless of fiscal residence so they may enjoy voting privileges in both?

VIII. CONCLUDING REMARKS

To conclude, taxation and access to welfare benefits in Sweden are generally based upon territorial affiliation rather than citizenship. The promotion of citizenship for voting privileges not only nurtures mismatches due to lack of coherence and congruence with respect to the contractual exchange, but it also further conveys a value judgment that separates individual taxpayers. I would go so far as to argue that this separation is done with reference to social class in the global context. Wealthier taxpayers will either receive or keep their privileges despite, or even thanks to, their mobility, a strong contrast to those individuals who are mobile by circumstances and not by ability. As such, there is a need to further analyse the definitions, contents, and roles of both formal and informal citizenships—e.g., social, fiscal, and political citizenship.

71. Depending on the length of their present stay in Sweden, they could be eligible for participating in municipal elections as previously described in Part VI of this Article.

APPENDIX

Taxpayer	Taxation <i>Based on the residence principle of which the Swedish Income Tax Act applies three criteria (of which one must be fulfilled)</i>	Voting <i>Municipalities sets their own tax rates = some influence on taxation</i>	Welfare Benefits <i>Based on domicile (minimum level: 1 year in Sweden)</i>
Benchmark <i>Swedish citizen, working solely in Sweden and earning no incomes from abroad</i>	Unlimited taxation in accordance with Swedish Income Tax Code (ITC) Access to all deductions	Full access: Municipal election General election	Full access: Work-based benefits Resident based contributions
Non-Resident Foreigner <i>Non-resident (foreigner and non-citizen) working temporarily in Sweden</i>	Limited taxation in accordance to Swedish Special Income Act (SITA) No access to deductions May choose to be taxed in accordance to ITA	No access if originating from a state outside of the EU Limited access if originating from another EU state	Limited access: Work-based benefits
Resident foreigner <i>Non-resident (foreigner and non-citizen) working in Sweden on a permanent basis</i>	Unlimited taxation in accordance to Swedish Income Tax Code (ITC) Access to all deductions	Limited access: Municipal election but not general election	Full access: Work-based benefits Residence-based contributions

<p>Cross-border worker <i>Swedish citizen working in Norway or Denmark solely (alternatively in both Sweden and the other state)</i></p>	<p>Unlimited taxation in accordance to Swedish Income Tax Code (ITC) Alt. Employment income taxed in Denmark Access to all deductions Alt. No deductions</p>	<p>Full access: Municipal election General election</p>	<p>Full access: Work-based benefits Residence-based contributions</p>
<p>Immigrant <i>Permanently resident in Sweden and awaiting citizenship</i></p>	<p>Unlimited taxation in accordance to Swedish Income Tax Code (ITC) Access to all deductions</p>	<p>Limited access: Municipal election but not general election</p>	<p>Full access: Work-based benefits Residence-based contributions</p>
<p>Expatriate <i>Swedish citizen yet permanently residing in another state</i></p>	<p>Limited taxation in accordance to Swedish Special Income Act (SITA) or alternatively no taxation depending on the applicable tax treaty No access to deductions May choose to be taxed in accordance to ITC</p>	<p>Limited access: General election</p>	<p>Limited access: Work-based benefits Alternative: No access</p>
