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Tax Challenges and Solutions

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Cross-Border Workers and New Ways of Working

Tax Challenges and Solutions

CHRISTIAN SCHWARTZ

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The image shows Swedish Prime Minister Tage Erlander speaking with television host Lennart Hyland by videophone in 1969. At the time, the possibility of conducting a conversation at a distance by means of moving images still appeared futuristic. Today, video meetings are an everyday part of working life and one of the most visible expressions of remote work. The legal framework examined in this thesis, however, belongs largely to the same era as the image. Article 15 of the OECD Model Tax Convention already existed when the photograph was taken and has remained almost unchanged, even as the labour market has been transformed by digitalization, remote work and cross-border mobility without physical movement.

This thesis examines how international tax law responds to new ways of working. Its central focus is the taxation of employment income in cross-border situations, particularly where work is performed remotely or within organizational structures that do not fit traditional assumptions about where work takes place. Through four interrelated studies, the thesis analyses Article 15 of the OECD Model Tax Convention, its interaction with EU rules on social security coordination, and the treatment of cross-border workers in contexts such as remote work, hybrid work and European research infrastructures.



CHRISTIAN SCHWARTZ is a researcher and lecturer at the School of Economics and Management, Lund University. Cross-Border Workers and New Ways of Working is his doctoral thesis.

Cross-Border Workers and New Ways of Working –
Tax Challenges and Solutions

Cross-Border Workers and New Ways of Working

Tax Challenges and Solutions

Christian Schwartz



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Abstract: This thesis examines the taxation of employment income derived from cross-border work in light of new ways of working. Its central focus is Article 15 of the OECD Model Tax Convention, which allocates taxing rights over income from employment primarily on the basis of where the work is physically performed. The thesis asks whether this framework remains suitable in a labour market increasingly characterized by remote work, hybrid work and organizational structures in which work, financing and legal responsibility may be divided between several jurisdictions.

The thesis is written as a compilation thesis and consists of four articles together with an introductory chapter. The articles analyze different forms of cross-border work and different legal problems arising from them. These include the taxation of international consortium workers within European Research Infrastructure Consortia, the allocation of taxing rights for cross-border remote workers in light of the benefit principle, the Öresund Agreement as a possible model for hybrid work in the Nordic region, and the interaction between taxation and social security contributions in cases of cross-border telework.

The study shows that existing legal frameworks were not designed for a labour market in which mobility does not necessarily require physical movement. Article 15 continues to rely on physical presence as the central connecting factor, even though remote and hybrid work may separate the place where work is performed from the state in which the employer is located and where the employment relationship is organised. At the same time, EU social security coordination rules and bilateral arrangements, such as the Öresund Agreement, illustrate both the possibilities and difficulties of adapting legal frameworks to new working patterns.

The thesis concludes that the current rules give rise to structural tensions in the taxation and social security treatment of cross-border employment income. While no single reform can resolve all of these issues, more coherent solutions are needed to better reflect how cross-border work is organized, where employment income is generated, and how public systems are financed.

Key words: Tax law, international taxation, cross-border work, social security contributions, OECD, remote work, telework, European Research Infrastructure Consortia

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Cross-Border Workers and New Ways of Working

Tax Challenges and Solutions

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To Sara, Edith, Harry and Lilly

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Abbreviations

AM-bidrag	Arbejdmarkedsbidrag (Danish Labour Market Contribution)
BEPS	Base Erosion and Profit Shifting
CERN	European Organization for Nuclear Research
CJEU	Court of Justice of the European Union
COVID-19	Coronavirus Disease 2019
CRDS	Contribution pour le remboursement de la dette sociale
CSG	Contribution sociale généralisée
EC	European Community / European Commission (depending on context)
ECJ	European Court of Justice
EEA	European Economic Area
EEC	European Economic Community
EEG	European Economic Interest Grouping
ERIC	European Research Infrastructure Consortium
ESS	European Spallation Source
EU	European Union
GDP	Gross Domestic Product
HFD	Högsta förvaltningsdomstolen (Swedish Supreme Administrative Court)
IBFD	International Bureau of Fiscal Documentation
ITRN	International Tax Law Research Network
MLI	Multilateral Instrument
OECD	Organisation for Economic Co-operation and Development
OECD MC	OECD Model Tax Convention on Income and on Capital
OJ	Official Journal of the European Union
PE	Permanent Establishment
POEM	Place of Effective Management
RFE/RL	Radio Free Europe/Radio Liberty
SAL	Socialavgiftslagen (Social Insurance Contributions Act)
SFB	Socialförsäkringsbalken (Social Insurance Code)
SFL	Skatteförfarandelagen (Tax Procedures Act)
SINK	Särskild inkomstskatt för utomlands bosatta (Special Income Tax for Non-Residents)
TFEU	Treaty on the Functioning of the European Union
UN	United Nations
VAT	Value Added Tax
VCCR	Vienna Convention on Consular Relations
VCDR	Vienna Convention on Diplomatic Relations
VCLT	Vienna Convention on the Law of Treaties

Preface

Much can happen over the course of eight years. When work on this thesis began, the world had not yet experienced the pandemic that would lay the foundation for a new way of working remotely. That pandemic, and the subsequent development of cross-border remote work, came to shape this thesis. Whatever it was that triggered the pandemic, it would go on to influence my work for the following six years.

Much can also happen on a personal level over the course of eight years. For me, those years brought marriage and three children. Edith, Harry and Lilly, this thesis would probably have been completed earlier without your involvement, but it would also have lacked the developments that have taken place in the field in recent years. I thank you for this joyful delay.

Sara, you have been there the whole time and you have always been supportive. Your contribution over these eight years has been critical to the completion of this thesis, and you have been the one able to lift my spirits in my darkest moments of doubt during the writing process. Thank you for everything you do for me and for our family.

I am also grateful to my parents, who have always believed in me and always supported me. Sadly, my father did not live to see the completion of this thesis, and I know that you would have been one of the few people who would have found genuine pleasure in reading it. The first footnote of this thesis is therefore dedicated to you. Although your career in tax law was brief, there is a contribution to tax law that deserves to be highlighted.¹

Axel Hilling and Sigrid Hemels have been my supervisors during the writing of this thesis. Axel, without you this thesis would never even have been conceived. Had you not inspired me to pursue doctoral studies, I would never have embarked on this journey. Tirelessly, you have been there throughout all these years, showing, with your impressive calm and steady hand, that it is possible to write a compilation thesis in tax law. Sigrid, you have contributed with a non-Swedish perspective that has been both valuable and thought-provoking. Your razor-sharp judgement and incredible attention to detail have been of great help during these years. Above all, together you have formed a supervisory duo that has complemented one another: not always in agreement

¹ Månson, C./Sjörén, N. (1980), "Beskattning av enmansdödsbo", *Skattenytt*, pp. 197–206.

on every detail, but always united in your overall view and, above all, always believing in me. I cannot imagine better supervision than yours.

Thanks are also due to those who have read my work and provided valuable advice and suggestions for improvement. I would particularly like to mention Susi Baerentzen and Frank Pötgens, who acted as discussants at my licentiate seminar and final seminar, respectively. Your comments and encouraging feedback have not only improved the thesis, but also given me the energy to complete it.

Throughout the period of writing this thesis, I have worked as a tax advisor at Deloitte. The solitude that can sometimes accompany thesis writing has been offset by the sense of community and team spirit that characterize the Tax & Legal Department at Deloitte Malmö. Thank you for being willing to lend me, at least in part, to academia. I am especially grateful to Charlotta Hansen, who has always offered to read my texts, and to Mato Saric, for endless discussions on tax law and for our joint article writing.

I also would like to thank the wonderful colleagues at the Department of Business Law for the workplace and research environment you create. A special thanks to all doctoral candidates, past and present, who have brightened these years.

Finally, I would like to express my gratitude to the Emil Heijnes Foundation for Legal Research for funding the printing of this thesis.

I have only exceptionally taken into account material published after 1 June 2026.

Malmö, 30 August 2026

Christian Schwartz

List of Articles

Article I

Schwartz C. (2021) In-kind Contributions: Taxation of International Consortium Workers, 49 *Intertax* 5.

Article II

Schwartz C. (2023) Taxation of Remote Workers – Is the Allocation of Taxation Rights in Line with the Benefit Principle?, 15 *World Tax Journal* 4.

Article III

Schwartz C. (2025) Ett nytt Öresundsavtal – En modell för hybridarbete i Norden, 75 *Skattenytt* 1.

Article IV

Schwartz C. (2026) Tax and Social Security Contributions: The Cross-Border Impact of Telework, 35 *EC Tax Review* 2.

1 Introduction

1.1 Background

Cross-border work has changed considerably in recent years.² Increasing globalization and digitalization make it possible for employees to perform their activities in an increasingly international environment. These developments have intensified over time and were further accelerated by the COVID-19 pandemic, which demonstrated that large parts of the workforce could maintain their employment duties without being physically present in the employer's state.³

A 2024 study of employees who worked remotely two days per week showed that they were as productive and as likely to be promoted as employees who worked exclusively from the office. The study also showed that resignations decreased by 33 percent for the group with the hybrid model compared to the group working from the office, resulting in major cost savings for the employer.⁴ These findings suggest that remote work is not merely a temporary or employee-driven phenomenon, but may also be attractive from the employer's perspective. If such working arrangements can be maintained without adverse effects on productivity or career progression, while at the same time reducing employee turnover, employers may have strong incentives to preserve or expand such models.

This development is particularly significant in a cross-border context where an employee lives in one state and is employed by an employer established in

² See OECD, *Public Consultation Document: Global Mobility of Individuals*, United Nations Committee of Experts on International Cooperation in Tax Matters (2025), *Co-ordinators' Report*, E/C.18/2025/CRP.1/Rev., para. 1, Eberhartinger, E./Figari, F./Fleischanderl, H./Petutschnig, M./Pistone, P./Zagler, M. (2025), *Tax barriers and cross-border workers: tackling the fragmentation of the EU tax framework*, p. 17.

³ Eurofound (2022), *The rise in telework: Impact on working conditions and regulations*, p. 7.

⁴ Bloom, N./Han, R./Liang, J. (2024), "Hybrid Working from Home Improves Retention without Damaging Performance", *Nature*, pp. 920-925.

another state. In this case even a relatively limited amount of remote work may shift part of the performance of the employment from the employer's state to the employee's state of residence. Remote work may therefore transform what would otherwise have been a traditional cross-border employment relationship into one involving the regular performance of work in two states. This has direct implications for the allocation of taxing rights under tax treaties.

The allocation of taxing rights between states is largely determined by bilateral tax treaties, which specify which state may tax which categories of income. In drafting these treaties, most states rely on the OECD Model Tax Convention⁵ (OECD MC).⁶ The first draft OECD MC was published in 1963⁷ and has undergone numerous revisions since then. In the field of corporate taxation, the past decades have seen significant developments, not least the OECD's Base Erosion and Profit Shifting (BEPS) project.⁸ By contrast, the rules governing the taxation of individuals, and in particular income from employment, have remained remarkably stable. Article 15 of the OECD MC (Income from Employment) has retained essentially the same structure and wording since 1963, despite the fact that working patterns and means of working have changed drastically.

Against this background, Article 15 of the OECD MC constitutes the key legal provision for allocating taxing rights of employment income in cross-border situations. Yet, despite its central importance, the provision appears increasingly outdated in light of developments in the labour market over the past decades. Its continued reliance on physical presence reflects a model of work in which the place of work, the employer's location and the employee's day-to-day working environment were more closely aligned than they are today.

The 2025 update of the OECD MC showed, that the OECD started to direct its attention to the growing number of cross-border remote workers, albeit still in a corporate tax context.⁹ In the 2025 update of the OECD MC, the Commentary to Article 5 (Permanent Establishment) was revised and the

⁵ OECD (2017), *Model Tax Convention on Income and on Capital: Condensed version 2017*.

⁶ OECD MC (2017), Introduction, paras. 12–15.

⁷ OECD (1963) *Draft Convention for the Avoidance of Double Taxation with Respect to Taxes on Income and Capital*.

⁸ OECD (2013), *Action Plan on Base Erosion and Profit Shifting*.

⁹ OECD (2025), *The 2025 Update to the OECD Model Tax Convention*, Commentary on Article 5.

conditions under which an employee's home office or similar location may constitute a fixed place of business were updated.¹⁰ The update was undertaken in response to the increasing number of individuals who perform all or part of their work for an enterprise of one Contracting State while physically located in another state.¹¹

Although the 2025 update focuses on cross-border remote work from a corporate tax perspective, the taxation of cross-border workers themselves is a matter of interest to the OECD, which launched a public consultation in 2025 on the topic and invited comments from the public.¹²

The United Nations Model Double Taxation Convention¹³ (UN MC) is primarily intended for use in tax treaty negotiations between developed and developing countries. While the UN MC largely mirrors the structure of the OECD MC, it generally places greater emphasis on source-based taxation.¹⁴ Article 15 has the same wording in both models but unlike the OECD, the UN has put forward concrete proposals for revising Article 15 extending the state of employment's right to tax the income.¹⁵

The fiscal implications for cross-border workers are not limited to taxation but also, in many jurisdictions, include the imposition of social security contributions on employment income. Unlike the field of taxation, there is no global framework comparable to the OECD or UN Model Conventions governing the allocation of rights to levy social security contributions. Instead, some states have concluded bilateral agreements to regulate their mutual obligations in this area.¹⁶

Within the European Union (EU), however, social security legislation is subject to a coordinated framework. The determination of the applicable

¹⁰ OECD 2025 update, Commentary on Article 5, paras. 44.1-44.21.

¹¹ OECD 2025 update, Commentary on Article 5, para. 44.1.

¹² OECD (2025), *Public Consultation Document: Global Mobility of Individuals*; see section 3.2.2 below concerning the submitted responses.

¹³ United Nations (2021) *United Nations Model Double Taxation Convention between developed and developing countries*.

¹⁴ UN MC (2021), Introduction, paras. 2–3.

¹⁵ United Nations Committee of Experts on International Cooperation in Tax Matters (2025), *Co-Coordinator's Report*, E/C.18/2025/CRP.1/Rev., Annex D.

¹⁶ See e.g. Strban, G. (2018), "Member States' Approaches to Bilateral Social Security Agreements", *European Journal of Social Security*, p. 129.

legislation and consequently, the liability to pay social security contributions in cross-border situations, is governed by EU Regulation No 883/2004¹⁷. In contrast to tax treaties, which allocate taxing rights between states, the Regulation assigns affiliation to a single Member State at a time, thereby avoiding overlapping contribution obligations.¹⁸

Compared to developments under the OECD MC, progress has been more pronounced in the EU with respect to the coordination of social security systems in the context of cross-border remote work. The Regulation has been supplemented by interpretative guidance and by a specific agreement that Member States may opt into, namely the 2023 Framework Agreement on Cross-Border Telework.¹⁹

For EU Member States, the OECD MC and EU Regulation No 883/2004 together constitute the cornerstone of how fiscal burdens associated with cross-border work are allocated. Nevertheless, both frameworks allow for a degree of flexibility. The OECD explicitly refrains from recommending any special provisions for frontier workers, recommending states to draft such provisions on a bilateral level without following a certain OECD model.²⁰ Article 16 of EU Regulation No 883/2004 enables EU Member States to agree on exceptions to the standard conflict-of-law rules on a bilateral level at the request of an individual. EU Member States may also conclude agreements on exceptions pursuant to this Article on a group level in order to achieve predictability for individuals sharing a common working pattern or the same employer.²¹ Thereby, individuals can rely on that their applications for exception will be approved already before applying. In addition to the conflict of law rules in Articles 11-15, this creates an additional layer of which legislation shall apply to cross-border workers within the EU.

¹⁷ Regulation (EC) No 883/2004 of 29 April 2004 on the coordination of social security systems, OJ L 166, 30 April 2004.

¹⁸ Article 11 EU Regulation 883/2004.

¹⁹ Administrative Commission for the Coordination of Social Security Systems (2023), *Guidance Note on Telework Applicable from 1 July 2023*, AC 137/23, 21 June 2023; European Commission, Administrative Commission for the Coordination of Social Security Systems (2023), *Framework Agreement on the Application of Article 16(1) of Regulation (EC) No 883/2004 in Cases of Habitual Cross-Border Telework*.

²⁰ OECD MC (2017), Commentary on Article 15, para. 10.

²¹ Schwartz, C. (2026), "Tax and Social Security Contributions – The Cross-Border Impact of Telework", *EC Tax Review*, p. 70.

Prominent examples of provisions deviating from the standard allocation rules of Article 15 of the OECD MC and Articles 11-15 in EU Regulation No 883/2004 are the two Öresund agreements²² concluded between Sweden and Denmark, which regulate taxation and social security and have the common objective of facilitating a well-functioning cross-border labour market in the Öresund region.²³ Both agreements seek to facilitate cross-border remote work.

A clear illustration of the challenges arising in an increasingly international labour market can be found at the heart of the Öresund Region, where the EU has established one of its flagship research infrastructures, the European Research Infrastructure Consortium (ERIC) known as the European Spallation Source (ESS). Bringing together researchers, engineers, and highly skilled professionals from across Europe and beyond, ESS exemplifies the growing mobility of labour in knowledge-intensive sectors. The European Commission has developed a strategy on research and technology infrastructures aimed at strengthening the EU's global competitiveness.²⁴

ERICs are identified as a key instrument in achieving these objectives and the Commission has outlined several actions that will help ERICs further strengthen pan-European research infrastructure capacities and strengthen the governance framework for research and technology infrastructures. These actions include a revision of the ERIC Regulation²⁵ in order to facilitate the participation of international partners and make it a reliable vehicle for joint investments.²⁶

While such international collaboration is central to scientific progress and European integration, it also highlights the complexity of applying traditional tax rules to modern cross-border working arrangements. Employees may

²² Agreement between the Kingdom of Sweden and the Kingdom of Denmark on Certain Tax Matters, Appendix 4 to the Nordic Tax Convention; “Gemensamt svensk-danskt uttalande om tillämpning av artikel 16 i EU-förordning nr 883/2004 i vissa gränssituationer”, 25 April 2024.

²³ Swedish Ministry of Finance (2024), “Överenskommelse om nytt Öresundsavtal”, press release, 6 May 2024.

²⁴ European Commission (2025), *A European Strategy on Research and Technology Infrastructures*, COM(2025) 497 final/2, p. 1.

²⁵ Regulation (EC) No 723/2009 of 25 June 2009 on the Community legal framework for a European Research Infrastructure Consortium (ERIC), OJ L 206, 8 August 2009.

²⁶ European Commission (2025), *A European Strategy on Research and Technology Infrastructures*, COM(2025) 497 final/2, p. 11.

reside in one jurisdiction, work physically in another, and perform part of their duties remotely from a third location, creating difficult questions concerning the allocation of taxing rights, social security coverage, and administrative compliance. The Öresund Region therefore provides a particularly valuable case study for examining how tax systems must adapt to new forms of international work and mobility.

1.2 Thesis Outline

The thesis is structured as follows. **The introductory chapter** presents the background, aim and research questions of the thesis, as well as the methodological approach and the legal materials used.

Chapter 2 clarifies the terminology used in the thesis. It explains the meaning and use of central concepts such as remote work, telework, digital nomads, workation and hybrid work.

Chapter 3 examines developments at OECD and UN level concerning the future taxation of cross-border workers, including the revised Commentary to Article 5 of the OECD MC, the OECD Public Consultation on the Global Mobility of Individuals, and the UN proposal for a new Article 15(4). The chapter also discusses reform proposals presented in the academic literature.

Chapter 4 summarizes the findings of the four articles included in the thesis.

Chapter 5 presents the conclusions of the thesis. It summarises the main findings and discusses possible ways forward for the legal treatment of cross-border employment income. The four articles are reproduced in full in **Chapter 6**.

1.3 Object and Aim of the Study

The overarching object of the thesis is to examine how different forms of cross-border work, challenge the established mechanisms for allocating taxing and contribution rights between states. Ultimately the study aims to illuminate if the current allocation mechanisms can accommodate modern work practices or whether a change is needed to minimize adverse effects on cross-border work. Specifically, it is addressed whether new ways of working reveal shortcomings in Article 15 of the OECD MC and, if so, whether these

shortcomings justify a reform of the provision. In particular, the study addresses whether the increasing prevalence of remote work challenges the current allocation of taxing rights based on physical presence.

The study is conducted through four independent scholarly articles, each addressing different issues related to the taxation of cross-border workforces. Each article focuses on a specific part of the broader object of the study, with its own specific purpose and/or research question(s).

Article I²⁷ seeks to explain and analyze deficiencies of today's international tax regime in relation to the taxation of workers of international organizations in general and ERICs in particular and to evaluate the situations in which uncertainty arises regarding employment taxation and to explore the features of an ERIC that may effectuate this uncertainty.

Article II²⁸ poses the question whether the current system for international allocation of taxing rights is equipped with the necessary tools to deal with a world where people are no longer tied to a certain physical workplace and if the allocation of taxing rights pursuant to the OECD MC in situations of remote work is in line with the benefit principle.

Article III²⁹ asks, in light of the purpose of the Öresund Agreement, namely, to simplify matters for cross-border commuters and their employers and thereby secure a better-functioning labour market in the Öresund region, how well the Öresund Agreement addresses the taxation of remotely performed work, and what the implications are of the amendments introduced in the 2024 version of the agreement.

Article IV³⁰ examines how cross-border telework affects the financing of social security systems by analyzing the impact of the simultaneous application of EU Regulation No. 883/2004 and double tax conventions on cross-border teleworkers. The analysis is structured around three key research questions:

²⁷ Schwartz, C. (2024), "In-Kind Contributions: Taxation of International Consortium Workers", *Intertax*, pp. 424-436.

²⁸ Schwartz, C. (2023), "Taxation of Remote Workers – Is the Allocation of Taxation Rights in Line with the Benefit Principle?", *World Tax Journal*, pp. 621-641.

²⁹ Schwartz, C. (2025), "Ett nytt Öresundsavtal – En modell för hybridarbete i Norden", *Skattenytt*, pp. 30-52.

³⁰ Schwartz, C. (2026), pp. 66-78.

- Does the simultaneous application of the two regulatory frameworks infringe on the objectives of each framework?
- Does cross-border telework entail any particular challenges compared to traditional cross-border work when applying the regulatory frameworks simultaneously?
- How can potential problems arising from simultaneous application be overcome?

Taken together, these studies facilitate the evaluation of the extent to which the current regulatory framework is fit for purpose in the context of today's mobile and internationally integrated workforce.

The chosen format for this thesis is a compilation thesis, primarily for two key reasons. First, the subject matter of the thesis concerns legal issues arising from new and evolving forms of cross-border work, such as work for an ERIC or remote work. These phenomena are characterized either by their relative novelty or by the fact that they are in a stage of ongoing transformation. By adopting the compilation thesis format, I could effectively capture and explain the legal positions at specific points in time, thereby preserving the contemporary relevance of the issues at hand.

Second, the intent behind opting for the compilation thesis format was to enhance the outreach of the research, especially when published in international tax journals. I aimed to use the platform provided by such journals to reach a broader audience and to enable a discussion on the topics while I was still working on the thesis. Furthermore, as all articles have undergone peer review, the thesis has benefited from valuable comments received from external reviewers. These comments were considered during the continued development of the thesis. The articles have been published in the following journals:

- Intertax: Article I (In-kind Contributions: Taxation of International Consortium Workers)
- World Tax Journal: Article II (Taxation of Remote Workers – Is the Allocation of Taxation Rights in Line with the Benefit Principle?): World Tax Journal
- Skattenytt: Article III (Ett nytt Öresundsavtal – En modell för hybridarbete i Norden): Skattenytt
- EC Tax Review: Article IV (Tax and Social Security Contributions: The Cross-Border Impact of Telework)

For reasons of readability, the articles are not reproduced in the thesis in their published layout. Given the smaller page format of this book, retaining the original layout would make the text too small. The wording of the articles nevertheless remains identical to the published versions, and the footnotes retain their original numbering. Since Article III was originally published in Swedish, an English translation is included in this book. The original Swedish version is reproduced in the appendix.

1.4 Delimitations

The focus of the thesis is taxation of cross-border workers. The study does not take into account potential effects that cross-border work may have on other areas within the field of tax law. For example, the study excludes the potential effects that cross-border work might have on corporate taxation. Nevertheless, the taxation of the individual workers and the entities employing them, have common points of intersection. An example of this is the concept of permanent establishment.³¹ While primarily a means of granting taxation rights to a state other than the one where an enterprise is registered or has its' place of effective management, the concept of permanent establishment also has effects on the taxation of individuals. This is evident both in relation to Article 15.2 of the OECD MC and Article 1 of the Öresund Agreement. Accordingly, the study also covers matters relating to the creation of permanent establishments but only to the extent it is relevant for the taxation of the individual cross-border worker.

Tax treaty law and the allocation of taxing rights is at the core of the thesis and is present throughout all the articles. I do however not analyze the possible impact EU law may have on the application of tax treaties.³² This delimitation is made because the relationship between EU law and tax treaties raises a separate set of questions which falls outside the specific focus of the thesis, namely the allocation of taxing rights and social security affiliation in relation

³¹ OECD MC (2017), art. 5.

³² For such a perspective on the tax treaty law see, e.g. Hilling, M. (2005), *Free Movement and Tax Treaties in the Internal Market*, Pistone, P. (2002), *The Impact of Community Law on Tax Treaties: Issues and Solutions*, van Thiel, S. (2002), *Free movement of persons and income tax law: the European Court in search of principles*.

to new forms of cross-border work. EU law is therefore only subject to analysis the extent the thesis addresses a certain issue, under specific EU regulations³³.

Each article also contains delimitations of their own. For example, article II excludes social security contributions from the study, while that is the primary focus of article IV.

1.5 Methodology

The overarching object of this thesis is to examine how new forms of cross-border work challenge the established mechanisms for allocating taxing rights between states. The thesis is concerned with situations in which individuals perform work across borders, either physically or remotely, and in which more than one legal system may claim a regulatory connection with the same employment income, employment relationship, or social security contribution base. The purpose is therefore not to measure the economic effects of such rules, nor to investigate empirically how tax administrations or employers respond to them in practice. Rather, the object is to determine how the relevant legal rules apply, how they interact, and whether the results produced by their application are coherent in light of the legal purposes and principles that underlie them.

The articles that form part of this thesis collectively examine different perspectives on the taxation of employment income derived from various forms of cross-border work. The recurring objects of analysis are the tax treaty provisions governing the allocation of taxing rights over employment income. Although several provisions of the OECD MC dealing with such income are considered, Article 15, as the general provision on income from employment, is at the core of the thesis. Each article places cross-border work within a specific legal and factual context, such as work performed at an ERIC, cross-border telework, hybrid work in the Öresund region, or remote work more generally. The legal issues arising in these contexts are then analyzed in light of, e.g., underlying normative principles, overlapping regulatory frameworks or the purpose of the relevant provision.

The study is of legal-dogmatic character. Legal dogmatics is used here in the sense of a method directed at identifying, interpreting, systematizing and

³³ E.g., the EU social security coordination rules under Regulation (EC) No 883/2004 and Regulation (EC) No 723/2009 establishing the legal framework for an ERIC.

analyzing valid legal norms within a defined legal field.³⁴ It is a method that takes the legal order as both its starting point and its primary object of analysis. The primary research object is the content of the law: the legal rules governing the allocation of taxing rights and social security contributions, the relationship between those rules, and the legal consequences that follow when they are applied to specific types of cross-border employment situations. The legal materials are not studied from an external sociological, economic or political perspective, although the social and economic context of cross-border work is relevant for understanding the practical importance of the legal questions addressed.

Legal dogmatics is often described as system-immanent. Jareborg characterizes legal dogmatics as an activity that proceeds from within the legal system, while Sandgren emphasizes that the dogmatic element (if any) lies in the fact that existing legal norms and conventions are taken as the point of departure for legal analysis rather than being assessed solely by external criteria.³⁵ This does not mean that legal-dogmatic research is uncritical. On the contrary, one of its central functions is to reveal tensions, inconsistencies and gaps within the legal system. Olsen points out that when forsaking existing rules and crafting new ones, an important task is to clarify the applicable law and to identify deficiencies in the current legislation. The applicable law must therefore be examined. Insights into inconsistencies and functional shortcomings are achieved, for example, by relating the results of the legal analysis to the purpose of that the legislation.³⁶

A recurring theme in the literature is the relationship between legal dogmatics and legal practice.³⁷ Smits emphasizes that the researcher's role differs from that of the judge: whereas judges work inductively with concrete cases, the legal dogmatician works systematically and abstractly to develop the coherence of the legal system as a whole. Doctrinal analysis is therefore not

³⁴ Kleineman, J. (2013), "Rättsdogmatisk metod", in Korling/Zamboni (red.), *Juridisk metodlära*, p. 26; Smits, J. M. (2017), "What Is Legal Doctrine? On the Aims and Methods of Legal-Dogmatic Research", in van Gestel/Micklitz/Rubin (red.), *Rethinking Legal Scholarship: A Transatlantic Dialogue*, p. 210; Peczenik, A. (2005), "Juridikens allmänna läror", *Svensk Juristtidning*, pp. 249.

³⁵ Jareborg, N. (2004), "Rättsdogmatik som vetenskap", *Svensk Juristtidning*, p. 4; Sandgren, C. (2005), "Är rättsdogmatiken dogmatisk?", *Tidsskrift for Rettsvitenskap*, p. 649.

³⁶ Olsen, L. (2004), "Rättsvetenskapliga perspektiv", *Svensk Juristtidning*, pp. 134–135.

³⁷ See, e.g., Olsen, L. (2004), pp. 107–108; Arvidsson, N. (2010), *Aktieägaravtal: särskilt om besluts- och överlåtelsebindningar*, pp. 35–36; Jareborg, N. (2004), pp. 4–5.

merely a descriptive exercise but constitutes a form of normative guidance, insofar as it influences how legal rules are understood and applied in practice.³⁸ The legal-dogmatic method therefore includes not only the determination of applicable law, but also the systematic reconstruction of legal norms in order to clarify their internal structure, their interrelationship and their implications in concrete or typified cases.

By going beyond the confines set by legislative and judicial authorities, the methodology empowers the researcher to explore potential areas for regulatory improvement or modification.³⁹

This is particularly important in the present thesis because the legal problems examined do not arise within a single, self-contained legal regime. Cross-border work may simultaneously engage tax treaty law, domestic tax law, EU social security coordination law, and, in certain situations, legal instruments governing ERICs. Each of these regimes has its own legal sources, concepts and objectives. The legal-dogmatic task is therefore not limited to interpreting isolated provisions. It also requires the analysis of how different legal regimes interact when they apply to the same situation.

The legal-scientific contribution of this thesis therefore lies in its reconstruction of the legal framework governing cross-border work at the intersection of tax treaty law and EU social security coordination law. While each article constitutes an independent scientific contribution, together they provide a picture of the shortcomings of the existing rules and of whether reform is warranted. The contribution of the thesis therefore lies not only in the analysis of the individual legal questions addressed in each article, but also in the way in which the articles collectively reconstruct the legal framework governing cross-border work. The thesis shows how rules that may appear coherent within their own legal regime may produce tensions that become visible only when the regimes are analyzed together.

The knowledge produced in this thesis is valuable because it clarifies the legal consequences of cross-border work that are not fully reflected in the design of the relevant regimes. It also contributes to legal predictability by identifying which legal questions must be asked, which connecting factors are decisive, and where the interaction between legal regimes may produce unintended or difficult-to-justify outcomes. Finally, the thesis contributes to future legal

³⁸ Smits, J. M. (2017), p. 223; see also van Gestel, R./Micklitz, H.-W. (2011), *Revitalizing Doctrinal Legal Research in Europe: What About Methodology?*, p. 29.

³⁹ Jareborg, N. (2004), pp. 4-5; Sandgren, C. (2005), p. 650.

development by identifying where reform may be warranted and by clarifying the legal premises that any such reform must take into account.

1.6 Material

1.6.1 Introduction

The individual articles contain accounts of the legal materials relevant to the specific issues examined in each study. The purpose of this section is therefore to provide a more general overview of the legal framework that underpins the thesis as a whole.

1.6.2 OECD Material

The OECD MC does not in itself constitute a legally binding bi- or multilateral treaty. Rather, it serves as a model and point of reference for the negotiation and interpretation of actual tax treaties concluded between states.⁴⁰ The principal purpose of the OECD MC is, as stated in its introduction,

to clarify, standardize, and confirm the fiscal situation of taxpayers who are engaged in commercial, industrial, financial, or any other activities in other countries through the application by all countries of common solutions to identical cases of double taxation.⁴¹

All the OECD member countries are recommended to draft their tax treaties in accordance with OECD MC and follow the recommendations of the OECD that are expressed in the OECD MC Commentary.⁴² The OECD MC has also been used as reference in negotiations between non-member countries and served as a blueprint for the United Nations Model Double Taxation

⁴⁰ Lang, M./Brugger, F. (2008), "The Role of the OECD Commentary in Tax Treaty Interpretation", *Australian Tax Forum*, p. 104.

⁴¹ OECD MC (2017), Introduction, para. 2.

⁴² OECD MC (2017), Introduction, para. 3; Hemels, S. (2026), *References to Dynamic International Standards and the Tax Legality Principle: Working Paper for the 2026 GREIT Conference in Leuven*, p. 12.

Convention (UN MC).⁴³ The primary purpose of the UN MC is to allow for increased taxation at source in treaties concluded between developed and developing countries.⁴⁴ Since this present study focuses on situations involving developed countries in general and European countries in particular, the UN MC is not an explicit subject of this study.

Throughout this thesis reference are made to both the OECD MC and its Commentary when dealing with tax treaty law. Tax treaties are international agreements between states and therefore subject to international law.⁴⁵ The 1969 Vienna Convention on the Law of Treaties (VCLT) covers the topic of interpretation of treaties laying down the rules for interpretation in Articles 31-33. The general rule for interpretation is to be found in Article 31(1) and it establishes that:

...a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its objective and purpose.

According to Article 31(2), the context referred to in Article 31(1) includes of agreements relating to the treaty which were made between all the parties in connection with the conclusion of the treaty and instruments which were made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty in addition to the treaty text itself and its preamble and annexes. Article 31(3) states that alongside the context, subsequent agreements between the parties regarding the interpretation of the treaty or the application of its provisions, subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation and relevant rules of international law applicable in the relations between the parties shall be taken into account. If it is established that the parties so intended, a special meaning shall be given to a term according to Article 31(4).

Article 32 permits recourse to supplementary means of interpretation, including preparatory work and the circumstances of the treaty's conclusion,

⁴³ UN MC (2021), Introduction, para. 1; OECD MC (2017), Introduction, para. 14; Haslehner, W. (2022), "Introduction", in Reimer/Rust (red.), *Klaus Vogel on Double Taxation Conventions*, para. 24.

⁴⁴ UN MC (2021), Introduction, para. 13.

⁴⁵ Vienna Convention on the Law of Treaties, art. 2(1)(a).

either to confirm the meaning resulting from Article 31 or to resolve ambiguity, obscurity or manifestly absurd or unreasonable results.

The significance of these provisions for the interpretation of tax treaties lies in the legal status of the OECD MC Commentary. Whether, and to what extent, the Commentary may be relied upon depends on whether it is regarded as forming part of the interpretative framework established by Article 31 or merely as a supplementary means of interpretation under Article 32. Whether the OECD Commentary should be regarded as falling within Article 31 or Article 32 remains a matter of debate. It has been argued that the Commentary forms part of the context under Article 31(2), that it evidences a special meaning within the meaning of Article 31(4), or, alternatively, that it constitutes a supplementary means of interpretation under Article 32.⁴⁶

Due to the impact of the OECD MC on treaty drafting between countries, it is of importance for the articles of this thesis which all deal with international taxation of cross-border work.

It is the OECD's position that amendments and additions to the Commentary should also be taken into account when interpreting tax treaties concluded before the adoption of such changes.⁴⁷ This approach is commonly referred to as the ambulatory approach to the Commentary, according to which the most recent version of the Commentary is used for interpretative purposes. The opposite approach, namely the use of the version of the Commentary that was in force when the treaty was concluded, is referred to as the static approach. Where amendments to the Commentary are a direct consequence of changes to the provisions of the OECD MC itself, the OECD recommends the application of the static approach.⁴⁸

Although OECD's opinion of the Commentary's use when interpreting treaties is clearly expressed it does not necessarily align with the position of the states concluding treaties, national courts or scholars.⁴⁹

⁴⁶ Cejic, K. (2017), "The Commentaries on the OECD Model as a Mechanism for Interpretation with Reference to the Swedish Perspective", *Bulletin for International Taxation*, p. 664.

⁴⁷ OECD MC (2017), Introduction, para. 35.

⁴⁸ OECD MC (2017), Introduction, para. 35.

⁴⁹ See e.g., Avery Jones, J.F. (2002), "The Effect of Changes in the OECD Commentaries after a Treaty is Concluded", *Bulletin-Tax Treaty Monitor*, pp. 102-109; Hemels, S. (2026), pp. 2-38; Linderfalk, U./Hilling, M. (2015) "The Use of OECD Commentaries as Interpretive aids – The Static/Ambulatory – Approaches debate Considered from the Perspective of

Throughout this thesis reference is given to the latest version of the OECD MC and the OECD MC Commentary at the point when each article was published. The OECD MC and Commentary have remained unchanged during the period of publication of the articles, but a new version of the Commentary was issued before the publication of the thesis. The 2025 Commentary has not changed in respect to the allocation Articles dealing with employment income. It has however changed with respect to the Commentary on Article 5.⁵⁰

1.6.3 Swedish and Danish Material

The thesis draws on Swedish and, to a more limited extent, Danish legal material where this is necessary to determine the content of domestic law or to illustrate how international and EU-law instruments operate in practice. The meaning of both Swedish and Danish law is established through a legal-dogmatic method. Accordingly, traditional sources of law, including legislation, preparatory works, and case law, have been consulted.

In articles I and III Swedish and Danish material is used more extensively, however for different reasons. Article I forms a case study of a specific organizational form, ERICs, with particular emphasis on ESS. Although the primary inquiry concerns the organizational form of ERICs under EU law and the treatment of the personnel in respect of international tax treaty law, the analysis refers to Swedish and Danish national legislation, preparatory works, and case law to illustrate how the ESS personnel are taxed in practice.

Article III includes a case study on the cross-border labour market between Sweden and Denmark and the revised 2024 version of the Öresund Agreement applicable to the two states. Therefore, this part of the study relies on national legislation, case law, and administrative guidance from both Sweden and Denmark in order to analyze how the application of the Öresund Agreement affects individuals and employers.

In Articles II and IV focus is placed on a supranational level. The primary objective is to examine, respectively, the structural relationship between taxation and social security contributions, and the broader implications of remote work for international tax coordination. These articles are therefore less focused on the domestic legal orders of individual states. Nevertheless,

International Law”, *Nordic tax Journal*, pp. 34-59; Vogel, K. (2000), “The influence of the OECD commentaries on treaty interpretation” *Bulletin – Tax Treaty Monitor*, pp. 612-616.

⁵⁰ See section 3.2.1.

Swedish and Danish material is used to illustrate the practical consequences of divergent national classifications of taxes and social security contributions and to illustrate how multi- and bilateral instruments apply in different factual constellations.

1.6.4 EU Material

EU-material is used where EU law is part of the legal framework governing the subject examined in the thesis. Mainly this is the case in relation to ERICs and the coordination of social security systems. The EU material used, consists of legislative acts, case law of the Court of Justice of the European Union (CJEU), decisions and guidance issued by EU institutions and bodies, and preparatory or policy documents where these clarify the purpose or function of the legal framework under examination.

In Article I, EU-law material, such as regulations and decisions of the EU institutions, is used to describe the nature of an ERIC and to clarify its purpose. Article IV examines the coordination rules set out in EU Regulation No. 883/2004. In determining the applicable law, the analysis is based on legislative acts, case law, and guidance issued by the Administrative Commission for the Coordination of Social Security Systems (the Administrative Commission). Case law concerning the predecessor to EU Regulation 883/2004, Regulation EU No 1408/71, has also been taken into account where it remains relevant for the interpretation of corresponding provisions or principles under the current regulation.

The case law has not been selected with the purpose of providing an exhaustive list of all cases concerning EU social security coordination. Instead, the selection is based on relevance to the specific legal questions addressed in the thesis. This includes the determination of the applicable legislation, the relationship between taxation and social security contributions, and the treatment of cross-border work. Cases have therefore been included where they clarify legislation that is directly relevant to the issues analyzed, or where they illustrate the interaction between national fiscal measures and EU social security coordination.

A general assessment of the compatibility of national tax rules or treaty provisions with the EU Treaties is not performed. Such an assessment would raise a different set of questions concerning the fundamental freedoms and possible justifications for restrictions. Treaty-based justification analysis is therefore addressed only where it is necessary for the specific issue under

examination. The analysis of EU law has therefore been restricted to the function of EU law as part of the applicable legal framework, rather than an independent review of the compatibility of national or treaty-based tax rules with primary EU law.

1.7 Previous Research

There is a considerable amount of literature dealing with taxation of cross-border workers in one way or another. With respect to tax treaty law and the different allocation articles dealing with income from employment, *Klaus Vogel on Double Taxation Conventions* stands as the authoritative reference work on the law of tax treaties as its authors give a detailed description of all articles of the OECD MC.⁵¹ With regard to the application and interpretation of Article 15 of the OECD MC, which is central for this thesis, Frank Pötgens' dissertation, *Income from International Private Employment: An Analysis of Article 15 of the OECD Model*, constitutes the most detailed and comprehensive work.⁵² Apart from his dissertation, Pötgens has also authored numerous articles further developing the interpretation of Article 15.⁵³ Additional important contributions to the understanding of Article 15 include scholarly works by Kaspar Dziurdz⁵⁴ and Robert Waldburger⁵⁵. Studies by

⁵¹ Reimer, E./Rust, A. (red.) (2021), *Klaus Vogel on Double Taxation Conventions*.

⁵² Pötgens, F. P. G. (2006), *Income from International Private Employment: An Analysis of Article 15 of the OECD Model*.

⁵³ Pötgens, F. P. G. (2001), "The 'Closed System' of the Provisions on Income from Employment in the OECD Model", *European Taxation*, pp.252-263 ; Pötgens, F. P. G. (2007), "Proposed Changes to the Commentary on Article 15(2) of the OECD Model and Their Effect on the Interpretation of 'Employer' for Treaty Purposes", *Bulletin for International Taxation*, pp. 476-488.

⁵⁴ Dziurdz, K. (2013), "Article 15 of the OECD Model: The 183-Day Rule and the Meaning of 'Employer'", *British Tax Review*, pp. 95–108.

⁵⁵ Waldburger, R. (2008), "Income from Employment (Article 15 OECD Model Convention)", in Lang/Pistone/Schuch/Staringer (red.), *Source versus Residence: Problems Arising from the Allocation of Taxing Rights in Tax Treaty Law and Possible Alternatives*.

Michael Lang⁵⁶ and Pasquale Pistone⁵⁷ are particularly relevant for the other employment-related articles of the OECD MC.

As regards the benefit principle, central to the second article of this thesis, the publications of Richard and Peggy Musgrave form a foundational work.⁵⁸ Klaus Vogel's three-part study on residence and source taxation addressing the benefit principle also plays a significant role.⁵⁹ In addition, Eva Escribano's dissertation *Jurisdiction to Tax Corporate Income Pursuant to the Presumptive Benefit Principle*⁶⁰ provides a refined theoretical framework, shifting the focus from actual benefits received to presumptive benefits conferred by the state. This conceptualization is highly relevant for the discussions in Article 2.

With respect to the financing and coordination of social security systems in the EU, Thomas Erhag's dissertation *Fri rörlighet och finansiering av social trygghet*⁶¹ offers essential insights into the interplay between funding mechanisms and EU coordination rules.⁶² The interaction between taxation and social security contributions has also been extensively explored in the writings of Bruno Peeters, Herwig Verschueren and Marjon Weerepas.⁶³

⁵⁶ Lang, M. (2007), "Article 19(2): The Complexity of the OECD Model Can Be Reduced", *Bulletin for International Taxation*, pp. 17–22.

⁵⁷ Pistone, P. (2008), "Government Service (Article 19 OECD Model Convention)", in Lang/Pistone/Schuch/Staringer (red.), *Source versus Residence: Problems Arising from the Allocation of Taxing Rights in Tax Treaty Law and Possible Alternatives*.

⁵⁸ Musgrave, R. A. (1959), *The Theory of Public Finance: A Study in Public Economy*; Musgrave, R. A./Musgrave, P. B. (1972), "Inter-nation Equity", in Bird/Head (red.), *Modern Fiscal Issues: Essays in Honor of Carl S. Shoup*; Musgrave, P. B. (1972), "International Tax Base Division", *Public Finance*, pp. 394–413; Musgrave, R. A. (1990), "Horizontal Equity, Once More", *National Tax Journal*, pp. 113–122.

⁵⁹ Vogel, K. (1988), "Worldwide vs. Source Taxation of Income – A Review and Re-evaluation of Arguments (Part I)", *Intertax*, pp. 216–229; Vogel, K. (1988), "Worldwide vs. Source Taxation of Income – A Review and Re-evaluation of Arguments (Part II)", *Intertax*, pp. 310–320; Vogel, K. (1988), "Worldwide vs. Source Taxation of Income – A Review and Re-evaluation of Arguments (Part III)", *Intertax*, pp. 393–402.

⁶⁰ Escribano, E. (2019), *Jurisdiction to Tax Corporate Income Pursuant to the Presumptive Benefit Principle: A Critical Analysis of Structural Paradigms Underlying Corporate Income Taxation and Proposals for Reform*.

⁶¹ Translation: "Free movement and financing of social security".

⁶² Erhag, T. (2002), *Fri rörlighet och finansiering av social trygghet: En rättslig studie av EG-rättens inverkan på medlemsstaternas uttag av avgifter för finansiering av social trygghet*.

⁶³ Peeters, B. (2021), "The Design of Covid-19 Recovery Contributions: Taxes or Social Security Contributions?", *EC Tax Review*, pp. 236–241; Peeters, B./Verschueren, H.

Various articles dealing with remote work and taxation have been published in the recent years. Katia Cejie has in several contributions highlighted both tax and social security issues arising from this kind of work.⁶⁴ Hannelore Niesten examined the interrelationship between tax law and social security coordination in the context of cross-border telework..⁶⁵ Further valuable contributions on the taxation of remote work have been made by Giorgio Beretta⁶⁶, Svetislav Kostić⁶⁷, and Eva Escribano⁶⁸.

This body of existing research provides important doctrinal analyzes of both the allocation of taxing rights under the OECD MC and the coordination of social security systems under Regulation No 883/2004 on which this thesis builds. What is less explored is how the two frameworks operate when applied

(2016), "The Impact of European Union Law on the Interaction of Member States' Sovereign Powers in the Policy Fields of Social Protection and Personal Income Tax Benefits", *EC Tax Review*, pp. 262–276; Verschueren, H. (2012), "The Renewed EU Social Security Coordination in Regulation No. 883/2004 and Its Link with Bilateral Tax Agreements", *EC Tax Review*, pp. 98–111; Weerepas, M. (2018), "Tax or Social Security Contribution, a World of Difference?", *Nordic Tax Journal*, pp. 18–30.

⁶⁴ Cejie, K. (2021), "New Problems Caused by the COVID-19 Pandemic – Income Taxes and Social Security Contributions (An Overview)", *European Taxation*, pp. 185–194; Cejie, K. (2023), "Gränsöverskridande arbete – inkomstskatte- och socialavgiftsrättsliga erfarenheter från pandemin och utmaningar inför det nya 'normala'", *Skattenytt*, pp. 3–29; Cejie, K. (2024), "Let's End the Fuss about Home Offices as Permanent Establishments for Cross-Border Teleworking", *Bulletin for International Taxation*, pp. 426–435; Cejie, K. (2024), "Who Is Leading the Dance? Or Should the Main Principles of Taxation Be Adjusted in Accordance with Coordination Principles of Social Security? – Teleworking and Beyond", *World Tax Journal*, pp. 289–323.

⁶⁵ Niesten, H. (2021), "Revising the Fiscal and Social Security Landscape of International Teleworkers in the Digital Age", *Intertax*, pp. 120–143; Niesten, H. (2022), "Frontier Workers' Tax and Social Security Status in Europe – Optimizing the Legal Status in a Changing Landscape", *International Tax Studies*, pp. 2–30.

⁶⁶ Beretta, G. (2024) "Tax Residence of Individuals in the Age of Geographical Diversification", in Kostić/Báez Moreno/Chand/Tenore (red.), *Mobility of Individuals and Workforces*; Beretta, G. (2022), "'Work on the Move': Rethinking Taxation of Labour Income under Tax Treaties", *International Tax Studies*, pp. 2–28.

⁶⁷ Kostić, S. V. (2024) "A Common Autonomous International Tax Understanding of Employment and Its Potential Relevance for Future Reform of the Taxation of Employment Income Under Tax Treaties", in Kostić/Báez Moreno/Chand/Tenore (red.), *Mobility of Individuals and Workforces*; Kostić, S. V. (2019), "In Search of the Digital Nomad – Rethinking the Taxation of Employment Income under Tax Treaties", *World Tax Journal*, pp. 189–225.

⁶⁸ Escribano, E. (2024), "A New Model Tax Convention for a World of Increasing Remote Work and Mobility of Individuals", *World Tax Journal*, pp. 379–416.

simultaneously to remote work. What I add to the existing studies is the focus on the frictions that arise when income tax allocation follows physical presence, whereas social security affiliation rests on the single-state principle and activity thresholds. In addition, I add the analysis on how these frictions interact with underlying normative foundations of each system: the benefit principle on the tax side, and the financing structures that Member States rely upon for social security. As a result, the implications of remote work for the equitable allocation of taxing rights, for the financing of social protection, and for consistency between the two regimes has been further analyzed in this thesis. The analysis of ERICs develops a doctrinal understanding of how Articles 15 and 19 of the OECD Model apply to personnel engaged through in-kind contributions, an issue not yet studied in the literature. By combining these perspectives, the thesis builds on earlier scholarship but also advances it by demonstrating how remote work and new organizational forms expose unresolved inconsistencies between tax allocation rules and social-security coordination.

2 Terminology

2.1 Remote Work

Various terms are used to describe different kinds of types of work which have in common that they do not require the work to be performed at a certain place. Such terms include, remote work, telework, workcation and digital nomads.⁶⁹ Apart from telework there is no formal legal definition of what kind of work falls within each definition.⁷⁰ Nevertheless, the terms are widely used in literature concerning tax and social security law to describe different forms of remote work, thereby highlighting the distinct legal and practical implications associated with each mode of working.

Remote work is the broader term which includes the previously mentioned terms of telework, digital nomads and workation.⁷¹ Although the term is wide-ranging, it is generally understood that it means work that would typically be carried out at an office or similar but that is performed from another location such as for example a home office or co-working space. Against this background, this study adopts the term remote work as the general and overarching term to describe various forms of geographically flexible work unless otherwise specified. The purpose of employing a broad term is to facilitate a more integrated analysis of the legal implications arising from these developments, rather than artificially segmenting closely related phenomena. At the same time, it should be clarified that the concept of remote work, as used in this study, is not intended to cover all forms of work performed outside the employer's premises. In particular, traditional forms of cross-border work, such as temporary postings or business travel, fall outside the scope of the concept. Although such activities also involve work performed in a location

⁶⁹ See sections 2.1-2.5.

⁷⁰ Framework Agreement on Cross-Border Telework, art. 1(c).

⁷¹ See the illustration "Various Forms of Cross-Border Work Involving Remote-Work Elements".

other than the ordinary workplace, they are typically characterized by a direct commercial nexus to the place where the work is carried out, for example in order to meet clients or carry out specific assignments.

By contrast, remote work in the sense employed in this study refers to work that is not linked to a specific location from a commercial perspective. The choice of where the work is performed is, in such cases, largely independent of the employer's business needs and instead reflects the preferences or circumstances of the employee. It is precisely this decoupling of work from place that gives rise to the legal challenges examined in this study, particularly in relation to the allocation of taxing rights and the coordination of social security systems.

2.2 Telework

The term telework is usually attributed to Nilles who introduced the terms telecommuting and teleworking in the 1970s.⁷² Nilles research demonstrated that telecommunication technologies could substitute for physical commuting, thereby decoupling work from place. While the concept was initially motivated by transport and energy considerations, his findings already pointed to broader organizational and economic implications, including maintained productivity, reduced infrastructure needs, and the necessity of adapting managerial practices.

The term was adopted by the EU when the Framework agreement on Telework was established in 2023. In said agreement, telework is defined as:

...an activity which can be pursued from any location and could be performed at the employer's premises or place of business and:

1. is carried out in a Member State or Member States other than the one in which the employer's premises or the place of business is situated and

⁷² Nilles, J. M. (1975), "Telecommunications and organizational decentralization", in *IEEE Transactions on Communications*, pp. 1142–1147, Nilles, J. M. (1998), *Managing Telework: Strategies for Managing the Virtual Workforce*.

2. is based on information technology to remain connected to the employer's or business's working environment as well as stakeholders/clients in order to fulfil the employee's tasks assigned by the employer or clients..."⁷³

Similar to Nille's definition the Framework Agreement on Telework put emphasis on the fact that information technology is used to carry out the work duties.

In this study the term telework is primarily used in relation to the EU coordination rules on social security, as this is the term employed by the EU with respect to social security coordination.⁷⁴

2.3 Digital Nomad

The term, digital nomad, originates from Makimoto and Manners who used it to describe a future in which information technologies would fundamentally weaken the connection between work and physical location, thereby enabling geographically mobile forms of work largely detached from traditional organizational and territorial constraints.⁷⁵ In a tax law context, the notion of digital nomads is typically used to capture situations where individuals perform work while moving between jurisdictions, thereby giving rise to questions relating to tax residence.⁷⁶ This is also the meaning it has been given in this thesis.

2.4 Workation

The term workation is often employed to describe temporary stays abroad combining work and leisure, which in turn raises issues particularly in the field of social security coordination, including the determination of applicable

⁷³ Framework Agreement on Cross-Border Telework, art. 1(c).

⁷⁴ In Schwartz, C. (2026), pp. 66–78, telework is used to analyze the interaction between EU social security coordination rules and tax treaty law.

⁷⁵ Makimoto, T./Manners, D. (1997), *Digital Nomad*.

⁷⁶ Beretta, G. (2022), pp. 6–7; Kostić, S. V. (2019), p. 203.

legislation under EU Regulation No 883/2004.⁷⁷ It is the temporary nature of the remotely performed work that is characteristic. This makes it relevant in a discussion regarding postings pursuant to Article 12 in Regulation 883/2004.⁷⁸

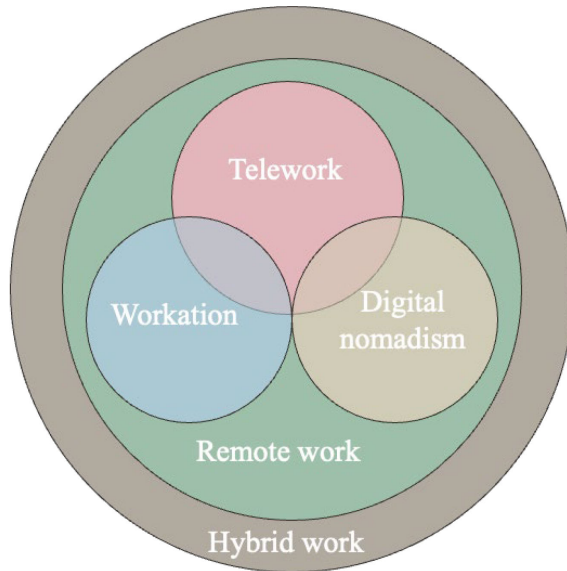
2.5 Hybrid Work

Like remote work, hybrid work is a broad term without a precise legal definition. In the context of cross-border remote work, it is used in this thesis to describe situations in which employees perform part of their duties remotely and part of them at their regular workplace.⁷⁹ The term does not primarily concern the manner in which the work is performed, but rather the frequency with which work is carried out in different locations. Examples of legal arrangements addressing hybrid work situations include the Framework Agreement on Cross-Border Telework and the Öresund agreements on taxation and social security.

⁷⁷ Administrative Commission for the Coordination of Social Security Systems (2023), *Guidance Note on Telework Applicable from 1 July 2023*, AC 137/23, 21 June 2023.

⁷⁸ See Verschueren, H. (2022), "The Application of the Conflict Rules of the European Social Security Coordination to Telework During and After the COVID-19 Pandemic", *European Journal of Social Security*, pp. 86–88; Cejic, K. (2023), p. 22; Holm, E. (2024), "Distansarbete i förhållande till lagvalsbestämmelserna i förordning 883/2004 – (var) passar det in?", *Nordisk socialrättslig tidskrift*, p. 136.

⁷⁹ See Schwartz, C. (2025), p. 31.



Various Forms of Cross-Border Work Involving Remote-Work Elements

The figure illustrates how the various terms presented in sections 2.1-2.5 overlap for employed individuals.

3 The Future of Taxation of Workers

3.1 Introduction

Several proposals have been presented to amend Article 15 of the OECD MC in response to the growing prevalence of remote work.⁸⁰ To date, the OECD has not put forward any concrete proposal to revise Article 15, although it has identified remote work as an area requiring closer examination.⁸¹ The OECD only include a revised Commentary to Article 5 as a response to the increased number of cross-border remote workers. By contrast, the UN Committee of Experts on International Cooperation in Tax Matters proposed amendments to Article 15, accompanied by corresponding changes to Articles 23A and 23B of the UN MC.⁸² In the academic literature, several alternative reform proposals have been presented.⁸³ The following sections examine and compare the various approaches that have been suggested for a revised Article 15 together with an examination of the updated OECD MC Commentary on Article 5 and its importance for cross-border remote work.

It should be noted, however, that amendments to the OECD MC do not in themselves affect existing tax treaties. Nor will such amendments necessarily be reflected in future treaties unless the negotiating states choose to incorporate them into their treaty policy and bilateral negotiations.⁸⁴ Consequently, even if Article 15 of the OECD MC or the UN MC were to be amended, it may take considerable time before such changes are reflected in actual treaty practice. A

⁸⁰ See sections 3.2–3.4.

⁸¹ OECD (2025), *Public Consultation Document: Global Mobility of Individuals*.

⁸² United Nations Committee of Experts on International Cooperation in Tax Matters (2025), *Co-Coordicators' Report*, E/C.18/2025/CRP.1/Rev.

⁸³ See section 3.4.

⁸⁴ See section 1.6.2.

more immediate and coordinated implementation could, in principle, be achieved through a multilateral instrument, as was the case in the BEPS project.⁸⁵

3.2 The OECD

3.2.1 Cross-Border Remote Work and Permanent Establishments

In the 2025 version of the OECD MC Commentary to Article 5, attention has been given to the creation of permanent establishments in situations of cross-border remote work. The introduction of the new commentary might not have a direct effect on the taxation of the individual, as the residence state retains the right to tax the entire employment income of an individual regardless of the presence of a permanent establishment. However, in certain situations, for example when the Öresund Agreement is applied, the presence of a permanent establishment in the residence state has effect on the taxation of the individual.

The 2025 update replaces the two former paragraphs with 21 new paragraphs, introducing a more detailed analytical framework.⁸⁶ Notably, the OECD introduces a threshold under which a home or other relevant place may be considered a place of business: if the activities carried out there amount to less than 50 percent of the employee's total working time during a twelve-month period commencing or ending in the fiscal year concerned, the location will generally not constitute a place of business.⁸⁷ If the 50 percent threshold is exceeded, this does not automatically mean that a permanent establishment exists. Instead, the determination depends on the specific facts and circumstances, with particular emphasis on whether there is a commercial rationale for the employee's activities being performed in the Contracting State in which the home office is located. In essence, a permanent establishment is more likely where the employee's presence in that state offers a commercial

⁸⁵ OECD (2016), *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting*.

⁸⁶ Compare OECD MC (2017), Commentary on Article 5, paras. 18–19, with OECD (2025), *The 2025 Update to the OECD Model Tax Convention*, Commentary on Article 5, paras. 44.1–44.21.

⁸⁷ OECD (2025), *The 2025 Update to the OECD Model Tax Convention*, Commentary on Article 5, para. 44.8.

advantage, for example, where the state is an important market for the enterprise and the employee's work relates to that market.⁸⁸

Similar to the previous version, the new version of the Commentary addresses situations when work is performed from a home office. However, the new version also points out that in addition to work carried out from a home office in the residence state, also work carried out from another relevant place in the residence state is within the scope of the updated guidance. The Commentary disqualifies certain places in this regard, such as premises of the employing enterprise or premises of an enterprise with contractual or other connections to the employing enterprise. This includes premises of customers, suppliers and associated enterprises to the employing enterprise. It also exemplifies what might be a relevant place, such as a second home, a holiday rental or the home of a friend or relative.⁸⁹ In addition, the commentary points out that an individual typically would spend time at home or another relevant place in a private context and may also undertake activities related to the business of an enterprise at the same home or relevant place.

The new Commentary to Article 5 introduces criteria and assessments previously not present in the Commentary. This raises the question of whether a static or ambulatory approach should be adopted when applying the amendment to tax treaties concluded before its adoption.⁹⁰ Haslehner argues that neither the 50 percent threshold nor the commercial rationale test finds support in the wording of Article 5 or in existing doctrine. Consequently, if a static approach is applied, these amendments to the Commentary risk being given little or no weight in the interpretation of previously concluded treaties.⁹¹ Weerepas and Kramer follow the same reasoning and conclude that the amendment to the Commentary cannot be regarded as a mere clarification but rather a material change and therefore cannot be used for the interpretation of Dutch tax treaties concluded prior to the amendment.⁹² This is also the view of Maisto who points out that the 2025 revisions extend beyond simply clarifying

⁸⁸ OECD 2025 update, Commentary on Article 5, para. 44.10-44.19.

⁸⁹ OECD 2025 update, Commentary on Article 5, Para 44.1.

⁹⁰ See section 1.6.2.

⁹¹ Haslehner, W. (2026), "The 2025 OECD Model Tax Convention Update: A Mountain in Labour Gives Birth to a Mouse", *Intertax*, p. 80.

⁹² Weerepas, M./Kramer, S. (2026), "Vaste inrichting en grensoverschrijdend thuiswerken verduidelijkt met het herziene OESO-commentaar van 19 november 2025? Zeker en vast?!", *Maandblad Belasting Beschouwingen*, p. 48.

Article 5(1).⁹³ The Swedish Tax Agency have repealed their previous statement⁹⁴ on when an employees work from home may constitute a permanent establishment for a foreign employer. The repealed statement was based on the previous Commentary on Article 5. Their new statement implies that the new Commentary shall be used for interpretative purposes.⁹⁵ The Swedish Tax Agency does not address the static/ambulatory approach in their new statement. However the statement seems to imply that they intend to also apply the 2025 Commentary on treaties concluded prior to the amendment. Such an approach could also from a Swedish perspective be questioned based on existing case law which generally favors a static approach if the amendment is of a material rather than clarifying character.⁹⁶

3.2.2 OECD Public Consultation on Global Mobility of Individuals

During November and December 2025, after the articles constituting this thesis had already been finalized, the OECD invited public comments on tax issues arising from the global mobility of individuals. The consultation addressed both personal income tax and corporate tax matters associated with internationally mobile workers, as well as data and trends concerning the prevalence of remote work and digital nomadism.

The responses submitted covered all of these topics, although the emphasis varied depending on the nature of the submitting party. Four themes relevant to this study emerge repeatedly from the consultation responses:

⁹³ Maisto, G. (2026), "Exploring the 2025 OECD Update on Home Office and Permanent Establishment", *Tax Notes International*, p. 9.

⁹⁴ Swedish Tax Agency (2022), "När medför en anställds arbete i hemmet att ett utländskt företag får fast driftställe?", Position Statement, ref. no. 8-1677220, 13 May 2022.

⁹⁵ Swedish Tax Agency (2026), "Ställningstagandet 'När medför en anställds arbete i hemmet att ett utländskt företag får fast driftställe?' ska inte längre tillämpas", Position Statement, ref. no. 8-87842-2026, 17 March 2026.

⁹⁶ See, e.g., Schwartz, C./Saric, M. (2018), "Förslaget om övergång till ekonomisk arbetsgivare vid tillfälligt arbete i Sverige", *Svensk Skattetidning*, pp. 347–353; Cejje, K. (2017), pp. 672–673; Sallander, A.-S. (2017), "Om valet av version av OECD:s modellavtal och kommentar vid tolkning av skatteavtal – en analys av HFD:s praxis under 30 år", *Skattenytt*, pp. 689-720..

- the determination of tax treaty residence under Article 4 of the OECD MC;⁹⁷
- issues relating to Article 15 of the OECD MC and the allocation of taxing rights over employment income, particularly in cross-border remote work situations;⁹⁸
- mismatches between the levy of taxes and social security contributions, and;⁹⁹
- the potential creation of permanent establishments through employees working abroad.¹⁰⁰

A selection of the responses relevant for this thesis is presented below.

The International Tax Law Research Network (ITRN) placed particular emphasis on the concept of tax residence in the context of increasing cross-border mobility. It argued that the current tie-breaker rules in Article 4 of the OECD MC, especially those based on permanent home and center of vital interests, may no longer adequately reflect contemporary patterns of living and working. The ITRN therefore suggested that greater weight could be given to more objective connecting factors, such as habitual abode or physical presence.¹⁰¹

The Maastricht Center for Taxation noted that the place-of-work principle underlying Article 15 of the OECD Model Convention is increasingly under pressure as a result of technological developments.¹⁰² Nevertheless, it remains a well-established allocation principle with the practical advantage that an individual cannot be physically present in two places at the same time. For that

⁹⁷ See, e.g., International Tax Law Research Network (ITRN) (2025), *Submission to the OECD Public Consultation on "Global Mobility of Individuals"*.

⁹⁸ Maastricht Centre for Taxation (2025), *Submission to the OECD Public Consultation on "Global Mobility of Individuals"*.

⁹⁹ See, e.g., Business at OECD (BIAC) (2026), *Submission to the OECD Public Consultation on "Global Mobility of Individuals"*; Maastricht Centre for Taxation (2025); Soares, R. (2025), *Submission to the OECD Public Consultation on "Global Mobility of Individuals"*.

¹⁰⁰ Business at OECD (BIAC) (2026), Deloitte (2025), *Submission to the OECD Public Consultation on "Global Mobility of Individuals"*; EY (2025), *Submission to the OECD Public Consultation on "Global Mobility of Individuals"*.

¹⁰¹ See e.g. International Tax Law Research Network (ITRN) (2025).

¹⁰² Maastricht Centre for Taxation (2025).

reason, the authors cautioned against abandoning it too hastily in favor of alternative approaches, such as principles linked to base erosion.

At the same time, they proposed that optional provisions dealing specifically with cross-border remote work could be incorporated either into the OECD MC itself or into the Commentary. One possible solution would be a tolerance rule of 34 days, allowing an employee to work from home in the state of residence for up to 34 days without triggering taxation there. Conversely, where the employee performs most of the work from home, exclusive taxation in the state of residence could be maintained provided that work physically performed in the state of employment does not exceed 34 days.

The authors further emphasized that the relevant threshold need not be fixed at 34 days and could instead be left to bilateral treaty negotiations. This would allow states to coordinate the threshold with applicable social security arrangements, such as EU Regulation No 883/2004. They also suggest that any resulting shifts in tax revenue could be addressed through macro-level compensation mechanisms between the states.

3.3 The UN

3.3.1 A New Article 15.4

The UN Committee of Experts on International Cooperation in Tax Matters recognized that remote work may facilitate cross-border employment in situations where labour mobility is constrained by legal or practical barriers. At the same time, it acknowledged that remote work gives rise to complex policy challenges for states. The committee specifically addressed situations in which the state of employment is unable to tax an employee because the work is performed remotely, while the remuneration paid to that employee remains deductible for corporate tax purposes in that same state. This gives rise to an asymmetry between the allocation of taxing rights over the employment income and the allocation of the corresponding corporate tax deduction.¹⁰³ Against this backdrop, the committee proposed two alternative additions to Article 15 in the form of a new paragraph 4. Both alternatives are similar in that they grant the employer's state of residence the right to tax remuneration paid to an employee irrespective of where the employment is exercised,

¹⁰³ United Nations Committee of Experts on International Cooperation in Tax Matters (2025), *Co-Coordicators' Report*, E/C.18/2025/CRP.1/Rev., paras. 14–18.

provided that the remuneration is not borne by an entity resident in the employee's state of residence. The principal difference between the two alternatives lies in the second version, which limits the employer's state's taxing right by capping the tax at a specified percentage of the gross remuneration.

Alternative 1

4. Notwithstanding the provisions of paragraphs 1 and 2 and subject to the provisions of paragraph 3 and Articles 16, 18 and 19, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment exercised in that State or in a third State may be taxed in the other Contracting State to the extent that the remuneration is paid by, or on behalf of, an employer who is a resident of that other State and such remuneration is not borne by a resident of the first-mentioned Contracting State or a permanent establishment situated therein.

Alternative 2

4. Notwithstanding the provisions of paragraphs 1 and 2 and subject to the provisions of paragraph 3 and Articles 16, 18 and 19, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment exercised in that State or in a third State may be taxed in the other Contracting State in accordance with the laws of that State to the extent that the remuneration is paid by, or on behalf of, an employer who is a resident of that other State and such remuneration is not borne by a resident of the first-mentioned Contracting State or a permanent establishment situated therein, but the tax so charged shall not exceed ____ per cent (the percentage is to be established through bilateral negotiations) of the gross amount of the remuneration.

3.3.2 Method of Eliminating Double Taxation

Depending on the method used to eliminate double taxation under the tax treaty namely the exemption method (Article 23A) or the credit method (Article 23B), the UN committee proposed corresponding amendments should a new Article 15(4) be introduced. Whether an amendment of the method for eliminating double taxation is needed or not depends on the rationale behind the implementation of Article 15.4 in the specific case. If the primary purpose behind introducing Article 15.4 is asymmetry between employee and corporate taxation and the credit method under Article 23B applies, no modification

would be required. By contrast, if double taxation is eliminated through the exemption method and the states have agreed a maximum rate of tax for Article 15.4, the committee proposed specific amendments to Article 23A, as set out below:

2. Where a resident of a Contracting State derives items of income which, in accordance with the provisions of Articles 10, 11, 12, 12A, 12B and paragraph 4 of Article 15, may be taxed in the other Contracting State, the first-mentioned State shall allow as a deduction from the tax on the income of that resident an amount equal to the tax paid in that other State. Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given, which is attributable to such items of income derived from that other State

4. The provisions of paragraph 1 shall not apply to income derived or capital owned by a resident of a Contracting State where the other Contracting State applies the provisions of this Convention to exempt such income or capital from tax or applies the provisions of paragraph 2 of Article 10, 11, 12 or 12A, or the provisions of Article 12B or paragraph 4 of Article 15, to such income; in the case where the other Contracting State does not exempt the income, the first mentioned State shall allow the deduction of tax as provided for by paragraph 2.

The UN Committee emphasizes that Article 15.4 may be introduced not primarily to address the tax asymmetry described above, but to neutralize incentives for employees to work remotely in order to benefit from low income tax rates. In such cases the taxation in the state of employment should serve the purpose of topping up the taxation in the residence state of the employee. This is achieved by a reversed credit where the state of employment rather than the state of residence is responsible for crediting the taxes due in the other state.

3. Where an employee is a resident of a Contracting State and derives remuneration in respect of an employment by an employer who is a resident of the other Contracting State, which may be taxed in the other Contracting State in accordance with paragraph 4 of Article 15 of this Convention, the other Contracting State shall allow as a deduction from the tax on that remuneration of that employee an amount equal to the income tax paid in the Contracting State of which the employee is a resident on the remuneration from the exercise of the employment in that State or in a third State.

Such deduction shall not, however, exceed that part of the income tax, as computed before the deduction is given, which is attributable to the remuneration which may be taxed in the State of which the employee is a resident.

3.4 Proposals in the Literature

In addition to the proposals either requested or suggested by the OECD and the UN, i.e. the bodies responsible for issuing the two model conventions, there are several proposals for a reformed approach to taxation of employment income under tax treaties in the academic literature. Niesten suggested a tolerance rule of 69 days in order to ascertain where the work has been performed. This would mean that the source state is allowed to tax 100% of the remuneration paid as long as a maximum of 69 work days are spent in the state of residence and/or a third state.¹⁰⁴ The period of 69 days has been established with reference to the applicable social security legislation pursuant to EU Regulation 883/2004.

Beretta proposed a revised version of Article 15 under which the residence state would be granted the primary right to tax employment income, while the source state would be entitled to tax the income if the individual is present in that state for an aggregate period of 90 days beginning or ending in the relevant fiscal year. In substance, this proposal would retain the structure of Article 15(1), but replace the 183-day threshold in Article 15(2) with a 90-day presence requirement. The two remaining criteria of Article 15.2 would be deleted and no attention would be given to whether the remuneration is paid by or on behalf of an employer present in the source state nor if the remuneration is borne by a permanent establishment in the source state.

Cejie has explored the possibility of adjusting the allocation articles in tax treaties with the EU coordination rules for social security and vice versa. Her conclusion is that, in theory, it could be possible to align the allocation articles with the social security coordination rules, especially, if combined with a compensation mechanism similar to the Öresund Agreement.¹⁰⁵

Another suggestion for a reformed Article 15 has been put forward by Escribano. Also, in her proposal the residence state is given the primary right of taxation. However, the source state is given a right to tax income received from work performed on its territory. If the remuneration is paid by an employer or borne by a permanent establishment in the source state, the source state may levy a tax equal to 5% of the gross remuneration. This applies

¹⁰⁴ Niesten, H. (2021), p. 140.

¹⁰⁵ Cejie, K. (2024), "Who Is Leading the Dance?", pp. 312-322.

regardless of if any work is performed physically in the source state.¹⁰⁶ Escribano's suggestion for a reformed Article 15 reads as following:

Subject to the provisions of article 16, 18 and 19, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State. The remuneration may be taxed in the other Contracting State if:

a) The recipient carries out the work in its territory (OPTIONAL: "for a period aggregating at least XX days in any 12-month period commencing or ending") in the fiscal year concerned. In these scenarios, the other Contracting State may tax the portion of the remuneration corresponding to the proportion of working days the recipient works from its territory (OPTIONAL: "insofar as the amount of gross receipts obtained exceed XX"). In addition, if the remuneration is paid by, or on behalf of, an employer that is resident in its territory or else is borne by a permanent establishment which the employer has in its territory, the other Contracting State may tax an extra 5 per cent of the remuneration.

b) The recipient does not carry out the work in its territory but the remuneration is paid by, or on behalf of, an employer that is resident in its territory or else is borne by a permanent establishment which the employer has in its territory. In these scenarios, the other Contracting tax may tax 5 per cent of the remuneration.¹⁰⁷

The proposed revisions to Article 15 constitute an important contribution to the ongoing debate and deserve careful consideration in future policy deliberations. However, further analysis is required to determine whether amendments to Article 15 are warranted and, if so, how such amendments should be designed. To this end, the following sections provide an overview of the four studies included in this research. While each article focuses on a distinct challenge within the broader problem area, together they offer a comprehensive basis for evaluating the effectiveness and continued suitability of the current allocation of taxing rights in relation to an increasingly mobile workforce.

¹⁰⁶ Escribano, E. (2024), pp. 410-412.

¹⁰⁷ Escribano, E. (2024), p. 412.

4 Summary of the Articles in the Thesis

4.1 Article I - In-kind Contributions: Taxation of International Consortium Workers¹⁰⁸

The article In-kind Contributions: Taxation of International Consortium Workers investigates how tax treaty rules apply to the personnel of international research infrastructures financed not only through monetary contributions but also through in-kind contributions of labour. Using the ESS, the largest ERIC to date, as its primary case study, the article discusses how the organizational structure and financing model of ERICs exposes a number of doctrinal and practical weaknesses in the current international tax regime.

The ESS, like other ERICs, departs from earlier models for international scientific cooperation. Unlike EU institutions or the European Organization for Nuclear Research (CERN), which operate under internal systems of taxation that remove their personnel from national income tax, ERICs are not subject to any particular regime for taxation. Their personnel is therefore taxed according to ordinary national rules and subject to tax allocation under bilateral tax treaties. This, combined with the fact that up to forty percent of the ESS's financing consists of in-kind contributions in the form of goods, services, and personnel supplied by participating states, creates a multilayered and complex set of employment constellations.

The article demonstrates that the composition of the ESS workforce is far from uniform. Some individuals are employed directly by the ERIC, others by their home states and seconded through in-kind agreements, and others by public research institutions or private companies whose services are delivered as in-kind contributions. Additional groups form part of the workforce through cash-funded arrangements, meaning that their salaries are effectively financed by

¹⁰⁸ Schwartz, C. (2024), pp. 424–436.

Member States but not delivered as in-kind contributions. These categories give rise to different tax treaty dynamics, and the classification of the employer, state, public legal entity, private entity, is essential. As a result, two individuals performing identical tasks at the ESS may fall under different treaty provisions and may be taxed in different countries.

A substantial part of the article is devoted to analyzing the applicability of Article 19 of the OECD MC, which governs remuneration for government service. This provision, originally inspired by the Vienna Conventions on Diplomatic and Consular Relations, presumes a traditional bilateral relationship between a state employer and an individual employee exercising public authority. ERICs complicate this picture. When a Member State contributes personnel through an in-kind agreement, the individual typically remains employed by the sending state, and the value of the work carried out reduces that state's financial obligation towards the construction of the research facility. The article argues that this strongly supports the conclusion that such personnel performs services "for" the sending state within the meaning of Article 19. The sending state therefore retains the exclusive right to tax the income, unless the local employee clause in Article 19(1)(b) applies.

Applying Article 19 involves interpretation of which organizations should be subject to the provisions. The terms "political subdivision", "local authority," and "public legal entity," are undefined in the OECD Model, and thus must be interpreted under domestic law via Article 3(2). Swedish and Danish court practice reveals divergent interpretations, in some cases extending Article 19 coverage to hybrid institutions funded and controlled by states, and in other cases excluding publicly financed entities that are formally organized under private law. This divergence introduces a degree of uncertainty for ERIC personnel whose employers fall somewhere between public administration and private enterprise. The article concludes that although Article 19 may apply to a considerable portion of in-kind personnel, its applicability is depending on national classifications and may therefore vary depending on which is the contracting state.

The article also scrutinizes the condition in Article 19(3), which excludes government service from Article 19 if the state engages in "business." Some scholars interpret this as requiring a profit-seeking purpose, while others advocate an autonomous interpretation based on the state's underlying rationale for acting. The article argues that when states contribute labour as part of an in-kind obligation to an ERIC, they are not engaged in commercial activity. Although the contribution reduces the state's overall financial commitment to the project, that does not amount to conducting business.

Consequently, Article 19(3) should not displace Article 19(1) for employees engaged in such in-kind arrangements. By contrast, where a government body receives direct payment for services rendered under a cash-funded agreement, the activity takes on a commercial character, making Article 15, not Article 19, the appropriate provision.

For personnel not covered by Article 19, the allocation of taxing rights falls under Article 15 of the OECD Model. Here the analysis turns on the interpretation of the 183-day rule and, more specifically, the concept of “employer.” The article provides a detailed and practically oriented assessment of the formal employer approach and the economic employer approach, both recognized in the OECD Commentary. The ESS In-Kind Contribution Agreement template serves as an empirical basis for applying the integration test and the control test that define the economic employer doctrine. The author demonstrates that although the work carried out, such as construction, is undeniably integral to the ESS’s activities, the responsibility for risk, supervision, tools, reporting, and labour management remains with the delivering body in nearly all cases. Only the control of the physical premises arguably lies with the ERIC. Taken together, these factors favor treating the formal employer as the economic employer. This means that workers supplied through in-kind contributions will generally not be deemed economically employed by the ERIC for treaty purposes, thereby allowing the 183-day rule to operate in certain circumstances and reducing the risk of host-state taxation.

What emerges from the analysis is a broader systemic problem: international tax treaty rules, designed for conventional employment relationships, do not map neatly onto the complex hybrid arrangements generated by the in-kind financing model. The article shows that outcomes may differ substantively depending on subtle differences in employer classification, treaty wording, and domestic interpretations of key concepts. In some cases, workers in similar positions will be treated differently purely because their employer fits within, or falls just outside, the scope of Article 19. This raises concerns not only about fiscal neutrality but also about the pragmatic objective of ensuring that ERICs can attract qualified personnel from across Europe. Tax uncertainty may undermine the very purpose behind the creation of ERICs: to foster cutting-edge scientific collaboration through the free movement of expertise.

The article concludes that adopting an internal taxation model similar to that of the EU institutions or CERN, would be ill suited to ERICs. Because ERICs rely heavily on externally employed staff, any internal tax system would leave large segments of the workforce outside its scope, potentially creating more fragmentation rather than less. Instead, the article proposes that ERICs

consider creating treaty-like internal provisions modelled on Article 19 to allocate taxing rights predictably between the sending state and the host state. While such provisions could not override bilateral tax treaties in all circumstances, they could provide a clearer starting point for Member States and help stabilize expectations for personnel operating under in-kind contribution agreements.

In sum, the article offers a doctrinal analysis of how international tax law responds, or fails to respond, to new forms of scientific collaboration that blur traditional boundaries between public and private employment, national and international governance, and monetary and non-monetary financing. Its findings highlight not only the legal complexity inherent in the ERIC model but also the broader need to adapt tax treaty interpretation to emerging organizational forms in cross-border research infrastructures.

4.2 Article II - Taxation of Remote Workers – is the Allocation of Taxation Rights in Line with the Benefit Principle?¹⁰⁹

This article examines how the rise of remote work challenges the foundational assumptions of the international tax regime. The development of digital technologies and the structural changes triggered by the COVID-19 pandemic have facilitated a form of labour mobility that is no longer tied to the physical movement of workers across borders. This transformation exposes tensions within the OECD MC, whose allocation rules for employment income continue to rely heavily on physical presence as the decisive nexus for source taxation. The central purpose of this article was therefore to assess whether these allocation mechanisms remain normatively defensible when viewed through the lens of the benefit principle.

The article begins by situating remote work within a broader socio-economic shift. While remote work has existed for decades, it gained momentum during the pandemic, when large parts of the workforce were required or encouraged to work from home. Many organizations have subsequently adopted permanent or semi-permanent remote-work models, ranging from “work-from-anywhere” policies to fully decentralized corporate structures. These developments

¹⁰⁹ Schwartz, C. (2023), pp. 621–641.

undermine the longstanding view, reflected in both doctrine and tax-treaty design, that labour is inherently less mobile than other production factors. When employees can perform their tasks from anywhere, the geographic link between labour and the employer's jurisdiction becomes weakened, raising fundamental questions about the appropriate tax nexus.

Building on this context, it is analyzed how income from remote work is allocated under the OECD MC. The core allocation rule for employment income is found in Article 15, which ties taxing rights to the place where the employment is "exercised," interpreted by the Commentary as the place where the employee is physically present. As a consequence, if an employee performs all work remotely from their state of residence, only the residence state may tax the income; the state where the employer is located plays no role unless some portion of the work is physically carried out there. With remote work, the simplification rule in Article 15(2), the 183-day rule, loses much of its relevance, as the threshold presupposes physical presence in the employer's state.

Contrasting Article 15 with Articles 16 and 19, it is highlighted that the OECD MC itself recognizes non-physical nexus criteria in certain situations. Article 16 (directors' fees) allocates taxing rights to the state of the company's place of effective management, regardless of where the director performs the work. Article 19 (government service) allocates taxing rights primarily to the paying state, with an exception for "local employees." These provisions demonstrate that the OECD MC is not wholly bound to the physical-presence paradigm; instead, practical and sovereignty-based considerations sometimes justify alternative allocation mechanisms. The discussion also includes frontier-worker provisions, which are not part of the OECD MC but are frequently included in bilateral tax treaties to facilitate daily cross-border commuting. These rules are poorly aligned with extensive remote-work patterns and risk creating uncertainty or unintended consequences when work is no longer performed predominantly in the employment state.

The OECD's temporary guidance during the COVID-19 pandemic further illustrates the fragility of the current system. By recommending that states treat remote work due to the pandemic as if it had not changed the place where work was exercised, the OECD implicitly acknowledged that the physical-presence rules could produce distortive outcomes in exceptional circumstances. This response also raises broader questions about how well these rules function in a world where remote work has become a permanent feature rather than an emergency measure.

In the second part of the article, I turn to the normative framework underpinning international tax allocation and in particular to the benefit principle. Drawing on the work of Schanz, Vogel, and the Musgraves, I examine the relationship between residence and source taxation, and the broader concept of inter-nation equity. The benefit principle holds that taxpayers should contribute to public finances in proportion to the benefits they receive from state-provided services. Historically, this principle has justified source-based taxation, as the state where income-generating activity occurs is seen as providing the infrastructure, legal system, and economic environment that enable the income.

However, in the context of remote work, the assumption that value creation takes place where the work is physically performed becomes problematic. A remote worker's income depends on contributions from both the employer's state and the residence state. While the residence state provides everyday public services, infrastructure, and personal protection, the employer's state offers the corporate environment, regulatory framework, and market context that make the employment relationship possible. In this sense, both states contribute to the income's production, although in different ways.

It is therefore evaluated whether the allocation rules of Articles 15, 16, and 19 align with the benefit principle in remote-work situations. Article 15, when applied to remote workers, effectively grants exclusive taxing rights to the residence state. This outcome reflects aspects of the benefit principle, as the worker indeed benefits from public services in that state. Yet it undervalues the employer state's role in creating the conditions for the employment. Article 16, by contrast, aligns more closely with a benefit-based rationale, as it recognizes the employer state's contribution regardless of physical presence. Article 19 reveals the greatest tension: although rooted in sovereignty concerns, it produces outcomes in remote-work scenarios that deviate sharply from benefit-based reasoning, particularly when government employees work remotely abroad.

In the concluding part of the article, I outline possible approaches for adapting the tax-treaty framework to remote work. These include rethinking the nexus criteria in Article 15, drawing inspiration from Article 16, exploring hybrid allocation methods that reflect employer-state involvement, and considering multilateral reforms analogous to the OECD's digital-tax initiatives. I also note that while temporary administrative measures may ease short-term frictions, they do not resolve the deeper structural misalignment between current treaty rules and the realities of digitally enabled labour mobility.

Overall, the article argues that remote work acts as a conceptual stress test for the international allocation of taxing rights. By applying the benefit principle to remote-work scenarios, I demonstrate that the physical-presence nexus embedded in the OECD MC is no longer a reliable proxy for economic allegiance or for the distribution of state-provided benefits. The analysis points towards the need for a more fundamental reconsideration of how employment income is sourced in the digital economy. In the broader context of my thesis, the article provides a theoretical foundation for re-evaluating traditional allocation principles and contributes to a modernized understanding of cross-border work.

4.3 Article III - A New Öresund Agreement – A Model for Hybrid Work in the Nordics¹¹⁰

This article provides an analysis of the 2024 revision of the Öresund Agreement between Sweden and Denmark, assessing its significance against the backdrop of increasingly common hybrid and remote work patterns in the post-pandemic labour market. The purpose of the updated agreement, originally introduced in 2003 and now substantially modernized, is to facilitate cross-border employment in the Öresund region by clarifying and simplifying the allocation of taxing rights for hybrid workers. In combination with the parallel social security coordination arrangement (Öresundsöverenskommelsen), the 2024 agreement creates a regulatory environment in which both taxation and social security contributions are attributed to the state of employment, irrespective of where the work is physically performed (within certain limits). The article evaluates this legal architecture and considers whether the updated framework might serve as a model for broader Nordic cooperation.

The analysis begins by situating the 2024 reform within larger structural developments. The COVID-19 pandemic triggered an unprecedented shift towards remote and hybrid work. Many employees became accustomed to working partly or wholly from home, and employer practices evolved accordingly. These developments exposed several shortcomings in pre-existing tax treaty frameworks, including the Nordic Tax Convention, which, like the OECD MC, allocates taxing rights primarily based on the place where

¹¹⁰ Schwartz, C. (2025), pp. 30–52.

the work is physically carried out. Hybrid work challenged these traditional premises. Even before the pandemic, Sweden and Denmark had tailored solutions for the Öresund region, recognizing that thousands of individuals commute daily across the strait. Yet the original 2003 Öresund Agreement was based on assumptions of limited and predictable remote work and therefore required revision.

Against this background, the 2024 agreement constitutes a qualitative shift. The article first provides a historical overview, tracing the development of bilateral and multilateral Nordic tax treaties since the early twentieth century. It highlights how Denmark and Sweden have periodically introduced and removed frontier-worker rules, depending on political and labour-market needs. The 2003 agreement itself was a bilateral supplement to the Nordic Tax Convention, designed to ensure that cross-border workers could maintain tax affiliation to the employment state even when working occasionally from home. However, the agreement was limited in scope, applied only to private-sector employees, and relied on a quarterly (three-month) calculation period that no longer corresponded to modern working patterns.

The 2024 agreement extends both the substantive and personal scope of the rules. Most notably, it now includes public-sector employees, who were previously excluded and remained fully governed by Article 19 of the Nordic Tax Convention. Moreover, the calculation period is expanded from three to twelve months, allowing greater flexibility in the distribution of workdays. The substantive core of the agreement, Article 1, provides that work performed by a resident of one state for an employer located in the other shall be deemed to be performed in the employer's state, provided that at least half of the total work during a twelve-month period is physically performed in that state. This reclassification mechanism is central to the functioning of the agreement: it effectively displaces the standard OECD MC interpretation, which ties the place of work to the employee's physical presence. By allowing work performed in the residence state to be treated as if it were executed in the employment state, the agreement ensures continuity of tax jurisdiction and minimizes administrative complexity.

The article explores several interpretative and practical issues arising from this rule. One challenge concerns short-term employment. Because the twelve-month period is central to the calculation, it is unclear whether temporary employment contracts of less than six months permit application of the agreement at all. A literal reading suggests that the requirement to work "at least half" of the period in the employer's state cannot be satisfied. The article argues, however, that a purposive interpretation, aligned with the agreement's

objective of simplifying cross-border taxation, supports applying the agreement even to shorter employment periods. Otherwise, employees dismissed early or hired temporarily would unpredictably fall outside the regime, causing inconsistent tax outcomes and administrative burdens.

An additional component of the agreement concerns the treatment of work in third countries. Compared with the 2003 version, the new agreement is more flexible. Under the earlier rule, remote work had to be performed from the employee's home, and travel to third countries was allowed only for business trips. The 2024 agreement instead requires that work outside the employer's state be limited to the residence state or constitute business trips or other work of temporary nature. This loosens earlier constraints, though the article notes that the corresponding social security agreement (the Öresundsöverenskommelsen) continues to impose stricter limits, creating asymmetries between taxation and social security coordination.

A central analytical section of the article addresses the risk of creating a permanent establishment (PE) in the employee's state of residence when work is performed outside the employer's jurisdiction. The 2024 agreement removes the requirement that home-state work be performed from the employee's residence, potentially allowing work from an affiliate's premises or a co-working facility. This raises the possibility that such premises could constitute a fixed place of business under Article 5 of the Nordic Tax Convention. The article draws on the OECD Commentaries, including the 2017 amendments dealing with home offices, to argue that occasional home work rarely constitutes a PE, but regular work from another company's premises may do so if the work is integral to the employer's core business and the place is at the employer's disposal. The author highlights the practical dilemma: while the new agreement offers more flexibility, it simultaneously increases the risk that Sweden or Denmark could deem an enterprise to have a PE in the employee's residence state, thereby imposing corporate tax obligations and undermining the agreement's intended administrative simplification.

The article also devotes substantial attention to procedural provisions, including the withholding of preliminary tax. Following Sweden's 2021 reform requiring foreign employers without a PE to withhold Swedish tax on work performed in Sweden, Danish employers became subject to reporting and withholding obligations even when their employees were exempt from Swedish taxation under the Öresund Agreement. The 2024 reform introduced a new treaty-based exemption from Swedish withholding obligations, removing this administrative burden and aligning practice with the purpose of

the agreement. This demonstrates a pragmatic mutual adjustment to ensure smooth cross-border employment.

Another key component is the revenue-sharing mechanism, the utjämningsordning. To prevent fiscal imbalances, Sweden and Denmark compensate one another for tax losses incurred when cross-border workers are taxed exclusively in the employment state. The 2024 update increases the threshold for compensation (from DKK 150,000 to 210,000, indexed annually) and extends the mechanism to public-sector employees, significantly broadening its fiscal impact. The article explains how this mechanism stabilizes tax revenues and reflects a deeper regulatory integration between the two states.

The article also discusses social security coordination. The Öresund Agreement on Social Security, originally concluded under Regulation No 1408/71 and now updated for Regulation No 883/2004, mirrors the Öresund Agreement by allowing social security affiliation in the employer's state provided that at least half of the work is performed there. However, the article identifies increasing divergence between the tax and social security frameworks. For instance, sickness and holiday days are counted as workdays in different ways under the two regimes; and third-country work allowed under the tax agreement may not be allowed under the social security rules. Consequently, hybrid workers may find themselves taxed in one state but socially insured in another, contrary to the intended alignment between the two frameworks.

In its concluding analysis, the article evaluates whether the revised Öresund Agreement could serve as a model for other Nordic countries. While the bilateral arrangement between Sweden and Denmark is functionally effective, its expansion to Finland or Norway would require renegotiation of those countries' positions under the Nordic Convention and adjustments to their social security coordination mechanisms. The article suggests that the Öresund model could advance Nordic labour market integration but notes that differences in labour-market patterns, tax structures, and administrative capacities may require country-specific adaptations.

Overall, the article demonstrates that the 2024 Öresund Agreement represents a significant modernization of cross-border tax coordination in the Öresund region. It adapts the legal framework to contemporary hybrid work realities, aligns taxation more closely with social security rules, and promotes administrative efficiency. At the same time, unresolved issues, including PE risk, mismatches between tax and social security rules, and uncertainties

regarding short-term employment, suggest the need for further refinement. The article's broader normative argument is that tailored, functional bilateral agreements may provide solutions where general tax treaty models fall short, especially in regions with by dense cross-border labour mobility.

4.4 Article IV - Tax and Social Security Contributions – The Cross-Border Impact of Telework¹¹¹

The fourth article investigates how the rapid increase of cross-border telework has affected two distinct legal frameworks that regulate tax and social security contributions on income from cross-border employment: the EU's coordination of social security under Regulation 883/2004 and the international tax treaty network built on the OECD MC. While these frameworks have long coexisted, the increase of cross-border telework has revealed inconsistencies in how they allocate the right to levy taxes and social security contributions. The article thus contributes to understanding how labour mobility in the digital age challenges the underlying assumptions of European and international fiscal coordination. As such, it plays a central role in the thesis by demonstrating how the boundaries between taxation and social security financing are affected by new ways of performing cross-border work.

The article begins by outlining the financing of social security systems within the EU. Member States exhibit significant variations in how they fund social security systems, ranging from contribution-based systems inspired by the Bismarck model to tax-financed Beveridgean schemes. Although these models differ substantially, EU Regulation No. 883/2004 applies regardless of how the system is financed and does not distinguish between contributory and tax-funded systems. This observation is essential to the article's broader argument: even in Member States where financing is almost entirely tax-based, affiliation to the social security system remains dependent on the coordination provisions of Regulation No. 883/2004. The article highlights the fiscal importance of social security contributions in many Member States and notes that, on average, these contributions represent a significant share of public revenues, often comparable to or exceeding personal income taxes. Against this background, the allocation of contributions and taxes in cross-border telework

¹¹¹ Schwartz, C. (2026), pp. 66–78.

situations is not merely a technical matter but one with systemic implications for public finance and distributive fairness between states.

Having established the fiscal significance of contributions, the article turns to the architecture of Regulation No 883/2004. The Regulation rests on two fundamental principles: the single-state principle, which ensures that a person is affiliated with only one Member State's legislation; and *lex loci laboris*, which assigns affiliation based on where the work is physically carried out. The system includes exceptions for postings and for multi-state workers, with the latter governed by thresholds that determine whether a substantial part of the activity is performed in the state of residence. The article emphasizes that these rules were conceived for a labour market in which physical presence could be assumed. Telework challenges this premise by relocating substantial portions of work to the employee's state of residence without changing the nature of the employment relationship or the economic position of the employer.

The pandemic played a decisive role in revealing these issues. To avoid unintended shifts in affiliation during periods of compulsory remote work, the Administrative Commission issued guidance effectively suspending the normal application of Articles 11–13 of the Regulation. When temporary measures expired, sustained levels of telework prompted more lasting adjustments. Of particular importance is the 2023 Framework Agreement on Cross-border Telework, adopted under Article 16 of the Regulation, which allows up to 50 percent of work to be performed from the state of residence without triggering a change in applicable legislation, provided that both Member States involved have signed the agreement. The article interprets this development as evidence of an emerging flexibility within social security coordination, an evolution toward a functional rather than strictly territorial understanding of workplace location.

The tax treaty system, by contrast, remains firmly anchored in physical presence as the decisive criterion for allocating taxing rights. Article 15 of the OECD MC assigns the primary right to tax employment income to the state where the work is physically exercised. Because telework relocates the physical performance of work to the employee's residence state, income attributable to teleworked days becomes taxable exclusively in that state. The article explains that this outcome is not an unintended anomaly but a direct consequence of the OECD MC's design. While tax treaties always preserve a residual taxing right for the residence state, the state of source loses its entitlement to tax teleworked income even when the employer and the economic activity remain centered there. The article notes that this stands in

contrast to the increasing flexibility within Regulation No 883/2004, which now allows continued affiliation with the state of employment despite significant remote work.

Frontier worker provisions add an additional layer of complexity. These bilateral clauses were designed for traditional cross-border commuters and vary widely in structure and scope. The article demonstrates that telework often renders such provisions inoperative or produces outcomes that contracting states did not anticipate when drafting them. Their bilateral and geographically constrained nature also contrasts sharply with the EU-wide application of Regulation No 883/2004, further contributing to the fragmented governance landscape.

Drawing on CJEU case law, the article explains that under EU law, the classification of a levy depends on whether it has a direct and sufficient link to the financing of social security, not on its label under domestic law. By contrast, the OECD MC excludes from its scope levies that are directly linked to social security benefit entitlements. This creates the possibility that a single levy may be classified as a social security contribution under EU law but as a tax under a tax treaty. The article emphasizes that this conceptual mismatch can lead to situations where a state must refrain from levying a contribution, even though the individual is not affiliated to its social security system, because the applicable tax treaty restricts its taxing rights.

To illustrate the practical consequences of these tensions, the article presents a series of telework scenarios. By examining occasional teleworkers, hybrid teleworkers, and dedicated teleworkers, and comparing the outcome under Regulation No 883/2004 with that under Article 15 of the OECD MC, it demonstrates how contributions and taxes may accrue in different states. When combined with Member States' divergent funding models and the methods used to eliminate double taxation, these scenarios produce a range of possible outcomes, including double financing, where the income contributes to two states' public budgets, and zero financing, where the income contributes to none. The article's examples reveal that such outcomes are not merely hypothetical but plausible results of the structural misalignment between the two coordination systems.

In its concluding analysis, the article argues that the simultaneous application of Regulation No 883/2004 and double tax treaties may undermine the coherence of both systems. Telework, by decoupling the physical performance of work from the traditional workplace, exposes the extent to which the two frameworks rely on incompatible territorial logics. While the social security

system has begun adapting through mechanisms such as the Framework Agreement on Cross-border Telework, the tax treaty system has not undergone a corresponding evolution. The article therefore suggests that without improved coordination, or at least mutual awareness, between the two regimes, cross-border telework will continue to generate legal uncertainty, equity concerns and potential distortions in Member States' ability to finance public welfare systems.

The article demonstrates how cross-border telework reveals deeper structural issues in the relationship between international tax law and EU social security coordination. By combining doctrinal analysis with fiscal and policy-oriented reflection, it supports the overarching argument that modern forms of work require a more integrated understanding of taxation and social security financing. The article thus strengthens the dissertation's broader claim that existing coordination instruments are strained by digitalization and changing labour patterns, underscoring the need for a rethinking of allocation principles to preserve legal certainty, fairness, and coherent multi-level governance in the internal market.

5 Conclusions

5.1 Summary of Findings

The overarching object of the thesis has been to examine how different forms of cross-border work, challenge the established mechanisms for allocating taxing and contribution rights between states. Ultimately the study aimed to illustrate if the current allocation mechanisms can accommodate modern work practices or if a change is needed to minimize adverse effects on cross-border work. Specifically, it has addressed whether new ways of working reveal shortcomings in Article 15 of the OECD MC and, if so, whether these shortcomings justify a reform of the provision. In particular, the study has addressed whether the increasing prevalence of remote and hybrid work challenges the current allocation of taxing rights based on physical presence.

The title of this thesis is, *Cross-Border Workers and New Ways of Working - Tax Challenges and Solutions*. While phenomena such as remote work are not entirely new, the increase in individuals performing work remotely represents a significant structural shift. This change has a large impact on the international allocation of taxing rights and the levying of social security contributions. The emergence of the ERIC organizational form can be placed rather precisely on a timeline. Prior to 2009¹¹², the concept of an ERIC did not exist; yet as of 2026, there are 32 ERICs established across the EU, varying considerably in size and function.¹¹³ Although remote work and ERICs differ conceptually, remote work being a mode of performing an employment activity, and ERICs being legal bodies created to facilitate scientific cooperation within the EU, they share a crucial characteristic: they were either non-existing or at least very rare when the allocation rules of the OECD Model Convention were first designed.

¹¹² Regulation (EC) No 723/2009.

¹¹³ European Commission, “ERIC Landscape: Active European Research Infrastructure Consortia (ERICs)”, available at https://research-and-innovation.ec.europa.eu/strategy/strategy-research-and-innovation/our-digital-future/european-research-infrastructures/eric/eric-landscape_en.

The thesis shows that new ways of working give rise to challenges in the taxation of employment income that could not have been fully anticipated when the existing legal frameworks were designed. These challenges are not limited to situations of remote work. They also arise in relation to organizational models such as the use of in-kind contributions at the ESS, where employees may be integrated into a cross-border research infrastructure while remaining formally connected to another entity or state. Taken together, these developments demonstrate that cross-border work is not performed in a homogeneous manner. Different forms of mobility, organization and financing may require more tailored legal responses, including bilateral and multilateral solutions. In the case of ERICs, such solutions could potentially be developed at EU level by addressing the taxation of employees already in the design of new ERIC structures, particularly where in-kind contributions constitute a significant part of the organizational and financing model.

The provisions governing employment income, and Article 15 in particular, have undergone only limited substantive changes since the 1963 draft OECD MC. This study has been conducted with reference to the 2017 OECD MC, which remained the applicable version during the writing of the thesis. It is important to note that this version predates the COVID-19 pandemic, which accelerated remote work. Against this background, the release of the 2025 change to the OECD MC raised the question of whether the Model or its Commentary would address the tax implications of remote work more explicitly. What is notable in the 2025 update to the OECD MC is that, although the increase of remote work is acknowledged, this is not reflected in Article 15 or in any of the other provisions governing the allocation of employment income. Instead, the attention is focused on Article 5 and the definition of a permanent establishment. The revisions to the Commentary should be understood as an attempt to simplify the permanent establishment assessment in relation to hybrid work. This means that for remote work performed up to 50 percent of the time, the assessment of whether a permanent establishment arises is simplified.

It is notable that both the Framework agreement on Telework and the OECD MC Commentary to Article 5 apply 50 percent as the relevant threshold. As long as the threshold is not breached, social security cover can be kept in the employing state while a permanent establishment is avoided in the residence state of the employee. The Öresund Agreement uses the same threshold,

making the assessment whether a permanent establishment is present more predictable for persons that meet the criteria of the Öresund Agreement.¹¹⁴

In an EU context, many authors note that a closer alignment between the allocation rules of the OECD MC and the EU's social security coordination rules would be desirable.¹¹⁵ Achieving such alignment, however, is challenging without significantly altering the foundational principles of each framework, namely, the single-state principle in Regulation No. 883/2004 and the bilateral allocation of taxing rights embedded in the OECD MC. When the heterogeneity of social security financing across the EU is added to the equation, the complexity of finding a coherent solution at either the global or EU level becomes even more apparent.

As was illustrated by the example of Sweden and Denmark, bilateral solutions aimed at bridging differences in social security financing are nevertheless possible. Given that an EU-wide harmonization of social security financing methods is unlikely, tailor-made bilateral arrangements that reflect the specific similarities and differences between individual states may offer a pragmatic way forward. The 50-percent threshold found both in the Framework Agreement on Cross-border Telework and in the OECD Commentary to Article 5 may serve as a useful benchmark for designing such bilateral instruments. While this would not resolve issues arising from complete remote work, it would significantly facilitate many common forms of cross-border telework. Combined with compensation mechanisms similar to those found in the Öresund Agreement, such an approach would also be normatively defensible in light of the benefit principle.

At the global level, where social security coordination mechanisms do not exist, other solutions may be required to safeguard the employment state's right to tax income in situations involving remote work. One potential approach, suggested in Article II would be to introduce a source-based withholding tax on employment income, analogous to that applied to dividends and interest. This could offer a viable model for ensuring that states in which economic activity is effectively located retain an appropriate share of taxing rights.

¹¹⁴ As the Öresund agreement stipulates that at least 50% of the work should be performed in the state of employment and the OECD Commentary to Article 5 puts the 50% threshold on the amount of work performed in the state of residence it is not a complete match, but in practice close.

¹¹⁵ See, e.g., Cejic, K. (2024), "Who Is Leading the Dance?", p. 312; Niesten, H. (2021), p. 143.

5.2 Possible ways forward

Historically, the UN Model Convention has favored source-state taxation to a greater extent than the OECD MC.¹¹⁶ For this reason, the proposal put forward to the UN MC would be more likely to be introduced in the UN MC rather than the OECD MC. In light of the 2025 update to the Commentary on Article 5, however, it is reasonable to assume that any potential OECD reform of Article 15 would be aligned with the principles underlying that update.¹¹⁷

Given the introduction of a 50 percent threshold in the permanent establishment assessment, one could envisage a fully aligned approach under which the right to tax the entire remuneration is allocated to the state of employment when at least 50 percent of the work is performed there. Such an approach would mean that the state in which the entity bearing the cost of the remuneration is located, and where that remuneration is deductible for corporate tax purposes, would also receive the corresponding tax revenue at the individual level. This solution would remain broadly consistent with the existing structure and rationale of Article 15.¹¹⁸

In an EU context, such an approach would also align with the Framework Agreement on Cross-Border Telework, under which the legislation of the state of employment remains applicable where no more than 50 percent of the work is performed in the employee's state of residence. Under such a model, both states financing their social security systems through general taxation and those relying primarily on social security contributions would continue to receive revenue to support their systems.¹¹⁹

A remaining question concerns the position of the state of residence. Although that state retains the right to tax the entire remuneration under Article 15, it is also responsible for eliminating double taxation following Articles 23A and 23B in the OECD MC. If the exemption method under Article 23A of the OECD MC applies, the residence state risks to receive no tax revenue from the employment income. If, by contrast, the credit method under Article 23B applies, the revenue of the residence state would depend on the relative tax

¹¹⁶ Haslehner, W. (2022), "Introduction", in Reimer/Rust (red.), Klaus Vogel on Double Taxation Conventions, para. 24.

¹¹⁷ See section 3.2.1.

¹¹⁸ OECD MC (2017), Commentary on Article 15.

¹¹⁹ Schwartz, C. (2026), pp. 68–69.

rates in the two states. Where the tax rate in the state of employment is equal to or higher than that in the state of residence, the outcome would in practice be the same as under the exemption method. Only where the tax rate in the state of employment is lower than that in the state of residence would the residence state obtain any residual tax revenue. The residence state could therefore be regarded to be placed at a disadvantage especially considering the situation from the perspective of the benefit principle.¹²⁰

The described solution resembles the approach adopted in the bilateral tax arrangements between Sweden and Denmark. Under the Öresund Agreement, employment income is treated as arising entirely in the state of employment provided that at least 50 percent of the work is performed there.¹²¹ In such cases, the state of employment is granted the exclusive right to tax the remuneration, while the state of residence exempts the income in accordance with the applicable method article. A notable feature of the Swedish–Danish arrangement, however, is the existence of a compensation mechanism under which the state of employment compensates the state of residence for part of the tax revenue lost as a result of the allocation rule.¹²² This mechanism ensures that the residence state is not left entirely without revenue despite relinquishing its taxing rights.

The question therefore arises whether a similar compensation mechanism could be introduced at the level of the OECD MC. Such a solution appears unlikely in practice. Designing a uniform compensation mechanism that would function effectively across the diverse fiscal systems of all OECD member states would be highly complex, and it would likely prove difficult to reach consensus on both the design of the mechanism and the calculation of the compensatory payments.

Although the introduction of such a mechanism at OECD level may be unrealistic, states remain free to design and implement similar arrangements bilaterally. Given that a 50 percent threshold already exists both in relation to the creation of permanent establishments and to social security affiliation, such a threshold could, at least within the EU, serve as a natural point of departure for future treaty negotiations.

¹²⁰ Schwartz, C. (2023), pp. 635–641.

¹²¹ Schwartz, C. (2025), pp. 34–35.

¹²² Schwartz, C. (2025), pp. 43–44; Cejic, K. (2024), "Who Is Leading the Dance?", pp. 319–322.

An alignment between the rules governing permanent establishments, the allocation of taxing rights over employment income, and social security affiliation would effectively permit a hybrid working model in which work may be performed in the residence state for up to 50 percent of the working time, corresponding to approximately 2.5 days per week on average. Such a model would be particularly relevant for neighboring states between which there is a lot of frontier work, such as the Benelux countries, France and Germany. It may therefore be appropriate to reconsider existing frontier worker regimes within the EU to evaluate whether a transition towards a 50 percent hybrid work threshold would constitute an improvement over the current rules. The long-standing existence of a similar arrangement between Sweden and Denmark also demonstrates that such a solution is both workable and capable of functioning effectively in practice.¹²³

In Article III, I propose a solution similar to the Öresund agreements on tax and social security for all Nordic countries.¹²⁴ Considering the subsequent introduction of a 50 percent threshold for permanent establishment creation, the solution might be appealing also outside the Nordic countries.

The idea of source taxation decoupled from physical presence has been advanced both by the UN and in academic literature. From the perspective of revenue allocation, such an approach ensures that the state of employment continues to receive tax revenue even in situations involving extensive remote work. Combined with a capped tax rate in the state of employment, it could also prevent excessive erosion of the tax base of the residence state. From the taxpayer's perspective, the approach would simplify compliance by removing the need for detailed day-counting exercises to determine the allocation of taxing rights.

In Article II, I propose a source taxation for remote work motivated by considerations following a fair allocation of tax revenue pursuant to the benefit principle.¹²⁵ My proposal is broadly in line with the UNs suggestion as well as Escribano's suggestion for a revised Article 15. Both my proposal and Escribano's proposal also address the situation where the individual also might be present for work in the state of employment.

¹²³ Schwartz, C. (2025), pp. 30–52.

¹²⁴ Schwartz, C. (2025), pp. 50–52.

¹²⁵ Schwartz, C. (2023), p. 639.

My proposal for a reformed allocation and taxation of income from employment is therefore twofold. First, I suggest that Article 15 of the OECD MC is amended to provide for source taxation of remote work in the state of employment, preferably combined with a limitation on the tax rate that may be imposed by that state. Second, I propose the introduction of a 50 percent hybrid remote work rule which could be adopted on a bilateral basis combined with a compensation mechanism between the contracting states. The latter rule would not be incorporated in the OECD MC itself but would instead be included in the Commentary to Article 15 as a blueprint for a suitable solution at a bilateral level.

In summary, this thesis demonstrates that neither the OECD MC nor the EU rules on the coordination of social security systems were designed for a labour market with mobility without physical movement. As remote work becomes more common in cross-border employment patterns, the pressure on existing legal frameworks will continue to intensify. The conflicts identified in this thesis are not limited to technical inconsistencies but reflect a deeper mismatch between rules built on physical presence and working patterns that are no longer organized around that premise. While no single reform can eliminate all of these tensions, the analysis has shown that more coherent solutions are both necessary and possible. The future taxation and social security treatment of cross-border work should therefore be guided by rules that better reflect where employment income is generated, where public systems are financed, and how work is actually performed.

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Appendix

