Taxation without Representation: The Case of Resident Non-Citizens

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In this article, the author examines the issue of taxation without representation as it relates to non-citizen taxpayers in the context of political and voting rights.

1. Introduction

Scholarly debate on the protection of taxpayers' fundamental rights has a relatively recent history. Interest in this subject first emerged in the last quarter of the 20th century.[1] This discussion was, and still is, heavily influenced by the contemporary human rights movement.[2] Various tax law controversies are often examined in relation to the founding concepts of human rights.[3] The most recurrent questions in relation to the rights of taxpayers revolve closely around rights and liberties relating to a fair trial, privacy, personal property, etc.[4]

In this article, the author examines a completely different category of taxpayers' fundamental rights, i.e. political rights and, in particular, the right to vote. In this respect, political rights constitute a distinct category of fundamental rights, predominantly reserved for citizens of a certain state.[5]

The article could be viewed as a small part of the wider debate regarding the inclusion of aliens[6] in the political demos of democratic societies. Tax law offers an interesting insight here in revealing the pragmatic approaches of states towards immigration. Although newcomers are almost immediately subject to full tax liability in a given jurisdiction, granting them full political rights takes a number of years.

The article focuses on Swiss and US law, with some comparisons to other countries and the European Union. Although very different in a number of aspects, Switzerland and the United States share similarities that are relevant within the framework of this research, i.e. large flows of immigration that give rise to significant foreign resident populations,[7] a federalist state structure that is also reflected in their tax systems, and direct democratic mechanisms. One important difference, i.e. the US worldwide taxation of its citizens, is interesting in this analysis as it appears to be less significant in practice than is usually seen.

Section 2. defines the problem related to the political participation of taxpayers and some of the mechanisms available to non-citizens. Section 3. briefly introduces the contemporary debate regarding the constitution of the demos. Section 4. reviews the importance of tax residence, in Switzerland and the United States, as the principal connecting factor between an individual and the state. Finally, section 5. compares the criteria of tax residence with the criteria of naturalization, which currently is the only way to access full political rights in both countries and in most other jurisdictions.

2. Defining the Problem

2.1. The mismatch between the constituencies of taxpayers and voters

Taxation has an effect on various fundamental rights and liberties of an individual, especially the right to property.[8] Given the important consequences of states' taxing actions, most current democracies enact tax obligations as formal laws.[9] Taxing and budgetary powers are usually the

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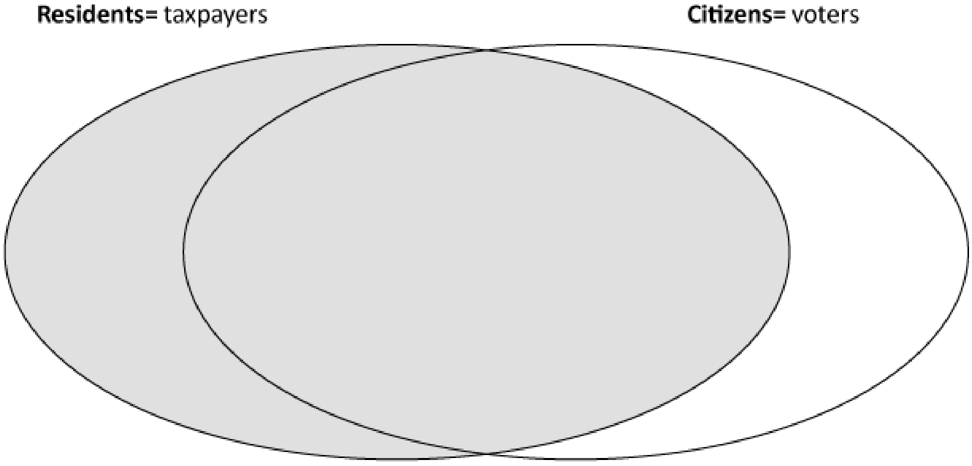
1. B. Brzezinski, *Taxpayers' Rights: Some Theoretical Issues, Protection of Taxpayers' Rights: European, International and Domestic Tax Law Perspective* p. 17 (Oficyna 2009).
2. Id., at p. 17 et seq.
3. D. Bentley, *Taxpayers' Rights: Theory, Origin and Implementation* pp. 48 and 141-142 (Kluwer L. Intl. 2007) and OECD, *Taxpayers' Rights and Obligations: a Survey of the Legal Situation in OECD Countries* pp. 10-11 (OECD 1990).
4. Bentley, *supra* n. 3; OECD, *supra* n. 3; G. Kofler et al., *Human Rights and Taxation in Europe and the World* (IBFD 2011), Online Books IBFD; and D. Albregste & H. van Arendonk, *Taxpayer Protection in the European Union,* (Kluwer L. Intl. 1998).
5. A. Auer et al., *Droit constitutionnel suisse* vol. II, pp. 5 and 13-15 (Stämpfli Editions SA 2013). The Chapter of Fundamental Rights of the European Union includes political rights (articles 39-46), but are reserved for EU citizens. *See* http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0389:0403:en:PDF (accessed 26 Dec. 2014). Interestingly, article 21 of the Universal Declaration of Human Rights does not specify that this right belongs only to the citizens of the state and refers to voters as "everyone" in "his country". *See* www.un.org/en/documents/udhr/index.shtml#a21 (accessed 6 Jan. 2015).
6. In Switzerland, the term "foreigner" (in French, "*étranger*" and, in German, "*Ausländer*") is used to define anyone who does not have Swiss citizenship (*see* Auer et al., *supra* n. 5, at vol.I, p. 137. In this article, however, the author uses the term "resident non-citizen" to describe non-citizens resident in a country.
7. In 2012, the lawful permanent population in the United States was approximately 13.3 million. *See* N. Rytina, *Estimates of the Legal Permanent Resident Population in 2012* p. 1 (July 2013), available at www.dhs.gov/sites/default/files/publications/ois_lpr_pe_2012.pdf (accessed 24 Feb. 2015). As at 31 December 2013, the Swiss resident population was 8,139,631, of which 1,424,370, i.e. 24.6%, were resident aliens. *See OFS – Encyclopédie statistique de la Suisse*, available at www.bfs.admin.ch/bfs/portal/fr/index.html (accessed 4 Feb. 2015). At the end of 2013, there were 732,183 Swiss citizens permanently or temporarily living abroad. *See OFS* at www.bfs.admin.ch/bfs/portal/fr/index/themen/01/02/blank/key/schweizer_im_ausland.html (accessed 8 Feb. 2015).
8. Bentley, *supra* n. 3, at pp. 12-14; Auer, *supra* n. 5, at pp. 380, 392; and X. Oberson, *Droit fiscal suisse*, pp. 43-44 (Helbing & Lichtenhahn 2012).
9. Art. 5(1) and art. 127(1) Federal Constitution of the Swiss Confederation (*Bundesverfassung*, BV); J.F. Aubert & P. Mahon, *Petit commentaire de la Constitution fédérale de la Confédération suisse du 18 avril 1999* p. 1009, ad art. 127 (Schulthess 2003).

Diagram 1: Mismatch of constituencies between voters and taxpayers*



*Countries subjecting individuals to a full tax liability based on their residence.

prerogative of national or regional legislators.[10] In certain countries, such as Switzerland, at cantonal and federal level, and the United States, at state level, a number of tax-related decisions are also taken by popular vote through the mechanism of direct democracy.[11] As a result, voting in parliamentary elections or directly on tax laws is the first step in shaping an individual's tax obligations and, therefore, in protecting various related rights, directly or indirectly.[12]

At present, in nearly all countries, political rights are predominantly reserved for citizens,[13] while taxpaying obligations fall on all residents.[14] The constituencies of taxpayers and voters, therefore, do not match (*see* Diagram 1).[15]

Diagram 1 distinguishes between the following three categories of individuals:

- resident non-citizens, who are taxpayers and usually do not have any or full political rights;[16]
- resident citizens, who are taxpayers and holders of political rights; and,
- non-resident citizens, who, in general, are not subject to full tax liability in their home country, but usually retain their political rights while living abroad.[17]

The question, therefore, arises as to whether the exclusion from political participation of the first category of individuals, i.e. resident non-citizens, is democratically legitimate and just.

It should be noted that resident non-citizens are often not completely deprived from all possibility of political participation in the country of their tax residence. The author briefly reviews the scope and effectiveness of such rights in section 2.2.

2.2. Voting rights of resident non-citizens

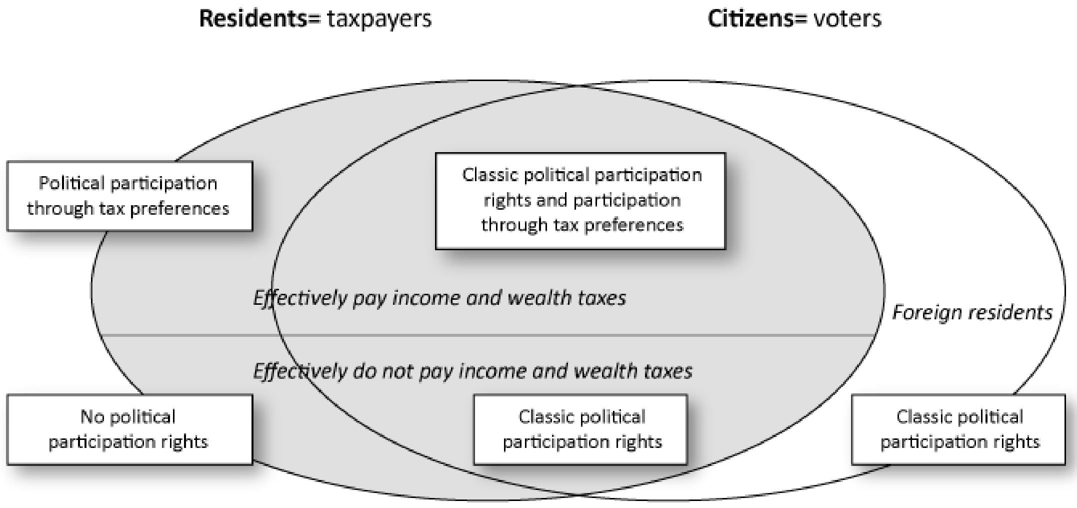
2.2.1. Voting rights of resident aliens in general

Recently, a number of countries have granted their permanent residents, who are always subjected to full tax liability,[18] certain political rights at regional or municipal levels.

In Switzerland, eight cantons have granted foreigners a right to vote at communal level[19] and two cantons at can-

10. Art. I, sec. 8 US Constitution ("Taxing and Spending clause") and Amendment XVI to the US Constitution; and art. 164 (1)(d) of the BV.
11. Twenty-seven individual states have some form of direct democracy in the United States and an increasing number of state-wide tax issues are determined through initiatives and referenda. Brunori argues that the rise of direct democracy in the United States is increasingly limiting the government's taxing and spending powers. *See* D. Brunori, *The Limits of Justice*, in *The Struggle for Tax Justice in the States, Tax Justice: The Ongoing Debate*, p. 203 (J.J. Thorndike & D.J.J. Ventry eds., The Urb. Inst. Press 2002). For direct democracy in the United States, *see also* D.A. Smith, *Direct Democracy: Regulating the "Will of the People", Law and Election Politics: the Rules of the Game* p. 173 (Routledge 2013). In Switzerland, an essential modification of an existing tax as well as the introduction of any new tax should be submitted to an obligatory referendum according to articles 140 (1)(a), 142 (2) and 195 of the BV. *See* Auer et al., *supra* n. 5, at p. 404.
12. All human rights in constitutional context are shaped through exercise of citizenship. *See* E. Hirsch Ballin, *Citizens' Rights and the Right to Be a Citizen* p. 142 (Brill Nijhoff 2014).
13. L. Beckman, *Citizenship and Voting Rights: Should Resident Aliens Vote?* p. 154 (22 Aug. 2006), available at, http://dx.doi.org/10.1080/13621020600633093 (accessed 24 Nov.2014) and article 136(1) of the BV.
14. *See* section 4. Interestingly, the idea of citizenship-based voting was originally introduced for the purpose of democratic inclusion as opposed to distribution of voting rights based on alleged competence or wealth. *See* Beckman, *supra* n. 13, at p. 155.
15. Arguing along the same lines, *see* A.J. Menéndez, *Justifying Taxes. Some Elements for a General Theory of Democratic Tax Law* p. 333 (Kluwer Academic Publishers 2001).
16. *See* section 2.2. on the political rights of foreigners.
17. For instance, Swiss nationals residing abroad can exercise their political rights in Switzerland (article 40 II of the Federal Constitution of the Swiss Confederation (*Constitution fédérale de la Confederation Suisse*, Cst.) and article 1 of the Federal Act on Exercising Political Rights Abroad (*Loi fédérale sur les droits politiques des Suisses de l'étranger*)).
18. *See* section 4. for a review of tax residence requirements in a number of countries.
19. Auer et al., *supra* n. 5, at p. 211. Vaud, Fribourg and Geneva have incorporated this right in their cantonal constitutions. Neuchatel and Jura granted this right in statutory dispositions. Bale-Ville, Appenzell Rhodes-Extérieures and Grisons only allow their respective communities the liberty to grant voting rights for foreigners.

Diagram 2: Mismatch of constituencies between residents and taxpayers*



*Countries using the criteria of residence to subject individuals to their full taxing jurisdiction. In the US however the situation would be similar, except that citizens residing abroad would also have the possibility to participate in political processes through tax preferences.

tonal level.[20] Political rights at the federal level are reserved for citizens.[21] A number of other countries, including Belgium, Denmark, Finland, Ireland and the Netherlands, grant a right to vote to non-nationals, subject to certain conditions.[22] In the European Union, a national of any Member State can vote and stand for municipal elections in the Member State in which he resides, and has the right to vote and stand as a candidate in elections for the European Parliament in the Member State in which he resides, under the same conditions as nationals of that Member State.[23]

In the United States, alien suffrage has a controversial history. It was a commonly accepted feature prior to World War I but is almost non-existent now, except in a handful of small localities.[24]

The disentanglement of voting rights from the status of citizenship can, therefore, be observed worldwide, but mainly at regional or municipal levels.[25] Consequently, current systems do not grant sufficient political participation rights to resident non-citizens, who are deprived of political participation at the national level where significant taxing and budgetary powers exist.

2.2.2. Voting rights of taxpayers paying income and wealth taxes

Even without explicitly granting political rights, a large number of countries have taxing mechanisms equivalent to voting rights that permit taxpayers to influence political decisions.[26] This influence is exercised through certain tax preferences in relation to income and wealth tax deductions.

A classic example is allowable deductions for charitable contributions.[27] By allowing such deductions, tax laws remove the budgetary decision-making power from the legislator and leave private individuals to decide which third parties should benefit from public revenue.[28] Tax deductions in relation to charitable contributions are available under both Swiss and US law.[29]

Another example in US law is the exclusion of interest earned on US state or local bonds.[30] This could be compared to a similar deduction allowable under Swiss law in respect of passive interest[31] and has a similar effect as charitable deductions.

In addition, various deductions or contributions directly relating to political participation processes have similar effects to voting. For instance, the check-off system in US

20. Auer et al., *supra* n. 5, at pp. 210-211. Voting rights at cantonal level are granted to non-citizens by Neuchatel and Jura only.
21. Art. 136 BV.
22. F. Fabbrini, *The Right to Vote for Non-Citizens* p. 100 (Oxford U. Press 2014).
23. Treaty on the Functioning of the European Union of 13 Dec. 2007 (TFEU), art. 22, OJ C115 (2008); EU Law IBFD.
24. J.B. Raskin, *Legal Aliens, Local Citizens: The Historical, Constitutional and Theoretical Meanings of Alien Suffrage*, 141 U. Pa. L Rev. 4, pp. 1397 et seq. and 1462 (1993).
25. Only four countries in the world do not require citizenship to have the right to vote at the national level, i.e. Chile, Malawi, New Zealand and Uruguay.
26. N. Staudt, *Taxation Without Representation* 55 Tax Law Review, p. 555 et seq. (2002), who reviews these rights in the United States from a critical perspective. *See also* Menéndez, *supra* n. 15, at pp. 310-311, who analyses the advantages and disadvantages of income tax deductions within the framework of political participation in Spanish law. The article in question does not cover the lobby activities of taxpayers.
27. Economic literature widely qualifies deductions for charitable contributions as equivalent to voting mechanisms. *See* Staudt, *supra* n. 26, at p. 573 and the cited references.
28. Id. at p. 595.
29. Art. 33(a) Federal Direct Tax Act (*Loi fédérale sur l'impôt federal direct*, LIFD) and the US Internal Revenue Code (IRC), sec. 170.
30. Staudt, *supra* n. 26, at p. 595 and sec. 103 of the IRC.
31. Art. 33(1)(a) Federal Direct Tax Act (*Loi fédérale sur l'impôt federal direct*, LIFD).

law, which exists both at federal and state levels, permits taxpayers to contribute USD 3 of their taxes to the Presidential Election Campaign Fund by checking a box on their tax return.[32] Swiss income tax law authorizes deductions linked to an individual's political participation. In particular, subject to certain conditions under federal law, it is possible to deduct contributions made to political parties from taxable income up to a maximum of CHF 10,100.[33]

Briefly, taxpayers, whether citizens or not, do have some political power through the aforementioned measures (*see* Diagram 2).

Diagram 2 contains four groups whose powers of political participation range from very strong, i.e. resident citizens effectively paying taxes and able to take advantage of tax preferences, to none at all, i.e. resident non-citizens with no effective tax liability. The other two categories are as follows: non-citizen taxpayers with effective tax liability, who are able to access certain political participation rights through tax preferences, and the combined category of foreign resident citizens and resident citizens with no effective tax liability, who have classic political participation rights.

In integrating certain non-citizens into a state's political community prior to their naturalization, the practical possibilities of political decision making by non-citizen taxpayers can be regarded as a specific variation of taxation with representation and an avant-garde aspect of tax law.

However, this type of political participation is insufficient to protect the rights of taxpayers. The principal objection is that these "voting mechanisms" are available only to taxpayers effectively having tax liabilities, and such taxpayers can therefore influence the level of their tax liability.[34] Without entering into a delicate discussion regarding the economic fairness of such tax preferences,[35] it can be observed that they establish an undesirable link between voting and property rights.[36] These measures also have a higher practical effect than a traditional vote.[37] The practical significance of such measures, combined with their selective availability to higher-income taxpayers, does not make tax preferences and exclusions a valid democratic alternative to the classic voting mechanism.

3. Political Inclusion and Tax Law: Theoretical Observations

3.1. Political inclusion: citizenship or residence?

Fundamentally, the question of whether all taxpayers should have a right to vote is a narrowed-down version of the debate as to who has a rightful claim to be included in a country's demos.[38] This is one of the most complex questions in contemporary political theory and even summarizing all of the suggested answers would be beyond the scope of this article.[39] The author, therefore, limits himself to considering the two mainstream theories.

Currently, in most democratic countries, including Switzerland and the United States, full political rights are acquired only through citizenship.[40] Citizenship is usually understood in terms of specific membership, corresponding to some social, ethnic or other characteristic of the population, which is often reflected in naturalization laws.[41] The non-granting of political rights to resident non-citizens is often justified by the lack of a special and sufficient link with the state.[42]

The practice of giving full political rights exclusively through citizenship is, however, increasingly being challenged,[43] as migration is modifying the demographic situation worldwide.[44] A number of scholars argue that political participation rights should be granted based on other criteria that create special links with a state, notably that of residence.[45] This reflects the "all-subjected principle". Under this principle and according to the classic definition of political democracy as the rule by the people,[46] everyone subjected to political rule within the state should

32. Staudt, *supra* n. 26, at p. 563.
33. Art. 33(1) let I LIFD. The conditions are that the political party must be registered according to federal law requirements, must be represented at the cantonal parliament and must have obtained at least 3% of the votes in the last cantonal parliamentary elections.
34. Staudt, *supra* n. 26, at p. 573 et seq.
35. Id. Staudt describes nearly unanimous criticisms of charitable deductions or exclusion of interest, in pointing out that they favour high-income taxpayers, are less useful to middle class taxpayers and are useless for those who pay no taxes. This creates various controversies regarding the allocation of public funds directly to third parties instead of passing through the governmental structure. For instance, empirical data indicates that high-income individuals have different charitable preferences to low-income individuals. Id., at p. 573 note 78. With regard to the question of justice of targeted tax incentives, *see* Brunori, *supra* n. 11, at p. 211.
36. Id., at p. 599 points out the similarities of those measures in US law to the poll tax, which was abolished by the Twenty Fourth Amendment of the US Constitution.
37. Id., at p. 566 with regard to the US check-off system. In making a charitable contribution, which is later deductible, taxpayers effect a 100% certain relocation of public funds to their preferred objectives. In casting a vote in parliamentary and/or presidential elections or voting in favour of a bill, the level of certainty in influencing public policy or budgetary decisions is lower, i.e. it depends on whether the party or the candidate in question or the legal bill will pass into law, whether desired budgetary objectives will be implemented in the future, etc.
38. R.A. Dahl, *Democracy and Its Critics*, p. 119 (Yale U. Press 1989).
39. Dahl, *supra* n. 38, at p. 117 et seq. and S. Näsström, *The Challenge of the All-Affected Principle* p. 115 et seq., 59 Political Stud. 1, pp. 116–134 (2011), available at http://onlinelibrary.wiley.com/doi/10.1111/j.1467-9248.2010.00845.x/pdf; and Beckman, *supra* n. 13, at p. 154 et seq.
40. Beckman, *supra* n. 13, at p. 154. In Switzerland, article 136 (1) of the BV expressly grants political rights at the federal level only to citizens. The Fifteenth Amendment to the US Constitution states that "the right of *citizens* of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude" (emphasis added).
41. Id. at p. 155.
42. Auer et al., *supra* n. 5, at p. 210.
43. J.L. Cohen, *Changing Paradigms of Citizenship and the Exclusiveness of the Demos*, 14 Intl. Sociology 3, p. 250 (1999); Beckman, *supra* n. 13, at p. 162; and Aubert & Mahon, *supra* n. 9, at p. 1066, ad art. 136, note 9, concurring. Dahl, *supra* n. 38, at p. 128 emphasizes that, if a society is democratic to its own demos and not in relation to everyone subject to its rules, the difference between democracy and an order dominated by a collegial elite is removed. *See also* Aubert & Mahon, *supra* n. 9, at p. 1066, ad art. 136, note 9. With regard to the democratic deficit in Switzerland, *see* D. Bianchi, *Die Integration der ausländischen Bevölkerung: der Integrationsprozess im Lichte des schweizerischen Verfassungsrechts* p. 153 (Schulthess 2003).
44. D.C. Earnest, *Neither Citizen nor Alien: Why States Enfranchise Resident Aliens* p. 242 52 World Pol. 2, p. 242 (2006).
45. S. Benhabib, *Dignity in Adversity: Human Rights in Troubled Times* p. 110 et seq. (Polity P. 2011). *See also* Hirsch Ballin, *supra* n. 12, at p. 84 and Dahl, *supra* n. 38, at p. 129.
46. On the concept of political democracy, *see* Dahl, *supra* n. 38, at p. 106 and note no. 1 and Auer et al., *supra* n. 5, at p. 198.

have a say in its making, except the mentally incompetent or transients.[47]

Under the all-subjected principle, residence is a principal connecting factor between individual and state because of the state's territorial sovereignty. This phenomena can also be observed in branches of law outside the scope of political rights (*see* section 2.2.1.). For instance, in conflicts of law and jurisdictional disputes, private international law increasingly refers to an individual's habitual residence as a principal connecting factor, which replaced the criterion of an individual's domicile, which previously replaced the criterion of nationality.[48] In addition, the tax practices of countries follow the all-subjected principle through residence-taxation rules.

3.2. "No taxation without representation": Principles of legality and equality

Granting political rights to all the people subjected to a state's rule is the basic logic behind the phrase "no taxation without representation".[49] Certain authors regard this as reflected both in the "principle of legality",[50] which serves as a base for the democratic legitimacy of state acts in a number of countries, and in tax law, which provides that taxing authority, tax obligations and their validity in time are defined by law.[51]

This interpretation is incomplete. The phrase was first used in the American Revolution to contest taxes enacted by the British Parliament and imposed on Americans. However, what gave rise to agitation in the American colonies was the absence of locally elected representatives.[52] "No taxation without representation" should, therefore, be regarded not as a simple requirement to enact tax obligations in a formal law, but rather as the possibility for every taxpayer to elect representatives to the legislative body of a state subjecting the taxpayer to its laws. The principle of legality as understood in, for example, Swiss law does not include this requirement. As a result, it is not possible to argue that such a principle legitimizes the taxation of people excluded from democratic processes.

The principle of equal treatment of taxpayers, which is a common criterion used to measure the justice (or lack thereof) of a tax system,[53] cannot remediate the inequality arising from the misrepresentation of taxpayers. For instance, if voters have different distributional preferences than non-voters, for example, based on wealth, ethnicity, cultural criteria, etc., no matter how equally the tax laws of the country are applied to all taxpayers in the post-legislative process, the discrimination is inherent, as the voters shape the laws to suit their own needs.

Interestingly, in various interpretations of the principles of equal treatment, the Swiss Federal Supreme Court (*Bundesgericht/Tribunal fédéral*) (the Court) consistently uses the term "citizens" in defining the taxes and the persons responsible for their payment.[54] As the term "citizen"[55] in Swiss public law is unambiguous and linked to the exercise of political rights,[56] this frequent reference to "citizen" is curious and perhaps due to the fact that the obligation to pay taxes cannot be explained in a logical manner without linking it to political rights.[57]

4. Residence in Tax Law

4.1. Tax residence as a special link

In nearly all jurisdictions, residence is the principal connecting factor between an individual and a state giving rise to full tax liability.[58] Even in the United States, which taxes its citizens worldwide, the residence of citizens plays a very important role in defining tax liability (*see* section 4.3.2.).

47. Näsström, *supra* n. 39, at p. 117. In the same sense, *see* Aubert & Mahon, *supra* n. 9, at p. 1066, note 9 and Dahl, *supra* n. 38, at p. 129, who refers to this as the principle of inclusion; summary arguments. *See again* Auer et al., *supra* n. 6, at p. 210.
48. The concept of "habitual residence" is increasingly used as a connecting factor in both conflicts of law and jurisdictional disputes, for example, the EU Rome Regulation series and the Brussels Regulation series, except for the Brussels IV on the applicable law for succession. *See* D. Bureau & H. Muir Watt, *Droit international privé* pp. 153-154, (Presses universitaires de France 2010) and D. Bureau, *Droit international privé* vol. II, p. 23 (Presses universitaires de France 2010).
49. Näsström, *supra* n. 39, at p. 119 and R.A. Dahl, *After the Revolution? Authority in a Good Society* p. 49 (Yale U. Press 1990).
50. K.A. Vallender & R. Wiederkehr, *Die schweizerische Bundesverfassung: Kommentar, B. Ehrenzeller, Schulthess* p. 1962 no. 4 (Dike Verlag 2008) and Aubert & Mahon, *supra* n. 9, p. 1011, ad art. 127 I, Cst. No. 5. In relation to the principle of legality, *see* M. Beusch, *Der Untergang der Steuerforderung* p. 15 (Schulthess 2012) and R. Böhi, *Das verdeckte Eigenkapital im Steuerrecht* p. 73 (Schulthess 2014).
51. For an overview of this principle in tax law with an international comparison, *see* Bentley, *supra* n. 3, at p. 220 et seq. On democratic legitimacy in Swiss law through this principle, *see* P. Moor et al., *Droit administratif Vol. 1, Les fondements* p. 652 (Stämpfli 2012). In tax law: *see* Oberson, *supra* n. 8, at p. 30.
52. D. Schultz, *Election Law and Democratic Theory* pp. 59 and 137 (Ashgate 2014).
53. Federal Supreme Court Judgement (*Arrêt du Tribunal federal*, ATF) 132 I 153, in: *Receuil official des arrêts du Tribunal federal*, p. 153 et seq.; ATF 99 Ia 638 and cited references. The principle of equal treatment is embodied in Swiss tax law by the principles of the generality and the equality of taxation, as well as by the principle of the proportionality of the tax burden based on the economic ability of a taxpayer. However, the BV does not guarantee equal treatment between Swiss and foreign nationals. *See* Aubert & Mahon, *supra* n. 9, at ad art. 8.2.
54. ATF 135 I 130; "… community's expenses resulting from general public tasks have to be borne by all the *citizens*" ATF 132 I 153; 122 I 305; decisions in German ATF 114 Ia 221, ATF 114 Ia 321, ATF 112 Ia 240, ATF 99 Ia 638, etc.
55. In French, "*citoyen*" and, in German, "*bürger*".
56. The expressions "citizen rights" (*droits de cité*) and "citizenship" (*citoyenneté*) are used as synonyms of nationality (*nationalité*). *See* Aubert & Mahon, *supra* n. 9, at pp. 335 and 337. "Citizenship rights" often refer to cantonal or communal nationality, which is inseparable from federal nationality. *See* Auer et al., *supra* n. 5, at p. 123. Aubert & Mahon, *supra* n. 9, at p. 335, note 5, point out the only mismatch between the concepts of "citizenship" and "nationality" when political rights are granted to foreigners under certain conditions, from long-time residence. In the case in question, this is irrelevant, as taxpaying obligations fall on all individuals subjected to full tax liability in Switzerland and not only "citizens" with political rights. Article 34 of the Cst. guarantees citizens free exercise of political rights, and article 37 I of the Cst. defines the term "Swiss citizen". *See* Aubert & Mahon, *supra* n. 9, at pp. 337 and 340. This term is also used as a synonym of the term "national" in various laws, such as article 1 of the Federal Law on the Acquisition and Deprivation of Swiss Citizenship (*Loi fédérale sur l'acquisition et la perte de la nationalité Suisse*).
57. The use of the term "citizen" in this context can also be observed in doctrine. *See*, for example, Aubert & Mahon, *supra* n. 9, at p. 1012.
58. *OECD Model Tax Convention on Income and on Capital: Commentaries* C(4)-3 (14 July 2014), Models IBFD. *See also* V. Thuronyi, *Comparative Tax Law* pp. 288-289 and 291 (Kluwer L. Intl. 2003).

The preference of residence over nationality with regard to international taxation was already apparent in the 1920s in discussions regarding the first draft of the OECD Model.[59] A 1923 technical study by leading economists took as a starting point the doctrine of economic allegiance and concluded that the mere relation of "citizenship" could no longer be considered a sufficient tie to impose on non-residents by their country of nationality. Instead, a permanent or habitual resident in a country should contribute to the expenses of such jurisdictions as a result of his economic interest.[60] The OECD Model (2014),[61] which serves as a basis for many states,[62] establishes an individual's residence as the principal connecting factor giving rise to full tax liability in the state in question.[63]

Currently, residence-based taxation is also supported by such arguments as meeting the distributive concerns of a specific society more efficiently[64] and allocating the public financial expenses of the society to all of its citizens.[65] Certain authors claim that residence often overlaps with political allegiance, thereby making residence taxation in democratic countries a proxy for taxation with representation.[66]

These arguments are often reflected in the criteria establishing tax residence, which are intended to demonstrate a certain degree of an individual's personal socio-economic links with a state.[67]

In this respect, tax residence tests can be classified under the following three general categories:
- physical presence (*see* section 4.2.);[68]
- tax domicile (*see* section 4.3.); and
- citizenship (*see again* section 4.3.).

The author now compares Swiss and US tax residence rules to establish to what extent they ascertain socio-economic links between an individual and the taxing jurisdiction.[69]

4.2. Physical presence test

The physical presence test, which is used in both Switzerland[70] and the United States[71] to impose full tax liability on individuals, at first sight does not confirm any links of an individual with the country except his mere presence there. However, in both countries, these tests are failed in some cases based on the individual's domicile elsewhere.

In Switzerland, the physical presence test is failed if an individual retains his domicile abroad and is only residing in Switzerland for educational or medical purposes.[72]

In the United States, the physical presence test is failed if it is defined by the carry-over of days rule and an individual has a "tax home" and a "closer connection" in another country.[73] These connections are determined by referring to the criteria used in US law prior to the enactment of the substantial presence test, when tax residence was defined as "a physical presence in a place with the intention of remaining there indefinitely or for a substantial period of time".[74] This is arrived by inferences from external facts, such as the maintenance of a dwelling and the length of stay in the United States, family ties, and civic and social activities in the United States.[75]

Finally, in both states, tax residence, based on physical presence or domicile tests, can also be avoided on the basis of the "tie-breaker" provisions in tax treaties, which place great emphasis on the individual's personal links with the taxing state.

4.3. Tax domicile and civic tests

4.3.1. Opening comments

Next to physical presence tests, both in Switzerland and the United States, an individual's full tax liability arises from his personal connections to these countries. In Switzerland, this connection is established through the tax domi-

59. A.P. Gonzalez, *Articles 1 and 4. Personal Scope: Individuals, History of Tax Treaties*, in *The Relevance of the OECD Documents for the Interpretation of Tax Treaties* p. 170 (T. Ecker & G. Ressler eds., Linde Verlag 2011).
60. Id., at p. 170 and the cited authors, with reference to the *Report on Double Taxation submitted to the Fiscal Committee Economic and Financial Commission Report by Experts on Double Taxation Documents*, E.F.S 73.F.19 (5 Apr. 1923).
61. *OECD Model Tax Convention on Income and on Capital* (15 July 2014), Models IBFD.
62. Most tax treaties are based on the *OECD Model* (2014). *See* V. Uckmar, *Double Taxation Conventions*, in *International Tax Law* p. 162 (A. Amatucci ed., Kluwer L. Intl. 2012). Even the *US Model Tax Convention on Income* (15 Nov. 2006), Models IBFD, has many common features with the *OECD Model* (2014). *See also* P.R. Macdaniel et al., *Introduction to United States international taxation* p. 185 (Kluwer L. Intl. 2014). The *OECD Model* (2014) and the *OECD Model: Commentaries* (2014) are very important regarding the interpretation of the tax treaties, and national courts often refer to them, even though their status under the *Vienna Convention on the Law of Treaties* (23 May 1969), Treaties IBFD, is unclear. *See* Uckmar, *supra*, at p. 170 and the cited cases. *See also* B.R. Souza De Castelo, *The History and Relevance of Model Tax Conventions, History of Tax Treaties*, in Ecker & Ressler, *supra* n. 59, at p. 73 et seq.
63. Art. 4(1) *OECD Model* (2014).
64. R.S. Avi-Yonah, *International Tax as International Law: an Analysis of the International Tax Regime* p. 11 (Cambridge U. Press 2007).
65. ATF 114 Ia 221, ATF 114 Ia 321, ATF 112 Ia 240, ATF 99 Ia 638, etc. *See supra* n. 57 for comment on the use of the term "citizen".
66. Avi-Yonah, *supra* n. 64, at p. 11.
67. Switzerland even uses the term "personal attachment" to describe an individual's "close link" with the country subjecting him to full tax liability. *See* article 3 of the LIFD and Oberson, *supra* n. 8, at p. 75.
68. Although certain countries use only a physical presence test to establish an individual's residence for tax purposes, many countries, especially the OECD member countries, use tax domicile, alternatively or exclusively. *See* Thuronyi, *supra* n. 58, at p. 289 and Avi-Yonah, *supra* n. 64, at p. 23.
69. E.A. Zelinsky, *Citizenship and Worldwide Taxation: Citizenship as an Administrable Proxy for Domicile*, 96 Iowa L. Rev., p. 1289 et seq. (2011) argues that tax domicile and citizenship justification is based on the same criterion, notably the criterion of an individual's allegiance to a certain country. In this respect, Zelinsky compares tax domicile criteria in Australia, Canada and the United Kingdom with citizenship criteria in the United States.
70. This test is defined by the term "*séjour*" (art. 3(1), (3) LIFD). An individual's full tax liability arises after a continuous stay in Switzerland of 30 days when exercising an employed activity and 90 days without.
71. The "Substantial Presence Test" provides that at least 183 days of physical presence in the United States gives rise to US tax residence in that year; when the number of days in a given year is less than 183, the individual's substantial presence is defined by the "carry-over of days" rules. *See* J. Isenbergh, *International Taxation* p. 23 (Thomson Reuters/Fund. P. 2010) and sections 7701(b)(1)(A) and 7701(b)(3) of the IRC.
72. Article 3(4) of the LIFD and J.B. Paschoud, *Commentaire ad. Art. 3*, in *Commentaire de la loi sur l'impôt fédéral direct* p. 83, no. 29 (D. Yersin & Y. Noël eds., Helbing Lichtenhahn 2008). This exception also applies to Swiss tax domicile rules.
73. Isenbergh, *supra* n. 71, at pp. 24-25 and section 7701(b)(3)(B) of the IRC.
74. Isenbergh, *supra* n. 71, at pp. 20-21.
75. Id., at p. 21. This definition of tax residence and the methods used are very similar to the Swiss concept and methodology that is used to define tax domicile.

cile rules[76] and, in the United States, it automatically arises by an individual's civic or immigration status, citizenship or green card.[77] Although very different at first sight, these tests have much in common and all take into account an individual's personal links with the taxing jurisdiction as well as residence.

4.3.2. The United States: Immigration and civic tests

In the United States, tax and emigration statuses are expressly linked.[78] Obtaining a "lawful permanent resident", i.e. "green card", status automatically entails an individual becoming liable to US worldwide taxation, thereby giving rise to similar effects as citizenship taxation.[79] However, in practice, a taxpayer's liability based on immigration status is dependent on his physical residence in the United States and his domicile. US immigration laws take into account both criteria in maintaining "green card" status, and not respecting such provisions may be treated as abandoning immigration status, thereby resulting in the elimination of worldwide US tax liability.[80]

The effect of worldwide taxation of citizens[81] resembles the effect of residence-based taxation more than it may appear. In practice, the tax liability of non-resident citizens is reduced by various exemptions, and some non-resident citizens residing abroad pay different US taxes than US residents, especially in relation to income taxes.[82] Nevertheless, not all foreign taxes are deductible or creditable for US income tax purposes. Consequently, different US citizens can be treated differently, depending on the nature and amount of taxes assessed in foreign jurisdictions.[83]

4.3.3. Switzerland: Tax domicile test

Under Swiss law, an individual's tax domicile is where an individual resides with an intention to stay on a long-term basis, thereby making it his place of residence.[84] This intention is determined by defining an individual's centre of personal and economic relations.[85] This centre, as with the US "tax home" and "close connection" tests, is ascertained by inferences to external facts, such as an individual's habitual abode, the residence of his family, his place of work, his social and political interests, etc.[86] In the case of several places of abode, the tax domicile is the place where the individual has the "closest relations".[87] "Closest relations" are established on a case-by-case basis according to several guiding criteria established by case law.[88] The time period for a visit to Switzerland is not specified by law; however, the stay should be longer than a stopover, although it can be interrupted, provided the residence sustains a certain consistency.[89]

According to repeatedly confirmed, although controversial, case law, Swiss tax domicile does not cease to exist as a result of the simple fact that an individual leaves the country.[90] The individual must demonstrate that he has chosen to have his tax domicile elsewhere.[91] This argument is based on an analogy with Swiss private law, which establishes that an individual must always have a domicile and which, according to the Court, prevails in Swiss international tax law.[92] Omitting the necessary requirement of residence, this interpretation of tax domicile gives rise to similar effects to US worldwide tax jurisdiction.[93]

4.4. Residence in international taxation

Most tax treaties concluded by Switzerland are based on the OECD Model,[94] and most tax treaties concluded by the United States are based on the US Model.[95] Both the OECD Model and the US Model contain an identical "tie-

76. The legal terminology defining tax domicile is diverse. Some countries, for example, Switzerland, expressly use the term "tax domicile" in their legislation. Others use equivalent terms, for example, the "sufficient ties test" in the United Kingdom. Yet others refer to a different set of rules describing an individual's residence status that automatically gives rise to tax domicile in a particular country, for example, green card or citizenship in the United States. K. Vogel et al., *Klaus Vogel on Double Taxation Conventions: A Commentary to the OECD, UN and US Model Conventions for the Avoidance Of Double Taxation of Income and Capital, with Particular Reference to German Treaty Practice* p. 232 (Kluwer L. Intl. 1997) note that the difference between the terms "residence" and "domicile" in the United States has, in principle, disappeared. The terminology used by legal writers is not unanimous. Some authors refer to "ordinary residence", i.e. a private law concept, while others refer to "residence for tax purposes" or "tax domicile", and yet others even refer to "nationality for tax purposes". *See* Avi-Yonah, *supra* n. 64, at p. 23.
77. Section 1 of the IRC; Reg. § 1.1-1(c); Macdaniel et al., *supra* n. 62, at p. 31; and C.H. Gustafson, *Tax Treaties in the Americas: The United States* in Amatucci, *supra* n. 62, at p. 207.
78. Isenbergh, *supra* n. 71 p. 22 and section 7701 (b)(6) of the IRC.
79. Macdaniel et al., *supra* n. 62, at p. 31.
80. A number of conditions for abandoning the US permanent residence status are related to an individual's intention to create a domicile abroad, such as either moving to another country with an intention to live there permanently or declaring oneself to have a "non-immigrant" status on US tax returns. A physical US presence is also a factor, as immigration status may be abandoned by a prolonged absence from the United States, even less than 1 year, without justifying that the absence was intended to be temporary. *See* the Official Website of the US Department of Homeland Security at www.uscis.gov/green-card/after-green-card-granted/maintaining-permanent-residence (accessed 14 Jan. 2015).
81. Upheld for the first time in 1924 in the US Supreme Court (SC) case of US: SC, 1924, *Cook v. Tait.See* A. Levitt, *Income Tax Predicated upon Citizenship: Cook v. Tait* 11 Va. L. Rev. 8, p. 607 (1925).
82. Zelinsky, *supra* n. 69, at p. 1297. Here, the author argues that both the justifications and effects of citizenship and domicile taxation are very similar if not the same. *See* Isenbergh, *supra* n. 71, at p. 115; for the description of tax credit and exclusion rules. *See also* Gustafson, *supra* n. 77, at pp. 207-208.
83. Zelinsky, *supra* n. 69, at p. 1298.
84. Paschoud, *supra* n. 72, at pp. 78-79, nos. 14-15.
85. Oberson, *supra* n. 8, at p. 77 and the cited case law and Paschoud, *supra* n. 72, at p. 79, no. 15.
86. Paschoud, *supra* n. 72, at p. 79, nos. 15-17.
87. Id., at p. 79, no. 17 and the cited case law.
88. Id. For instance, employed persons theoretically have stronger links to where they exercise their work than where they live. However, if a person is married, where the person's family lives theoretically creates stronger ties than the place of work and is therefore considered to be the place of residence for tax purposes.
89. Paschoud, *supra* n. 72, at p. 78, no. 14 and Oberson, *supra* n. 8, at p. 76.
90. Y. Noël, *Domicile fiscal – Départ à l'étranger – Absence de nouveau domicile à l'étranger*, Journal des tribunaux, I, p. 135 et seq. (2014).
91. ATF 138 II 300. Some other circumstances reveal certain abiding interests in Switzerland, most notably that the individual's wife remained in Switzerland. In addition, he arranged his health insurance, and visited friends and parents there.
92. Art. 24(1) Swiss Civil Code of 10 December 1907 (*Code civil Suisse du 10 décembre 1907*) and ATF 138 II 300. This position is criticized by the majority of Swiss legal writers as incompatible with Swiss law. *See*, for example, Noël, *supra* n. 90, at pp. 139-140.
93. Id., at p. 140.
94. X. Oberson, *Précis de droit fiscal international*, p. 21 (Stämpfli 2014).
95. The *US Model* (2006) shares many common features with the *OECD Model* (2014). *See* Macdaniel et al., *supra* n. 62, at p. 185.

breaker" provision,[96] which makes inferences regarding the concept of "tax residence" in the context of international taxation. This test adds autonomous terms to supplement the residence criteria of the contracting states when, due to mismatching domestic definitions, an individual is a resident of both states.[97] In this hierarchy of various personal attachments, the criterion of nationality comes last, after the criteria of a permanent home, the centre of vital interests and habitual abode.[98] The personal details of an individual's entire way of life, i.e. family and social relationships, occupation, political, cultural or other activities, place of business, etc.,[99] has more weight than his formal citizenship.

4.5. Interim conclusions

Despite important conceptual differences in ascertaining taxing jurisdictions, both Switzerland and the United States acknowledge the importance of an individual's residence as the connecting factor with the taxing state, even in the case of citizen taxation. Both countries also admit the importance of an individual's personal socio-economic links as a basis for their taxing jurisdiction. These links are expressed through tax domicile rules in Switzerland, and civil and/or immigration status, as well as "tax home" and "close connection" tests in the United States.

5. Naturalization and Taxation: Integration and Residence

In Switzerland and the United States, the only way for resident aliens to acquire full political rights is through naturalization. The requirements of this process in both countries can be divided into: (i) those relating to an individual's integration; and (ii) those relating to residence.[100]

An individual's integration is defined by various indices, some of which are identical in both countries. Some allegiance criteria encompass respect, such as adherance to the fundamental principles of the federal constitution and compliance with the legal order, and other criteria cover personal attributes, such as sufficient linguistic skills and historical knowledge.[101] The Swiss authorities apply additional extensive tests in assessing an individual's participation in social life, his contacts with the population and his professional integration.[102]

Political participation rights, however, cannot reasonably be denied to resident-alien taxpayers on the grounds of integration as defined by Swiss or US law as, in reality, the two issues are not always related.

First, integration requirements in the naturalization process are subject to a number of exceptions in both countries, ranging from looser application of those requirements to none. This is particularly evident in Switzerland, where the integration criteria are more extensive and personalized than in the United States.[103] For instance, such criteria as linguistic skills or integration into the local community can be waived in Switzerland in certain circumstances,[104] and some citizenship acquisition procedures do not require integration at all.[105] In some cases, integration is already required before the granting of permanent residence, which, however, does not give any access to political participation rights.[106] The detachment of the latter from the integration criteria is also demonstrated by the fact that, in both countries, citizens residing abroad have voting rights, regardless of the ties that such persons effectively have with the home country.[107]

Second, the tax domicile test in Switzerland and the tax residence test in the United States reveal a certain degree of individual integration. Determining an individual's centre of vital interests in Switzerland or in the United States through "tax home" or "closer connection" tests (*see* section 4.2.) ascertains the personal socio-economic attachments there. Under Swiss law, when tax domicile, controversially, follows the private law definition (*see* section 4.3.2.), it approaches even closer the sociological definition of domicile as the centre of an individual's integration.[108] The status of lawful permanent resident (LPR) in the United States, which is explicitly linked to an individual's tax status (*see* section 4.3.2.), entitles an individual to certain political rights (e.g. allowing the making of campaign contributions), which are forbidden to foreign nationals.[109]

Consequently, the main difference in the substantial requirements subjecting individuals to full tax liability as opposed to naturalization is in the formal criteria of residence, both in Switzerland and the United States, although the latter imposes much less rigid residence requirements for naturalization.[110] Even though, in both tax and citi-

96. The "tie-breaker" rule of article 4(2) of the *OECD Model* (2014) is identical to that in article 4(2) of the *US Model* (2006), as well as the *UN Model Tax Convention on Income and on Capital* art. 4 (2) (1 Jan. 2011), Models IBFD.
97. Vogel et al., *supra* n. 76, at pp. 223 and 246, no. 68.
98. Id.
99. C(4)-6 of the *OECD Model: Commentaries* (2014) and Vogel et al., *supra* n. 76, at p. 249, no. 74.
100. Arts. 14, 15(1), 26(1), 27(1) and 26-32 Federal Act on the Acquisition and Loss of Swiss Citizenship (*Loi fédérale sur l'acquisition et la perte de la nationalité Suisse*). US law does not refer to the term "integration", but the requirements are similar (*see* sections 316 and 318 of the IRC). However, they are less extensive in the United States.
101. Swiss Federal Office for Migration (*Office federal des migrations*), *Manuel sur la nationalité. Chapitre 4: Conditions générales et critères de naturalisation* pp. 24 and 30, available at www.bfm.admin.ch/dam/data/bfm/rechtsgrundlagen/weisungen/buergerrecht/hb-bueg-kap4-f.pdf (accessed 8 Jan. 2015) and sections 316 and 318 of the IRC.
102. Id., at p. 24 et seq. Swiss and US citizenship doctrines are different, based respectively on *ius sanguinis* and *ius soli* principles, which partly explains differences in naturalization procedures.
103. For instance, the United States requires only basic language and history knowledge, which are established by standardized tests.
104. Swiss Federal Office for Migration, *supra* n. 101, at p. 25 and the Swiss Federal Administrative Court (*Bundesverwaltungsgericht/Tribunal administratif fédéral*, BG/TA) decision in CH: BG/TA, 4 Nov.2008, C-5286/2007, Swiss Supreme Court decision 138 I 242.
105. Art. 18 Swiss Citizenship Law; id. p. 30. The individual applying for reinstatement of citizenship might not be integrated into Swiss society, for example, a child of Swiss nationals raised abroad, etc.
106. Art. 34(4) Swiss Federal Act on Foreign Nationals (*Loi fédérale sur les étrangers*).
107. Art. 1 Swiss Federal Law on Exercising of the Political Rights Abroad (*Loi fédérale sur les droits politiques des Suisses de l'étranger*) and 42 IRC 1973ff-6. Swiss law permits a perpetual transmission of nationality via birth without any Swiss residence requirements. *See* articles 1(1)(a) and 10 of the Swiss Citizenship Law.
108. Bureau, *supra* n. 48, at p. 23.
109. LPRs are not foreign nationals according to section 1101(20) of the IRC. *See* the US Federal Election Commission at www.fec.gov/pages/brochures/foreign.shtml (accessed 19 Feb. 2015).
110. Art. 15(1) Federal Law on Foreign Nationals and secs. 316 and 318 of the IRC.

zenship laws, residence is an indispensable condition, its impact is intrinsically opposite. Naturalization laws impose residence as a retrospective condition, whereas, under tax laws, there is a prospective character, thereby emphasizing the importance of the individual's intention to reside in a certain place in the future.

This retrospective residence requirement is linked to an individual's integration. The author, however, does not discuss its intrinsic founding, as it can be seen that integration is not necessarily associated with political rights. Consequently, the differentiation in residence requirements lacks democratic legitimacy, thereby excluding a significant part of a country's population from political participation for a significant period of time, especially in Switzerland, as opposed to a nearly immediate taxation.

6. Conclusions

Although taxpayers often have certain means of political participation outside citizenship rights, these means are inadequate to legitimize their taxation. Political rights, which are increasingly granted to resident aliens at municipal or regional levels, do not provide access to political participation at the national level, where the major taxing and budgetary issues are decided. "Voting" through tax preferences is possible only for a limited category of higher-income taxpayers.

The distribution of political rights on the grounds of citizenship has been increasingly criticized, thereby suggesting the use of residence as the principal connecting factor between an individual and a state for this purpose. This factor is already used in various branches of law, including tax law.

In a number of countries, including Switzerland and to a large extent the United States, an individual's taxation is based on the criterion of residence, which is also an international standard. The definition of tax residence is twofold in requiring: (i) a certain physical presence; and/or (ii) proof of an individual's personal attachment to a specific country. These two requirements are essentially the principal conditions for naturalization both in Switzerland and the United States.

When the requirement of personal attachment in tax law is compared with the requirement of integration in naturalization laws, it can be concluded that political rights cannot be refused to non-citizen taxpayers on this basis. First, the requirement of integration is subject to a number of exceptions in naturalization laws. Second, integration is not a prerequisite to the exercise of political rights for Swiss and US citizens living abroad. Finally, the test of tax domicile in Switzerland and various tax residence tests in the United States reveal the degree of an individual's integration, which, in some cases, is greater than the integration of naturalized individuals or born citizens.

As a result, the substantial difference between taxing and naturalization rules is that of the individual's residence. Although it is an indispensable criterion in both systems, in tax law it has a prospective character, thereby establishing an individual's intent to reside in a country, whereas, under naturalization laws, it is a retrospective condition.

In the author's opinion, there is no plausible democratic explanation for this conflict in residence requirements as a condition for both imposing an obligation to pay tax and, at the same time, refusing political participation rights, which would enable individuals to protect their interests.

According to the classic definition of democracy as rule by the people, which in the tax field can be seen as reflected in the old adage of "no taxation without representation", the right to vote should follow more closely the obligation to pay taxes. Although it is beyond the scope of this article to define the exact conditions for granting such rights, the author argues that the criteria of an individual's tax residence, as defined by tax domicile, immigration status, etc., should be taken into account as one of the major indices through which taxing countries admit an individual's significant personal connection into their societies.