**Residence of legal entities in International and Swiss tax law**

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**Previous situation:**  
**Art. 4 para. 3 of the OECD Model Tax Convention on Income and on Capital 2014**  
“Where by reason of the provisions of paragraph 1 a person other than an individual is resident of both Contracting States, then it shall be deemed to be a resident only of the State in which its place of effective management is situated.”

**Current situation:**  
**Art. 4 para. 3 of the OECD Model Tax Convention on Income and on Capital 2017**  
“Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, the competent authorities of the Contracting States shall endeavour to determine by mutual agreement the Contracting State of which such person shall be deemed to be a resident for the purposes of the Convention, having regard to its place of effective management, the place where it is incorporated or otherwise constituted and any other relevant factors. In the absence of such agreement, such person shall not be entitled to any relief or exemption from tax provided by this Convention except to the extent and in such manner as may be agreed upon by the competent authorities of the Contracting States.”

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**Research method:**

- Investigate which formulation of art. 4 para. 3 is currently applied by the states in the respective double taxation agreements. Why? Globalisation? (Carry out comparative law and legal history research)
- Is the new wording of art. 4 para. 3 OECD Model Convention implementable for Switzerland? If it cannot be implemented from Switzerland's point of view, what reasons are given and what amendments would have to be made to art. 4 para. 3 in the Model Tax Convention for Switzerland to adopt it? Do other double taxation agreements or tax law scholars take this criticism into account? (Carry out legal dogmatic and comparative law research)
- Identify the advantages and disadvantages of the various possible solutions, point out the need for amendments and possibilities for reformulation (de lege ferenda), examine the transferability to Swiss intercantonal residence delimitation. (Conduct legal dogmatic and legal policy research and identify legislative options)

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**Research Questions:**

- Does the amendment of art. 4 para. 3 OECD Model Tax Convention lead to the desired improvements or are other approaches necessary?
- Are other approaches necessary at international as well as Swiss intercantonal level, which so far have been based on the same concept (“place of effective management”)?

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**Expected results:**

- **Does the amendment of art. 4 para. 3 OECD Model Tax Convention lead to the desired improvements or are other approaches necessary?**
  - Elaboration of advantages and disadvantages of the new regulation.
- **Are other approaches necessary at international as well as Swiss intercantonal level, which so far have been based on the same concept (“place of effective management”)?**
  - Identify the need for amendments and suggest proposals in international, Swiss intercantonal tax law.

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**Conclusions to date:**

- Globalisation has an impact on residence, the need for amendment of art. 4 para. 3 OECD Model Tax Convention is obvious.
- Amendment solves tax-avoidance cases, but new regulation is criticised (legal uncertainty, no obligation to reach agreement and, without agreement, disadvantageous double taxation)
- So far, Switzerland does not intend to implement the amendment of art. 4 para. 3 of the OECD Model Tax Convention.

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**Propositions:**

- What amendments or alternatives could be implemented?
- Which amendment could also be applied to the Swiss intercantonal delimitation of tax residence?