

# BRAIN DRAIN & TAX COMPETITION: DO WE NEED ANOTHER BEPS?

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# METHODOLOGICAL APPROACH

- ***Questioning the weaknesses in the global tax architecture by several hypothetical case analysis: IT-specialists, sportsmen, students, researchers focused on Russia & Serbia:***

- 1) tax residence & source rules of donor countries of qualified specialists make it quite easy to break the personal nexus with the tax jurisdiction of the country of emigration, which leads to the unfair loss of tax revenues by them;
- 2) the rules for eliminating double taxation provided by both OECD and UN model conventions do not reflect current talent migration strategies, which can lead to double taxation, double non-taxation and unfair limitations of taxing rights of the donor states;
- 3) current digital trends are making it worse (1) development of digital marketing strategies, (2) increasing the level of mobility of the skilled workforce, (3) expanding the opportunities for working remotely

- ***Developing proposal for the multilateral solution related to harmful challenges of brain drain***

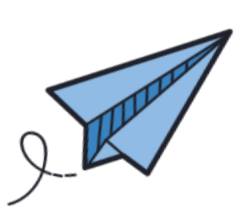
New ideology is needed for rethinking the global tax architecture in the context of brain drain based on two general ideas:

- (1) preventing the leak of talents migrating with tax benefits whose incomes are subject to double non-taxation due to the application of a combination of international and national tax rules,
- (2) counteracting the unfair loss of tax revenues by the countries which have educated, developed and then donated their qualified specialists to the other countries

Some ideas related to the design of such global tax cooperation are proposed

# TAX CONTEXT OF THE BRAIN DRAIN

## Tax losses from the «brain drain»



~ 50 000 people  
left Serbia in 2018  
(IMF Data)



~ 100 000 people  
emigrate to developed countries  
every year (RANEPA)

Country	Collected personal income tax	Tax losses from the «brain drain»	Share
RUS	~ 3301 bln. RUB	~7,95 bln. RUB.	0,24%
RS	~ 122.9 bln. RSD	~ 6,24 bln. RSD	5,07%

**Is that a lot or not?**



*Only:* actual physical presence in the state for at  
least **183 calendar days** for the calendar year



*Not only:* actual physical presence in the state for  
at least **183 calendar days** for the calendar year

*But also:* «**having a domicile, residence or center  
of business and life interests**» in **Serbia**

**Which mechanism is more effective in the context of the fight  
against «brain drain»?**

## Economic effects of the «brain drain»

Country	Potential Net Migration Index	Personal Income Tax Rate
New Zealand	231%	33%
Singapore	225%	22%
Iceland	208%	46,24%
UAE	204%	0%
Switzerland	187%	40%
...	...	...
Nigeria	-46%	24%
Congo	-50%	35%
Syria	-44%	7%
Senegal	-34%	11%
Source: Gallup, EY Sierra Leone	-70%	5%

## Lack of international tax cooperation in the field of taxation of mobile qualified professionals

- BEPS as a huge success in tax cooperation, but...
- No attention to mobile individuals
- Little attention to developing countries problems
- No rewriting of the old-fashioned OECD MC Articles for individuals
- Not only the new technique but the new cooperative ideology is strongly needed for the global tax cooperation

# IT-SPECIALIST – BRAIN DRAIN OF A DIGITAL NOMAD

*Evgeny is working as employer for Russian company:*

*(1) he moved to Algeria for the rest of calendar year*

*(2) changed contract with Russia company for (freelance) service contract from the start of the next year*

1<sup>st</sup> of January, 2019

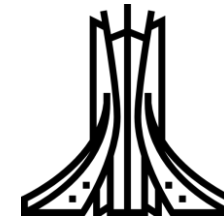
3<sup>rd</sup> of March, 2019 - ...



Russian Federation



- Tax resident?
- Employment income?
- Fixed base for services / PE?



Algeria



- Tax resident?
- Employment income?
- Fixed base for services / PE?

# IT-SPECIALIST – BRAIN DRAIN OF A DIGITAL NOMAD

*Dusko is working as freelance IT-specialist:*

*(1) based in Serbia and was making services for Serbian clients;*

*(2) moved to Greece for 5 months and started making services for Greek clients*

1<sup>st</sup> of January, 2019 –  
2<sup>nd</sup> of July 2019



Serbia



- Tax resident?
- Fixed base for services / PE?

3<sup>rd</sup> of July 2019 –  
3<sup>rd</sup> of December



Greece



- Tax resident?
- Fixed base for services / PE?

## ATHLETES

*«notwithstanding the provisions of Article 15, income derived by a resident of a Contracting state as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from that resident's personal activities as such exercised in the other Contracting State, may be taxed in that other State» [article 17 OECD].*

### Football case:

Victor is a famous Russian football player, who plays for the Russian club and for Russian national team

Victor trained in Russian football school

In June 2018 Victor **become a player of AC «Monaco»** and according to «quantitate day test» ceased to be Russian tax resident



Russian  
Federation

Football player



Monaco

So, how Russia can tax the income of its former tax resident?

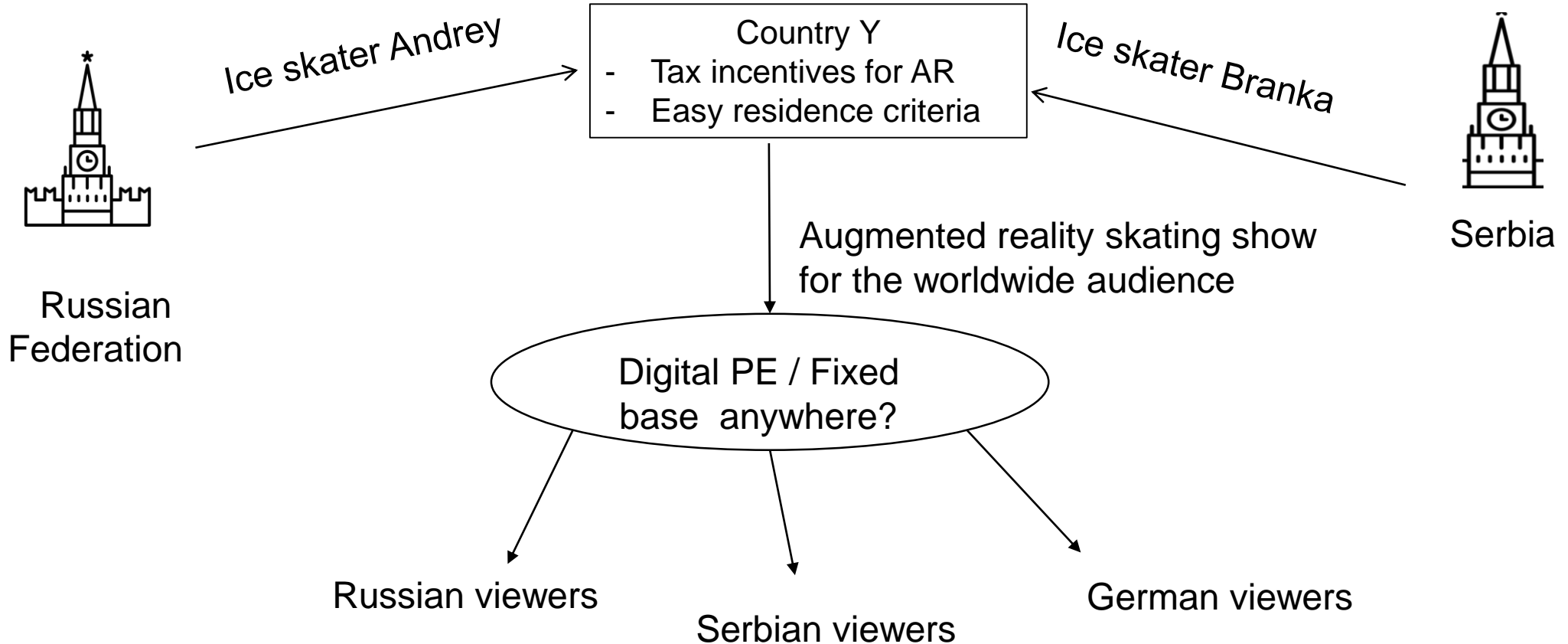
- In situation, when he again becomes a Russian tax resident (low probability);
- In situation, when he takes part in sport events in Russia (low probability, how to determine the part of income, which Russia can tax, how to pay tax)

The state drastically loses the right to tax the athlete's income if:

- The athlete ceases to be a tax resident of this State;
- The athlete is not a participant in events taking place in this State.

## ENTERTAINERS IN THE DIGITAL AGE: BRAIN DRAIN CASE

*Electronic violinist Lindsey Stirling is putting on a new kind of interactive virtual concert, performing live to fans in avatar form. The concert, put on in collaboration with streaming platform Wave, will take place at 3 p.m. (EST) on Monday 26 August. Stirling will perform through her avatar, powered by art body motion and face capture technology. Fans will also be able created their own avatars and attend the virtual show by downloading the Wave virtual reality (VR) app, supported by HTC Vive and Oculus Rift. Throughout the concert, Stirling will interact with fans “in a variety of direct, mysterious and surpris[ing] ways”. Limited edition concert merchandise will be available to buy*



## «BEOGRADSKI EPOHALAN POREZNI SPORAZUM (BEPS)»: WHAT CAN WE PICK FROM THE BEPS PROJECT FOR THE PROPOSED BEPS 2.0?

Action	Scope of potential applicability
1 – Tax Challenges Arising from Digitalization	<i>Improving the mechanism of income allocation in the context of the migration of talented individuals in the direction of more alignment between the place of taxation and the place of creation of value, which in the case of individual is the place of “talent creation” and in the context of the digitalization of the economy is the place of virtual economic activity</i>
7 – Avoiding Permanent Establishment Status	
8-10 – Transfer Pricing	
13 – Country-by-Country Reporting	
5 – Harmful Tax Practices	<i>Assessment of limits of acceptability of “aggressive tax incentives” employed by the countries in the processes of «brain drain». Amending a scope of an exchanged information with the information relating to tax instruments for attracting «brains»</i>
6 – Prevention of tax treaty abuse	<i>Improving the preamble to bilateral tax treaties in order to show countries’ intention for not creating the opportunities for non-taxation of migrating individuals</i>
11 – BEPS Data Analysis	<i>Creating an internationally consistent methodology for assessing tax losses from a brain drain</i>
12 – Mandatory Disclosure Rules	<i>Disclosure of information for the level of tax burden on the mobile highly qualified individuals</i>
14 – Mutual Agreement Procedure	<i>Improving the mechanism of the mutual agreement procedure for the conflict of «double residence» in the context of «brain drain»</i>
15 – Multilateral Instrument	<i>Platform for the synchronized implementation of anti-brain drain measures in bilateral tax treaties</i>



**THANK YOU FOR YOUR ATTENTION!**

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