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Dual Residency and the OECD Model Tax Convention: A Normative Analysis of Tie-Breaker Rules in the Indonesian Legal Context

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ABSTRACT: The rapid digitalization of the global economy and the increasing cross-border mobility of individuals have challenged the effectiveness of traditional residency-based taxation systems. For Indonesia, which relies heavily on domestic revenue, these developments create legal and fiscal tensions between safeguarding its tax base and adhering to international standards. This study addresses a significant research gap in the normative analysis of how OECD Model Tax Convention tie-breaker rules are applied within the Indonesian legal framework to resolve dual residency situations, particularly involving migrant workers and digital nomads. Using a doctrinal legal research approach, the study systematically examines Indonesia's regulatory framework at three levels: (i) substantive norms under the Income Tax Law, (ii) administrative instruments such as PMK 18/PMK.03/2021, and (iii) technical guidelines such as SE-52/PJ/2021. These are then compared with the residency and tie-breaker provisions of the OECD Model Tax Convention to assess their coherence and effectiveness in providing legal certainty. The findings reveal significant gaps between Indonesia's domestic regulations and international standards, particularly regarding the interpretation and implementation of tie-breaker rules. These gaps increase the risk of double taxation, double non-taxation, and tax base erosion in dual residency cases. Theoretically, this study enriches the literature by contextualizing the relevance of tie-breaker rules in the era of global mobility and digitalization. Practically, it offers policy recommendations for harmonizing domestic regulations with international instruments, strengthening treaty clauses, and enhancing administrative capacity to better protect Indonesia's fiscal interests.

Keywords: Dual Residency, OECD Model Tax Convention, Tie-Breaker Rules, Indonesian Tax Law, Doctrinal Legal Research.

INTRODUCTION

The global economic transformation marked by digitalization, capital mobility, and the mobility of individuals across jurisdictions has created new challenges for the international tax system (Kopel

& Löffler, 2023). The traditional model, which relied on physical presence to determine taxable status, is no longer adequate to address the complexities of the digital economy, where companies and individuals can conduct economic activities across borders without a physical presence (Simula & Trannoy, 2010). This situation has given rise to the phenomenon of dual or even multiple residencies, which have implications for legal uncertainty and the potential for double or double non-taxation (Erokhin & Zagler, 2024a).

Indonesia, as a country with a tax base that relies heavily on domestic revenue, faces an increasingly complex dilemma. On the one hand, domestic regulations—such as the Income Tax Law (UU PPh) and its derivative regulations—still adopt the classic criteria of the domicile test and physical presence test (183 days), which focus on individual and corporate taxpayers (Zhurenkov et al., 2021). However, on the other hand, global developments pioneered by the OECD through the Base Erosion and Profit Shifting (BEPS) Inclusive Framework and the multilateral consensus regarding Pillar 1 demand a redefinition of taxation rights based on significant economic presence and a mechanism for sharing taxation rights between countries (Roggeman et al., 2025).

Consequently, tax subject status is now not only a domestic issue but also a transnational one closely related to the tie-breaker rules outlined in the OECD Model Tax Convention. Traditional criteria for determining tax residency—such as permanent home, center of vital interests, and habitual abode—are often inadequate in resolving disputes arising in the digital economy. These challenges have significant implications for both legal certainty and the protection of the state's tax base (Lindsey et al., 2023).

Furthermore, this dilemma has significant fiscal implications for Indonesia. Failure to formulate appropriate criteria will open the door to tax base erosion and tax arbitrage practices by multinational corporations, potentially resulting in massive losses of state revenue. Therefore, a normative analysis of taxpayer status within the OECD Model Tax Convention is crucial, both for mapping the alignment of domestic regulations with international standards and for formulating Indonesia's negotiation strategy in multilateral forums (Allam et al., 2024a).

The global transformation marked by increased mobility of individuals across jurisdictions further underscores the urgency of regulating tax subject status. According to data from the United Nations Department of Economic and Social Affairs (UN DESA, 2025), the United States, Germany, Saudi Arabia, the United Kingdom, and France are the five countries with the largest number of international migrants in the world, each reaching tens of millions of people. This phenomenon demonstrates that population mobility is no longer a marginal phenomenon but a major current shaping the global economic and social landscape (Schjelderup & Stähler, 2023).

The implications for the tax regime are significant. The movement of individuals across borders not only raises administrative issues such as obtaining residence and work permits but also creates complexities in determining tax residency status (Yu et al., 2024) . Many of these individuals, including migrant workers from developing countries, potentially face dual residency, where more than one jurisdiction claims taxation rights over the same subject. In such circumstances, the risk of double taxation and double non-taxation becomes increasingly apparent, necessitating the existence of clear and effective regulatory mechanisms.

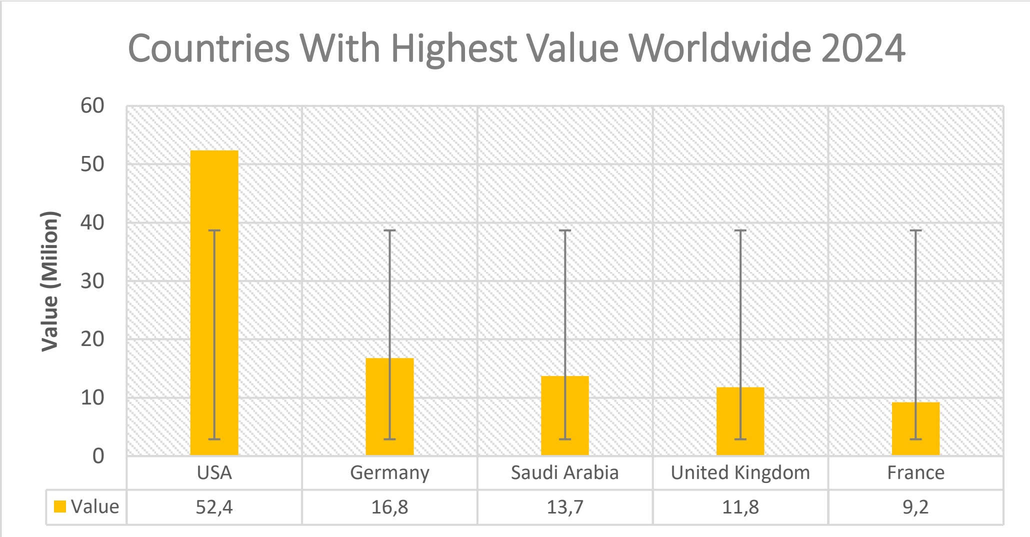

Figure 1. Countries With Highest Worldwide 2024

Source: UN DESA, 2025

According to UN DESA (2025) data, as of mid-2024, the United States was recorded as the country with the largest number of international migrants in the world, reaching approximately 52 million people. Next in line were Germany and Saudi Arabia, with approximately 13 million migrants each, followed by the United Kingdom with approximately 10 million, and France with approximately 9 million. These figures confirm that cross-border mobility is not a marginal phenomenon, but rather a massive and systemic global flow. This situation has direct implications for the issue of dual residency in the international tax regime, where an increasing number of individuals are potentially claimed as tax subjects by more than one jurisdiction, thus demanding clearer and more effective regulations (Erasashanti et al., 2023a).

Cross-border population mobility has increased over the past two decades, creating a massive and sustainable global migration pattern. The latest data from the United Nations Department of Economic and Social Affairs (UN DESA, 2025) indicates that by mid-2024, tens of millions of people will be living outside their home countries. This phenomenon makes international migration no longer a marginal issue but a crucial part of the dynamics of globalization, directly impacting social, economic, and fiscal aspects (Bahri, 2024a).

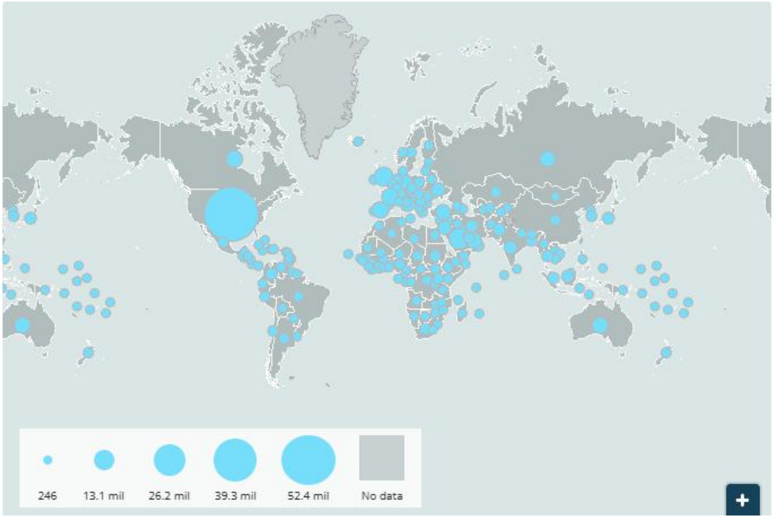

Figure 2. Total number of international migrants at mid-year 2024

Source: UN DESA, 2025

Table 1. Total number of international migrants at mid-year 2024

Ranking	Country	Number of Migrants (million people)
1	United States of America	52.4
2	Germany	13.1
3	Saudi Arabia	13.0
4	United Kingdom	10.0
5	France	9.0
6	Russian Federation	± 8.6
7	United Arab Emirates	± 8.2
8	Canada	± 8.0
9	Australia	± 7.5
10	Spain	± 6.8

Source: UN DESA, 2025

UN DESA data (2025) shows that by mid-2024, the United States was the leading destination for international migrants, with a total of approximately 52.4 million people. Germany and Saudi Arabia were in second and third place, each receiving approximately 13 million migrants. The United Kingdom received approximately 10 million migrants, followed by France with 9 million. Other countries that also served as magnets for global mobility were Russia, the United Arab Emirates, Canada, Australia, and Spain, each receiving between 6 and 9 million migrants.

This phenomenon demonstrates that cross-border mobility has become a systemic trend and has direct implications for determining tax residency status (Bahri, 2024a). The increasing number of individuals moving and residing in more than one jurisdiction creates the potential for dual residency, thus reinforcing the urgency of discussing tie-breaker rules in the international tax regime (Janský et al., 2022).

With this framework in mind, this research aims to examine in-depth the relationship between tax subject status, potential state revenue, and the relevance of domestic regulations to international instruments. This research is expected to provide not only academic contributions to international tax law but also practical recommendations for Indonesian fiscal authorities in responding to the global dynamics of taxation in the digital era (Erasashanti et al., 2023b).

Formulation of the problem

Based on the description in the introduction as well as the results and discussion, there are several main issues that need to be studied further, namely:

1. How are the regulations regarding the status of individual taxpayers in Indonesia regulated at three levels—substantive norms (Income Tax Law), administrative instruments (PMK 18/PMK.03/2021), and technical guidelines (SE-52/PJ/2021)—and to what extent are they effective in providing legal certainty?
2. How can the concept of tie-breaker rules in the OECD Model Tax Convention, particularly regarding the hierarchy of criteria (permanent home, center of vital interests, habitual abode, nationality, and MAP), be integrated into Indonesian tax practices?
3. How does the problem of dual residency among Indonesian citizens (for example, migrant workers and digital nomads) contribute to double taxation, double non-taxation, and the risk of tax revenue loss for Indonesia?
4. What normative strategies and policies does Indonesia need to adopt to synergize domestic regulations with international standards, including harmonizing the Income Tax Law, strengthening tax treaty clauses, and increasing tax administration capacity?

Research purposes

In line with the formulation of the problem, this research aims to:

1. Analyze the regulation of individual taxpayer status in Indonesian domestic law, starting from substantive norms in the Income Tax Law, administrative instruments through PMK 18/PMK.03/2021, to technical guidelines in SE-52/PJ/2021, and assess their effectiveness in providing legal certainty.
2. This study examines the concept and application of tie-breaker rules in the OECD Model Tax Convention and evaluates their relevance for resolving dual residency cases in Indonesian tax practice.
3. Identifying the dual residency problem faced by Indonesian citizens (WNI), both migrant workers and digital nomads, and assessing its implications for the risk of double taxation, double non-taxation, and potential tax revenue loss.
4. Formulate normative strategies and policies that Indonesia needs to pursue through harmonization of domestic regulations with international standards, strengthening residency clauses in tax treaties, and developing more effective tax administration mechanisms.

Novelty

The debate over the status of individual taxpayers in the context of economic globalization and cross-border mobility is increasingly prominent. Domestic regulations establishing the criteria for domestic taxpayers often conflict with international practices guided by the OECD Model Tax Convention, particularly Article 4 on residence (Chen et al., 2022). The application of tie-breaker rules to determine individual residency status is a key instrument in avoiding dual residence conflicts, but their implementation presents unique challenges when faced with the dynamics of multilateralism following Base Erosion and Profit Shifting (BEPS) and the adoption of Multilateral Instruments (MLI) (Novita & Fahmy, 2022).

Over the past five years, academic discourse on international taxation has increasingly highlighted the dynamics of individual taxpayer mobility and its implications for national fiscal sovereignty. Global phenomena such as digital nomads, remote workers across jurisdictions, and tax avoidance strategies through changes in residency status represent serious challenges to traditional physical presence-based and domicile-based tax systems. Meanwhile, multilateral reforms spearheaded by the OECD through the BEPS and Pillar 1 projects have focused primarily on the allocation of taxation rights to multinational corporate profits, while normative studies on tie-breaker rules for individuals within these developments have remained relatively marginal (Toledo & Alvarado, 2023).

International literature published in Scopus-indexed journals—particularly from Elsevier—shows a tendency to emphasize macro-fiscal aspects, tax avoidance, and global labor migration policies. Meanwhile, national publications, such as the journal Scientax, have begun to address the issue of protecting the domestic tax base through instruments such as exit taxes and regulatory readiness for the digital economy (Fachrizal & Hanum, 2024). However, to date, there has been no comprehensive study directly linking individual residency status, the application of tie-breaker rules, and the implications of Pillar 1 reforms for developing countries like Indonesia.

Table 2. Novelty

No	References (publications & links)	Main focus	Relevance to your topic	Limitations / gaps
1	**Leenders, W., Lejour, A., Rabaté, S., van 't Riet, M. (2023)**, "Offshore tax evasion and wealth inequality: Evidence from a tax amnesty", Journal of Public Economics (Elsevier). (ScienceDirect)	Distribution of tax evasion, the role of tax havens, and fiscal consequences	Shows how asset/residency mobility (including migration to low-tax jurisdictions) affects revenue and distribution — useful for fiscal arguments (potential leakage)	The primary focus is on embezzlement/wealth — not specifically on tie-breaker rules or individual residency in the treaty/Pillar 1; to be relevant it must be empirical evidence of fiscal risk.
2	**Tyutyuryukov, V. & Guseva, N. (2021)**, "From remote work to	Taxes for remote workers / digital	Relevant to aspects of individual mobility (digital nomads),	Not a treaty-law article; more of a review of policy and

No	References (publications & links)	Main focus	Relevance to your topic	Limitations / gaps
	digital nomads: Tax issues and tax opportunities of digital lifestyle", IFAC/Annals of Tourism Research / proceedings (available at ScienceDirect/IFAC-PapersOnLine) (Tyutyuryukov & Guseva, 2021a).	nomads: residency, withholding, source vs worldwide taxation	residency determination issues, and how jurisdictions react (special tax visas, presence rules) — directly touching on the theme of individual residency	practice; does not link directly to Pillar 1 or the OECD tie-breaker treaties.
3	**Bednorz, J. (2024)**, "Working from anywhere? Approaches to tax & migration for mobile workers", Annals of Tourism Research / Sciencedirect (review piece) (Bednorz, 2024a).	Policy approaches to mobile/remote work; residency tax implications	Relevant for the post-pandemic context and tax implications of personal presence/residency tests (183-day etc.)	Policy & practice focus; does not address tie-breaker rules at the treaty/MLI or Pillar 1 level
4	**De Widt, D. (2024)**, "Imagining cooperative tax regulation: Common origins and contemporary tensions", Research Policy (Schjelderup & Stähler, 2023)	A study of cross-border tax regulations, international coordination, and pressures on tax residence norms	Relevant to understanding the pressures of multilateralism (MLI/Pillar 1) on traditional residency rules	More of a regulatory theory; not specific to individual residency or tie-breaker clauses
5	**Kucuk, M. (2024)**, "Paying income tax after a natural disaster: residency and tax policy responses" (Schjelderup & Stähler, 2023)	How extraordinary events (disasters, COVID) affect residency determination & tax administration	Useful to show that residency rules (183 days, presence) can fail in transient situations — providing an argument for the need for more adaptive rules (relevant for tie-breakers)	Case-based; does not address the tie-breaker treaty or Pillar 1 directly
6	**Fachrizal, S.; Hanum, IU (2024)**, "Exit tax adoption to protect Indonesia's tax base: Are we ready?" (Fachrizal & Hanum, 2024)	Study on the adoption of exit tax to prevent tax base/asset shifting & policy implications	Highly relevant as an example of a domestic instrument to address taxpayer mobility and potential loss of revenue due to changes in residency.	Domestic focus; does not discuss the tie-breaker treaty/MLI/Pillar 1 in depth — but is appropriate as evidence of mitigation policy
7	**(Scientax) — another example 2023/2024**:	Domestic regulatory	Relevant to the context of Pillar 1	Not a tie-breaker/residency

No	References (publications & links)	Main focus	Relevance to your topic	Limitations / gaps
	"Tax policy in trade through electronic systems" (Schjelderup & Stähler, 2023)	changes addressing e-commerce and tax implications	domestic discussions (digital economy readiness)	analysis, but rather highlighting the gap between domestic regulations and global change.

The literature review in the table shows that articles from the Elsevier platform (Bednorz, 2024b; Tyutyuryukov & Guseva, 2021a) make important contributions to understanding how individual mobility, wealth transfer to tax havens, and cross-border tax policy developments impact fiscal revenues. Studies on digital nomads and remote workers confirm that the traditional 183-day rule is increasingly inadequate, potentially creating a gray area in determining tax residency (Müller et al., 2020).

At the national level, research in Scientax (Fachrizal & Hanum, 2024; Wulandari, 2024) demonstrates an awareness of the need for domestic instruments such as exit taxes and adaptation of digital trade regulations to maintain Indonesia's tax base. However, both groups of research—based on both international and national literature—still have significant limitations (Erokhin & Zagler, 2024a). First, the research has not explored in depth the normative dimension of tie-breaker rules as the primary instrument for resolving individual residency conflicts in tax treaties. Second, there has been no discussion directly linking the issue of individual residency to the OECD/G20 Pillar 1 multilateral framework, which has the potential to change the global taxation landscape. Third, quantitative analysis of the potential fiscal impacts on developing countries, particularly Indonesia, has also not received adequate attention (Ponce, 2024).

Thus, there is a clear and substantial research gap: a study that comprehensively analyzes the effectiveness and adequacy of tie-breaker rules for individuals in facing the realities of global mobility and Pillar 1 reforms, while also examining their fiscal implications for Indonesia. This research will address this gap, providing novel contributions at both the conceptual and practical levels (Perramon et al., 2024).

METHOD

This research uses a normative-juridical method, focusing on the analysis of positive law and international instruments related to taxpayer status and its implications for potential state revenue. This method was chosen because of the rule-based nature of the issue, making both domestic and international regulatory frameworks central to the analysis (Šímová, 2023).

This study combines three main approaches. First, a legislative approach, examining the Income Tax Law, implementing regulations, bilateral tax treaties, and the Multilateral Instrument (MLI). Second, a comparative approach, comparing the concepts of residency and tie-breaker rules in the OECD Model Tax Convention, the UN Model, and Indonesian practice, to identify any congruences or deviations. Third, a conceptual approach, based on the residency principle, the source principle, and the principle of international tax equity, serves as an interpretive framework.

The research data sources consist of primary legal materials, such as Indonesian laws and international legal instruments, as well as secondary legal materials, including academic literature, Scopus-indexed journal articles, and official OECD reports. All data are analyzed through legal interpretation and comparative analysis to address key issues regarding the determination of taxpayer status in a multi-jurisdictional regime and Indonesia's fiscal policy strategy in responding to global tax dynamics.

This methodology differs from previous research by examining national legal aspects within an international framework through the ratification of the MLI, the implementation of tie-breaker rules, and the linkages with Pillars 1 and 2 of the OECD/G20 BEPS Project. Thus, this research goes beyond the descriptive level of tax obligations of Indonesian citizens abroad, but also critically assesses the adequacy of Indonesian regulations in anticipating double non-taxation and double taxation practices. This approach is expected to provide theoretical contributions to the international tax literature as well as practical recommendations for the Indonesian fiscal authorities.

RESULTS AND DISCUSSION

The Status of Individual Tax Subjects in Indonesian Tax Law

Determining the status of individual taxpayers in Indonesia is regulated hierarchical manner, starting with substantive norms in law, followed by administrative instruments, and finally technical guidelines governing the implementation of international agreements. The hierarchy illustrates how Indonesia’s current rules fall short in ensuring legal certainty and effective tax residency regulation.

Substantive Norms: Ambiguities in Article 2 of the Income Tax Law

Article 2 of the Income Tax Law establishes the basic criteria for individual taxpayer status, namely Domestic Tax Subjects (SPDN) and Foreign Tax Subjects (SPLN). An individual is categorized as an SPDN if: (i) they reside in Indonesia for more than 183 days within a 12-month period, or (ii) they intend to reside in Indonesia. Conversely, individuals who do not meet these criteria are classified as SPLN (Agrawal & Brueckner, 2025a).

Normatively, this regulation is a general clause, allowing for flexibility of interpretation. However, the phrase "intending to reside" is ambiguous because it lacks objective indicators. This creates legal uncertainty, especially for individuals who work abroad long-term but maintain economic or family ties in Indonesia. This ambiguity has the potential to be exploited for tax evasion or give rise to interpretive disputes between taxpayers and fiscal authorities (DePaul et al., 2025).

Administrative Instrument: PMK 18/PMK.03/2021

Minister of Finance Regulation Number 18/PMK.03/2021 provides an administrative mechanism for issuing a Foreign Tax Subject Certificate (SK SPLN). The SK SPLN serves as formal proof that an individual holds SPLN status, exempting them from domestic tax obligations as SPDN. Required supporting documents include a passport, employment contract, residence permit, and proof of overseas commitment. The SK SPLN's validity period follows the calendar year and can be extended if the underlying circumstances remain unchanged.

While this PMK bridges the gap in norms within the law, it is declarative, not constitutive. This means that even if someone factually meets the SPLN criteria, without a SPLN Decree, they can still be considered SPDN by the tax authorities. This situation raises normative challenges related to legal certainty and the principle of fairness for taxpayers who substantially meet the SPLN criteria (Konrad, 2024).

Technical Guidelines: SE-52/PJ/2021

Circular Letter SE-52/PJ/2021 provides internal guidelines for tax authorities in implementing Double Taxation Avoidance Agreements (DTAs), particularly regarding dual residency. This Circular Letter adopts the tie-breaker rules of the OECD Model Tax Convention, with the following priority: permanent home, center of vital interests, habitual abode, nationality, and mutual agreement procedure (MAP) if residency status remains unclear. SE-52/PJ/2021 also emphasizes the use of a Certificate of Domicile (CoD) as a formal document from the partner country.

The weakness of these guidelines lies in their internal nature and their non-direct binding on taxpayers. Furthermore, reliance on the CoD from partner countries opens the potential for abuse, particularly in low-tax jurisdictions (Dissanayake et al., 2025).

Based on the above review of the regulatory hierarchy, determining individual taxpayer status in Indonesia can be understood as a series of interrelated normative, administrative, and technical mechanisms. The substantive norm in Article 2 of the Income Tax Law establishes the basic framework for SPDN and SPLN, but still leaves significant ambiguity regarding the aspect of "intention to reside," which has the potential to give rise to legal uncertainty and interpretative disputes. The administrative instrument, PMK 18/PMK.03/2021, provides a mechanism for issuing SPLN Decrees (SK SPLN) that bridges the ambiguity of the norm. However, its declarative nature does not always provide final legal certainty for taxpayers. Meanwhile, the technical guidelines of SE-52/PJ/2021, which regulate the application of OECD tie-breaker rules in the context of Tax Treaties, offer guidance for resolving dual residency. However, these are internal in nature and rely on documents from partner countries, thus still leaving the risk of abuse.

In synthesis, these three levels of regulation demonstrate that legal certainty and fiscal justice for individual taxpayers in Indonesia are not yet fully guaranteed. Norms, administrative mechanisms, and technical guidelines need to be synergized to create a transparent, constitutive, and legally binding system. Sharpening the "intention to stay" indicator, enforcing a constitutive SPLN

Decree, and integrating tie-breaker rules into formal regulations are strategic normative steps to increase legal certainty, prevent tax arbitrage practices, and strengthen Indonesia's tax base in the era of global mobility (Johnson et al., 2024).

The concept of tie-breaker rules in the OECD Model Tax Convention

Tax residency status is a crucial element in the international tax system, particularly to avoid dual residency cases that could potentially lead to double taxation or double non-taxation (Casi et al., 2020). The latest 2025 edition of the OECD Model Tax Convention, Article 4 (Resident), provides normative guidance for resolving the issues of individuals categorized as residents in more than one contracting country (Langenmayr & Zyska, 2023).

Basis of Rules

- Article 4(1) of the OECD Model 2025 states that the term resident refers to any individual who, under the laws of a Contracting State, is subject to taxation based on domicile, residence, permanent residence or similar criteria.
- Article 4(2) of the OECD Model 2025 regulates the case of individuals who are deemed residents by both contracting countries and provides that the competent tax authorities must resolve residency status through the mutual agreement procedure (MAP) if the residency determination criteria cannot be definitively applied.

Tie-Breaker Criteria Hierarchy

The OECD Model establishes a hierarchy of tests to determine the single country of residence of individuals with dual status, as follows:

1. Permanent Home
   a. An individual is considered a resident in the country where he or she has a permanent home.
   b. If permanent housing is available in both countries, residency determination proceeds to the next criteria.
2. Center of Vital Interests
   a. If an individual has a permanent home in both countries, the determination of residency is based on the location of the center of vital interests, that is, the country with which the individual's personal and economic ties are closest.
   b. Factors considered include the location of the nuclear family, major assets, professional or business activities, and social ties.
3. Habitual Abode (Habitual Abode)
   a. If the center of vital interests cannot be determined, residency is determined based on the place of habitual residence, that is, the location where the individual routinely and continuously spends most of their time.

   b. This determination is quantitative (e.g., number of days of stay) and considers continuity and intensity of presence.
4. Nationality
   a. If the previous three criteria do not provide certainty, residency status is determined based on citizenship. Individuals who hold citizenship of only one contracting country are categorized as residents of that country.
5. Mutual Agreement Procedure (MAP)
   a. If all the above criteria cannot resolve the residency conflict, the competent authorities of both countries shall resolve it through MAP in accordance with Article 4(2) of the OECD Model 2025.
   b. MAP ensures formal and legal settlement of individual tax jurisdictions, avoids legal conflicts, and prevents loss of tax revenue.

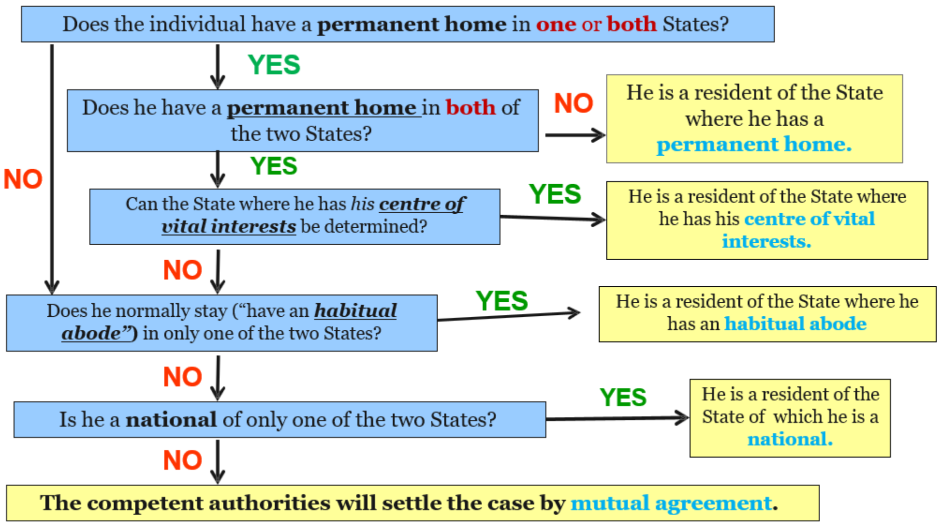

Figure 3. Dual Residency Determination Flow (OECD Model)

Source: Process by Author

Determining dual residency status in international tax law is a fundamental issue that often generates debate, particularly when an individual has close ties to more than one jurisdiction. The OECD Model Tax Convention introduces a mechanism called tie-breaker rules, a hierarchical set of criteria used to determine which country is entitled to claim residency (Allam et al., 2024b). The logic behind these rules begins with an assessment of whether an individual has a permanent home in only one country or both. If the permanent home is in only one country, determining residency is simple because the individual is directly recognized as a tax resident of that country. However, if the permanent home is in both countries, the analysis must proceed to the center of vital interests' criterion (Marquardt & Harima, 2024) .

The concept of center of vital interests refers to the closest personal and economic ties to a country, such as the presence of a nuclear family, the individual's place of employment, the principal location of a business, or social involvement in a community. If this assessment yields a clear conclusion, the individual is designated as a tax resident of that country. However, in practice, difficulties often arise when personal ties are concentrated in one country while economic ties are concentrated in another. If this occurs, the next criterion used is habitual abode, namely the country where the individual resides or spends most of his or her time. This calculation is usually done by measuring the number of days of residence within a given period.

If an individual spends more time in one country, they are designated as a tax resident of that country. However, if an individual resides almost equally in both countries and their mobility is so high that it is difficult to determine, the analysis shifts to the citizenship criterion (Rubolino, 2023).

Citizenship or nationality becomes the determining factor in the next stage. If an individual holds citizenship of only one country, that country has the right to claim residency status (Mas-Montserrat et al., 2025a). However, if an individual holds dual citizenship or is not a citizen of either country, the resolution must be through the Mutual Agreement Procedure (MAP) between the tax authorities of both countries. At this stage, decisions are no longer automatic, but rather through diplomatic negotiations that consider fiscal interests and bilateral relations between the two countries.

Normatively, the tie-breaker rules system provides legal certainty because it is structured hierarchically and systematically. Each criterion is tested in stages, minimizing uncertainty and reducing the potential for double taxation or double non-taxation. However, the complexity of the modern world presents new challenges in its implementation. Increasing human mobility means that individuals may have a permanent home in one country, a source of income in another, and a family in a third. This situation often makes it difficult to apply criteria such as center of vital interests or habitual abode objectively (Breunig et al., 2024).

This situation is particularly relevant in the Indonesian context. Many Indonesian citizens (WNI) work abroad long-term without formally changing their tax status through a Certificate of Domicile or recognition as a Foreign Tax Subject (SPLN). As a result, they are potentially considered tax subjects in two jurisdictions simultaneously. The phenomenon of digital nomads further adds complexity. An Indonesian citizen might work for a foreign company based in the United States, conduct daily activities in Bali, but maintain a permanent residence in Jakarta. In such cases, determining which country has the right to tax income becomes a challenging question, and this uncertainty can impact compliance and state revenues (Argilés-Bosch et al., 2021).

From a fiscal perspective, determining residency status impacts not only an individual's administrative obligations but also potential state revenue. If tax authorities fail to determine residency accurately, the risk of double taxation can create an excessive burden for taxpayers, while the risk of double non-taxation can be exploited for cross-border tax evasion. Therefore, a thorough understanding of the logic behind tie-breaker rules is crucial, both for tax authorities and taxpayers, especially in the era of economic globalization and digitalization. For Indonesia, the implementation of these rules must be positioned not merely as a technical mechanism, but also as a strategy to balance the protection of taxpayer rights with efforts to optimize state revenue (Leenders et al., 2023).

The tie-breaker rules system is hierarchical, systematic, and provides normative legal certainty. However, globalization poses new challenges: individuals are increasingly mobile, with permanent residence in one country, a source of income in another, and a family in a third country. Criteria such as the center of vital interests or habitual abode become difficult to apply objectively. In the

Indonesian context, this is relevant for Indonesian citizens working abroad or as digital nomads, where determining dual residency status significantly impacts taxation rights and potential state revenue (Tyutyuryukov & Guseva, 2021b).

Analysis of the Dual Residency Problem in the Indonesian Context

The phenomenon of dual residency is a classic but increasingly complex issue in the era of globalization (Agrawal & Brueckner, 2025b). For Indonesia, this issue often arises, especially for Indonesian citizens (WNI) working in countries with relatively low tax rates or even tax haven regimes. The unclear boundaries of domestic residency in national law, coupled with differences in the definition of residency between domestic provisions and tax treaties, create legal uncertainty (Mas-Montserrat et al., 2025b). As a result, two extreme possibilities arise: first, double taxation, where two countries both claim the right to tax an individual's income; second, double non-taxation, where no country effectively taxes the individual because each jurisdiction considers the individual not to be a domestic tax subject. Both conditions not only create injustice for taxpayers but also threaten potential state revenue (tax revenue loss) on a significant scale.

Normatively, the Indonesian Income Tax Law (UU PPh) stipulates that an individual is considered a Resident Tax Subject if they reside in Indonesia for more than 183 days within a 12-month period or have the intention to reside in Indonesia. However, in practice, this definition often conflicts with the residency provisions adopted by partner countries in tax treaties. Most Indonesian tax treaties follow the OECD Model Tax Convention, which uses the criteria of permanent home, center of vital interests, habitual abode, and nationality in its tie-breaker rules mechanism. Differences in interpretation of these criteria often create gray areas that are difficult for tax authorities to resolve unilaterally, thus increasing the risk of disputes (Erokhin & Zagler, 2024b).

From a fiscal perspective, the dual residency issue has serious implications. Indonesia potentially loses its tax base to high-income individuals with international mobility who are able to exploit regulatory loopholes to change their residency status. This loss of tax base not only directly reduces state revenue but also creates a distortion of fairness between domestic taxpayers and those with access to global mobility. This challenge is further complicated by limited cross-border data, although Indonesia has gradually become part of the automatic exchange of information regime through the Automatic Exchange of Information (AEOI) and the Common Reporting Standard (CRS). While access to global financial data strengthens the oversight capacity of tax authorities, its effectiveness remains hampered by data quality, differences in legal systems across countries, and slow administrative follow-up at the domestic level (West & Wilkinson, 2024).

Furthermore, from a normative perspective, Indonesia's position within the international tax legal landscape still faces limitations. Although Indonesia has ratified the Multilateral Instrument (MLI) as part of the OECD/G20 Inclusive Framework on BEPS, its use to strengthen residency clauses in tax treaties remains suboptimal. Many of Indonesia's bilateral tax treaties have not been fully updated to the latest OECD standards, particularly those related to the resolution of individual residency disputes. This situation weakens Indonesia's fiscal position and increases the risk of treaty shopping and manipulation of residency status by highly mobile individuals.

Therefore, there is an urgent need for comprehensive regulatory reform. First, from a domestic legal standpoint, harmonization of the Income Tax Law with international best practices is necessary, particularly through the development of more detailed regulations regarding tie-breaker rules. Domestic regulations cannot simply rely on the 183-day physical presence test; they must also integrate aspects of personal relationships, economic interests, and an individual's global lifestyle. Second, the residency clause in Indonesia's tax treaties needs to be strengthened to align with the development of international standards recommended by the OECD and the G20. This includes more consistent adoption of mandatory binding arbitration (MAP) clauses to resolve residency disputes.

Third, from a tax administration perspective, the Directorate General of Taxes (DGT) needs to enhance its institutional capacity to collaborate with partner country tax authorities. This collaboration should not stop at formal data exchange but should also include technical discussion mechanisms, bilateral consultation forums, and an accelerated system for resolving individual residency disputes. This step is crucial to ensure that legitimate tax potential is not lost simply due to weak coordination between authorities. Fourth, taxpayer education also needs to be strengthened to ensure the public understands the implications of residency status on their tax obligations and avoids the risk of sanctions due to misinterpretation.

Table 3. Flow Regulation

Levels of Regulation	Rule	Weaknesses/Problems	Practical Impact
Substantive Norms	**Income Tax Law Article 2**	The definition of residency relies solely on the following criteria: (1) ≥183 days of residence, or (2) intention to reside. The element of “intention” is subjective and open to multiple interpretations.	Does not provide legal certainty; prone to loopholes in tax status manipulation by taxpayers with global mobility.
Administrative Instruments	**PMK 18/PMK.03/2021 (SK SPLN)**	The SPLN Decree is declaratory, not constitutive. It doesn't actually determine tax status, just additional administration.	Ineffective in preventing dual residency; taxpayers can still be claimed as residents of two countries simultaneously.
Technical Guidelines	**SE-52/PJ/2021**	DGT's internal guidelines regarding tie-breaker rules are not binding on taxpayers or partner country tax authorities.	It is difficult to use as a legal basis in international disputes.
International Instruments	**Indonesia Tax Treaty (based on OECD MTC)**	Many old tax treaties have not been updated; tie-breaker clauses and MAPs do not consistently follow OECD/G20 standards (e.g., mandatory binding arbitration).	High potential for residency disputes; Indonesia is weak in international forums → prone to treaty shopping.

Levels of Regulation	Rule	Weaknesses/Problems	Practical Impact
Administrative Implementation	**DJP & AEOI/CRS**	Global data access already exists, but utilization is hampered by: data quality, differences in legal systems, and slow follow-up.	Supervisory capacity is not optimal → the risk of tax revenue loss remains large.

Source: Data Process by author

From the table above, the dual residency problem in Indonesia is not only a jurisdictional conflict with partner countries, but also a result of inconsistencies between regulatory levels. The Income Tax Law is too simplistic, the Minister of Finance Regulations (PMK) and Circular Letters (SE) are more administrative, while tax treaties have not been strengthened to meet international standards. This combination of weaknesses creates legal loopholes that trigger double taxation, double non-taxation, and even tax revenue loss (Pan & Aimaiti, 2025).

The phenomenon of global economic growth inequality, as projected in the World Economic Outlook (IMF, 2025), shows that developing countries like Indonesia still record relatively high growth (4.8%), while developed countries like Germany (0.1%) and Japan (0.7%) face stagnation. This imbalance creates a structural impetus for international migration flows: developing countries act as sending countries, while developed countries become receiving countries. The UN DESA report (2025) reinforces this phenomenon by showing that the United States hosts approximately 52 million international migrants, while Germany and Saudi Arabia each host approximately 13 million. Indonesia itself is recorded as having more than 3 million migrant workers abroad (BP2MI, 2024), most of whom work in developed countries with progressive tax systems.

This situation has direct implications for international taxation issues, particularly dual residency. An Indonesian migrant worker working in Germany, for example, can be categorized as a resident by German authorities because they meet the criteria for habitual abode or center of vital interests. However, at the same time, the Indonesian Income Tax Law still classifies the individual as a Domestic Tax Subject if they meet the requirements of "183 days" or "intention to reside." A similar situation is also experienced by Indonesian citizens in Japan, South Korea, and other migrant destination countries. Thus, international migration data and global economic growth projections not only illustrate the phenomenon of mobility but also provide empirical justification that cross-border labor flows increase the risk of dual residency problems for Indonesia.

Table 4. Selected Economies: Real GDP Growth (IMF WEO, July 2025)

Country	2023	2024	2025	2026
Argentina	-1.9	-1.3	5.5	4.5
Australia	2.1	1.0	1.8	2.2
Brazil	3.2	3.4	2.3	2.1
Canada	1.5	1.6	1.6	1.9
China	5.4	5.0	4.8	4.2
Egypt	3.8	2.4	4.0	4.1
France	1.6	1.1	0.6	1.0
Germany	-0.3	-0.2	0.1	0.9

Country	2023	2024	2025	2026
India	9.2	6.5	6.4	6.4
Indonesia	5.0	5.0	4.8	4.8
Iran	5.0	3.5	0.6	1.1
Italy	0.7	0.7	0.5	0.8
Japan	1.4	0.2	0.7	0.5
Kazakhstan	5.1	4.8	5.0	4.3
Korea	1.6	2.0	0.8	1.8
Malaysia	3.5	5.1	4.5	4.0
Mexico	3.4	1.4	0.2	1.4
Netherlands	-0.6	1.1	1.2	1.2
Nigeria	2.9	3.4	3.4	3.2
Pakistan	-0.2	2.5	2.7	3.6
Philippines	5.5	5.7	5.5	5.9
Poland	0.2	2.9	3.2	3.1
Russia	4.1	4.3	0.9	1.0
Saudi Arabia	0.5	2.0	3.6	3.9
South Africa	0.8	0.5	1.0	1.3
Spain	2.7	3.2	2.5	1.8
Thailand	2.0	2.5	2.0	1.7
Turkish	5.1	3.2	3.0	3.3
United Kingdom	0.4	1.1	1.2	1.4
United States	2.9	2.8	1.9	2.0

Source: IMF calculations, 2025.

The data in the table demonstrates structural imbalances in global economic growth. Relatively high-growth countries like India, the Philippines, and Indonesia tend to be sending countries, countries of origin for migrant workers, encouraging their workforce to seek economic opportunities abroad. Conversely, low-growth countries like Germany, Japan, and parts of Europe are receiving countries, the primary destinations for international migration.

For Indonesia, this situation has direct implications for the dual residency problem. The high flow of migrant workers to developed countries opens potential conflicts over tax jurisdiction, as Indonesia continues to base residency status on domestic criteria (≥183 days or intent to stay), while destination countries use different criteria under tax treaties. As a result, many Indonesian citizens are potentially considered taxable in two countries simultaneously (dual residency), creating the risk of double taxation or double non-taxation.

Unbalanced global economic growth not only impacts labor shifts but also contributes to legal uncertainty in the international tax system. This empirical justification for why strengthening domestic regulations and harmonizing them with international instruments is so urgent for Indonesia.

Thus, the dual residency problem is not merely a technical administrative issue, but also a strategic challenge concerning the country's fiscal sovereignty. Indonesia must respond through a holistic approach: improving domestic regulations, strengthening international agreements, enhancing administrative capacity, and expanding global cooperation. These reforms will close loopholes for residency abuse, increase legal certainty for taxpayers, and strengthen the state's revenue base amidst the dynamics of global mobility and the digital economy.

CONCLUSION

The analysis demonstrates that Indonesia's regulation of individual tax residency remains fragmented and lacks legal certainty. Substantive norms in the Income Tax Law rely on the ambiguous "183-day" and "intention to reside" criteria; administrative instruments such as PMK 18/PMK.03/2021 are declaratory rather than constitutive; and technical guidelines like SE-52/PJ/2021 adopt OECD tie-breaker rules but lack formal legal force. This fragmented framework creates legal gray areas that increase the risk of dual residency, double taxation, double non-taxation, and tax base erosion.

The OECD Model Tax Convention provides a clear hierarchical mechanism for resolving dual residency cases. However, its effective implementation in Indonesia depends on better integration with domestic law and tax treaties. To address this, three strategic steps are essential: (i) harmonizing domestic laws with international standards, particularly by codifying clearer residency criteria; (ii) strengthening residency clauses in tax treaties through renegotiation and the use of the Multilateral Instrument; and (iii) enhancing administrative capacity, including through AEOI/CRS, MAP procedures, and better bilateral cooperation.

Ultimately, aligning domestic regulations, international instruments, and administrative capacity will strengthen Indonesia's fiscal sovereignty and provide greater legal certainty for taxpayers. This reform is crucial not only for closing regulatory loopholes and mitigating treaty shopping but also for adapting Indonesia's tax system to the realities of global mobility and the digital economy.

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