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A COMPARATIVE STUDY OF THE EU REAL ESTATE TAX REGIMES AND IMPLICATIONS FOR STRATEGIC TAX PLANNING

Bachelor's thesis

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ABSTRACT

Property rights belonging to natural persons are granted and protected not only by national legislations but also international and supranational laws. The European Union (EU) enhances an individual's fundamental right to own property already in its founding Treaties. However, every right comes with a responsibility. While protecting its citizens' property rights, the EU legislation limits property autonomy by granting the Member States the right for taxation.

The Member States of the EU have entered into bilateral and/or multilateral tax agreements in order to eliminate double taxation. Due to differences in local tax practices, the inconsistency in tax law across the EU may abstain natural persons from taking advantage of real estate markets to the widest extent possible. This thesis is going to address primary differences in the policy of tax liability related to homeownership in selected countries.

The core question under the examination is whether the lack of harmonization of direct taxation in the EU grants or deprives tax planning possibilities from its citizens in cross-border real estate investments. This thesis seeks to reveal the incompatibilities and overlapping of tax regimes and their implications by comparing the property tax regimes of Finland, Estonia, France and Sweden. The main contribution of this thesis is to enhance the transparency of real estate markets by revealing transaction costs and other inevitable fiscal duties connected to the purchase of real estate, such as registration fees.

This comparative assessment shows that the transfer of immovable property in another Member State may grant surprising benefits in tax treatment than in the country of affiliation. Therefore, evaluation of the fiscal consequences, and strategic tax planning in the cross-border investments should be given attention in every transfer of real property.

Keywords: real estate taxation, double taxation, tax planning, EU property tax regimes

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INTRODUCTION

In the EU, tax law falls under the judicial sovereignty of each Member State, thus taxation practices are based on each state's domestic legislation in accordance with the tax treaties they have entered into.[1] Unlike in many other fields of law, the EU lacks the competence to impose direct taxes in its territory. Its role, in this respect, is to coordinate the internal market, and to enable co-operation between the Member States for the elimination of double taxation without facilitating tax evasion or avoidance.[2] National legislature's center of interest is to maintain state sovereignty in the establishment of each tax system, but simultaneously, they are obliged to follow general principles at international level. It is the responsibility of the states to guarantee stability for their citizens by supporting its functioning, and to enhance their capacity to comply with their duties through adequate taxation whilst maintaining protection of property rights and healthy development of the property markets.[3]

Since the beginning of the economic integration of the internal market, the EU has emphasized the significance of freedoms provided for its citizens. Four freedoms established and ensured by the EU consist of free movement of goods, persons, workers, and capital. Property rights fall under the protection of movement of goods and capital.[4] It has been argued that the states of the Organization for Economic Co-operation and Development (OECD) encourage for homeownership instead of tenure housing by the means of preferential tax treatment policies.[5] Investing in real estate within the territory of the EU is a significant execution of free movement of goods and capital, and it could be even more meaningful for an individual and the economics

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[1] Aujean, M. (2010). Tax Policy in the EU: between Harmonization and Coordination? *Transfer,* 16(1), p 11-22.
[2] OECD Model Tax Convention for the Elimination of Double Taxation with Respect to Taxes on Income and on Capital and the Prevention of Tax Evasion and Avoidance, preamble.
[3] McCluskey, W.J., Almy, R., Rochlickova, A. (1998). The Development of Property Taxation in the New Democracies of Central and Eastern Europe. *Property Management,* 16 (3), p 150. See also Anderson, G. (2019). Towards an Essentialist Legal Definition of Property. DePaul Law. Rev. 68 (3)
[4] Akkermans, B., Ramaekers, E. (2013). Free Movement of Goods and Property Law. *European Law Journal,* 19 (2), p 240.
[5] Garcia, M. T. M., Figueira, R. (2020). Determinants of Homeownership in Europe – an Empirical Analysis based on Share. *International Journal of Housing Markets and Analysis*. Vol. ahead-of-print, No. ahead-of-print. https://doi.org./10.1108/IJHMA-12-2019-0120.

of the Member States, if the taxation rules were clear and simple. However, uncertainty in subjective rights and obligations arising from owning, especially, real property in another Member State than of affiliation may abstain the EU citizens from taking advantage of full potential of the freedoms provided in the internal market.

Tax law is considered human-created, positive law, the interpretation of which consists of separate indeterminate fields of law.[6] According to Bogenschneider, the interpretation of tax law cannot be accomplished in a vacuum, because "the facts in tax law are not transcendent to law"[7] but to a high extent include i.e. theories of economics.[8] Ownership of immovable property comprises the application of numerous fields of law. Property law governs the classification of types of property as well as rights and obligations arising from the possession.[9] Transfer of ownership is regulated by contract law. In cases of acquisitions through inheritance, family law is applied, etc. Ownership of property is always subject to the provisions of tax law.

The European Parliament has recognized the difficulties of ensuring equal treatment of resident and non-resident taxpayers, if the income is received in a state where the taxpayer is not a resident.[10] The discussion concerns direct taxation, which covers income from employment, pensions as well as capital income. The European Parliament acknowledged that the legislative proposals brought to the Union are not operating as effectively as Union case law does regarding the equal treatment of resident and non-resident taxpayers in the field of personal direct taxation.[11]

Hidden transaction costs, such as compulsory transfer taxes and registration fees increase the opacity of international property markets.[12] Transparency in the fiscal duties arising from different domestic tax laws evidently increases an individual's property rights, especially in respect of property investments in another Member State.[13] Tax planning possibilities should be taken under

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[6] Bogenschneider, B. (2016). Factual Indeterminancy in International Tax Law. Brics Law Journal. III(3), p 73.
[7] Ibid, p 73.
[8] Ibid, p 99.
[9] Simón-Moreno, H., Kenna, P. (2018). Towards a New EU Regulatory Law on Residential Mortgage Lending. *Journal of Property, Planning and Environmental Law.* 11(1), 52.
[10] European Parliament. Fact Sheets on the European Union. Direct taxation: Personal and company taxation. Retrieved from: https://www.europarl.europa.eu/factsheets/en/sheet/80/direct-taxation-personal-and-company-taxation , 1 April 2020
[11] Ibid.
[12] Grover, R., Walawick, M., Buzu, O., Gunes, T., Raskovic, M., and Yildiz, U. (2019). Barriers to the Use of Property Taxation in Municipal Finance. *Journal of Financial Management of Property and Construction*, 24 (2), Emerald Publishing Limited, 166-183, p 175.
[13] Ibid, p 166-183.

examination in those cross-border situations, where tax rates are connected to, or directly proportional with the taxpayer's income. In many cases, the taxation obligations arising from property ownership are independent from an individual's income, for which reason, the fiscal duties may become an unexpected financial burden in unpredictable life events, such as sudden unemployment or preponed retirement.[14] In other words, tax liability arising from property ownership may exist even if it does not provide financial profit to the owner. Therefore, for the protection of each individual's financial stability, it is crucial to be aware of all costs, fiscal or commercial by nature, connected to the purchase and ownership of real estate.

The thesis reviews certain aspects of taxation and other fiscal duties arising from the ownership of immovable property in cross-border cases and discusses tax planning approaches. By using qualitative research, the thesis explores the EU level harmonization and state sovereignty regarding the taxation of immovable property. It discusses how to overcome the issue of double taxation, presents tax planning possibilities, and highlights the fiscal duties a Finnish private real estate investor needs to take into account when considering the purchase of real estate in Estonia, Sweden or France. This work clarifies the foreign tax practices at the conceptual level with practical significance for Finnish private real estate investors, who are considering homeownership for residential purposes in another Member State, in particular that it supports their strategic tax planning activities. This thesis does not research or compare all forms of ownership exhaustively. The concept of real property ownership will refer solely to direct ownership, unless otherwise expressly provided.[15]

This thesis is structured in an inductive way as follows: Chapter 1 introduces the relation between national and international legal provisions in the aspect of taxation. Chapter 2 inspects the definitions of immovable property in accordance with domestic law of Finland, Estonia, Sweden and France. Chapter 3 finds out natural person's tax liability arising from real estate in the aforementioned states. Chapter 4 discusses the issue of double taxation and how it shall be eliminated in case two or more Member States of the EU consider having a taxing right over the same property or the taxpayer. Chapter 5 makes a general distinction between unlawful tax evasion

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[14] Shanske, D. (2014). Revitalizing Local Political Economy through Modernizing the Property Tax. *Tax Law Review*, 68 (1), 143-ii., p 147.

[15] Ownership of real estate can be either direct or indirect. Direct ownership covers situations, where a person buys wholly or partially an item of property, whereas indirect ownership covers shareholding in property companies or property funds. Priemus, H. (2008). Real Estate Investors and Housing Associations: A Level Playing Field? The Dutch Case. European Journal of Housing Policy, 8(1), p 91.

and legitimate tax planning, finding the acceptable methods of tax planning in respect of real property ownership. Final conclusions consist of the most favorable methods tax-wisely for Finnish citizens in the real estate investments in Estonia, France or Sweden.

1. REGULATORY LANDSCAPE

1.1 Model tax conventions and policies

1.1.1 The OECD Model Tax Convention

The OECD Model Tax Convention on Income and on Capital (the OECD Model Tax Convention) was established to provide a uniform basis taking into account the core issues arising from the international double taxation.[16] The OECD has established a document in order to relief the administrative burden in the creation of tax agreements between two or more states. It is not legally binding Convention under international law, but it has great significance in the states' practice, because it was specifically designed to remove the repetitive bureaucracy in the negotiations. The purpose of the Model Tax Convention is to standardize and confirm the fiscal obligations of taxpayers acting in commercial, industrial, financial or any other field for all states having common solutions for the avoidance of double taxation.[17]

1.1.2 UN Model Tax Convention

United Nations Model Double Taxation Convention between Developed and Developing Countries 2017 (UN Model Tax Convention) was established to solidify international treaty practice in the elimination of double taxation. The Paragraph 12 of the Introduction of the Convention distributes the taxation rights between the source state and the residence state. As enacted in its provisions, the UN Model Tax Convention is not legally binding document nor enforceable as such. However, the Model Tax Convention has practical significance due to its nature as negotiation facilitator and guidance on the application of bilateral tax treaties.[18]

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[16] OECD. Tax treaties. Model Tax Convention on Income and on Capital: Condensed Version 2017: About. Retrieved from: https://www.oecd.org/tax/treaties/model-tax-convention-on-income-and-on-capital-condensed-version-20745419.htm, 3 April 2020.

[17] OECD. Model Tax Convention on Income and on Capital: Condensed Version 2017, p 9. Retrieved from: https://read.oecd-ilibrary.org/taxation/model-tax-convention-on-income-and-on-capital-condensed-version-2017_mtc_cond-2017-en#page11, 3 April 2020.

[18] United Nations Model Double Taxation Convention between Developed and Developing Countries (2017)., p vii.

1.2 Legislation

1.2.1 EU primary law

The EU primary law comprises the Treaty on the European Union, the Treaty on the Functioning of the European Union, as well as the Treaty establishing the European Atomic Energy Community.[19] The EU primary law has a crucial role in the guarantee of protection of property rights held by individuals and Member States.

The connection between free movement of capital and state taxation sovereignty is regulated in the Article 65 of the Treaty of the Functioning of the European Union (TFEU). Paragraphs 1(a) and 3 enact that the Member States may establish different tax regulation for non-residents and cross-border investments given that it does not violate the principle of non-discrimination. The Articles 110-113 are to be interpreted in a manner that the Member States are expected to co-operate on the abolition of double taxation in the territory of the EU.[20] Objectives of approximation of laws between Member States are set out in the Articles 114-118 of the TFEU. Nevertheless, Article 114(2) excludes application to fiscal duties, according to which the approximation of laws shall not apply i.e. to fiscal provisions. Therefore, it can be concluded that the requirement for collaboration between Member States regarding direct taxation is rather nominal.

The role of the European Convention on Human Rights in tax law is enacted in the Protocol 1, Article 1, according to which every natural or legal person is entitled to the peaceful enjoyment of his possessions without deprivation unless for the public interest provided by law. However, the provision shall not in any way impair the right of a State to secure the payment of taxes or other contributions.

1.2.2 EU secondary law

The EU secondary law consists of unilateral acts and agreements, such as regulations, directives and decisions, which aim at preventing tax evasion and elimination of double taxation. However,

[19] European Commission. *Types of EU law: Primary versus secondary law*. Retrieved from: https://ec.europa.eu/info/law/law-making-process/types-eu-law_en, 30 March 2020.
[20] European Parliament. Direct Taxation: Personal and Company Taxation. Retrieved from: https://www.europarl.europa.eu/factsheets/en/sheet/80/direct-taxation-personal-and-company-taxation, 1 April 2020.

direct taxation is not governed by the EU legislation.[21] The Council Directive 2011/16/EU on administrative cooperation in the field of taxation requires Member States to collaborate in the exchange of taxation information. It shall be noted that the scope of the application of the Directive concerns solely administrative cooperation, not material collaboration in order to harmonize direct taxation. In the field of personal direct taxation, the Court of Justice of the European Union (CJEU) ruled in the case C-279/93 that the Article 48 of the Treaty precludes the application of benefit of procedures on direct taxation, such as annual deductions at source, only to residents.[22] Case law of the CJEU provides more effective guidelines on personal direct taxation than any legislative means at EU level, including legislative proposals. Forbidden discrimination in tax law could arise in situations, where taxpayers are treated differently under comparable circumstances, or where the factual circumstances differ significantly, the treatment of taxpayers remains similar to each other.[23]

Ritter-Coulais case[24] has relevant interface with the assessment of non-discrimination principle in tax treatment of the EU nationals in cross-border ownership. In the case, a German national and his dual-national wife were both working in Germany, but living in France. They were considered tax liable in Germany for their global income in accordance with German law. They requested that negative income arising from their use of own house is taken into account in their tax rate calculations. German tax law stated that in case positive income from real estate in another state does not occur, the loss of income will not be taken into account in the determination of the tax rate in Germany. Based on these facts, a preliminary question was brought before the CJEU asking, whether the tax practice of Germany, which treats foreign negative income on a different basis than if derived from national source, is compatible with the EU law regarding free movement of capital. The CJEU ruled that if positive income from foreign real estate is taken into account for the purposes of determining the rate of taxation, the negative income shall be taken into account as well.

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[21] European Parliament. Fact Sheets on the European Union. Direct taxation: personal and company taxation. Retrieved from: https://www.europarl.europa.eu/factsheets/en/sheet/80/direct-taxation-personal-and-company-taxation, 30 March 2020.
[22] Judgement of 14.2.1995 – Case 279/93 Finanzamt Köln-Altstadt v. Roland Schumacker
[23] Dafnomilis, V. I. (2014). Inheritance Taxes and European Union Law: Case Law to be Inherited. *EC Tax Review*, 23(6), p 354.
[24] Judgement of 21.2.2006 – Case C-152/03 Ritter-Coulais v. Germany

1.2.3 Multilateral tax agreements

Multilateral tax agreements are concluded between three or more contracting states in order to regulate the avoidance of double taxation. The issue of double taxation arises when multiple states consider having a right to levy taxes on the same person or property. Taxing rights of contracting states are limited under tax agreements. The purpose is not to create tax liability or tax rates in the multilateral tax agreements, but to distribute the taxation rights of the states. Following the project of the OECD, Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI) was signed by 94 states.[25]

1.2.4 Bilateral tax treaties

Bilateral tax treaty is a written international agreement entered into by two States, the purpose of which is to avoid double taxation.[26] The contracting states may freely negotiate on the terms in accordance with rules arising from international law. Bilateral tax treaties define personal scope, and which taxes are covered under the Convention. Tax treaties limit the taxing rights of the contracting states and determine the applicable double tax relief methods. Bilateral tax treaties are governed by international law. The provisions of tax treaties – multilateral or bilateral – prevail domestic law in case aforementioned legislations conflict.[27]

1.2.5 Domestic tax law

Member States of the EU have the legislative competence in regulating the property rights and obligations. Domestic law of each Member State regulates not only horizontal relationships covering transactions between private persons, but also vertical relationship between the private person and the state – meaning fiscal duties.[28]

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[25] OECD. Signatories and parties to the multilateral convention to implement tax treaty related measures to prevent base erosion and profit shifting, status as of 28 February 2020. Retrieved from: http://www.oecd.org/tax/treaties/beps-mli-signatories-and-parties.pdf, 1 March 2020.

[26] Sly, N., Weber, C. (2017). Bilateral Tax Treaties and GDP Co-Movement. *Review of International Economics*, 25 (2), p 293.

[27] UN Model Double Taxation Convention between Developed and Developing Countries (2017), vii.

[28] Simón-Moreno, H., Kenna, P. (2019). Towards a New EU Regulatory Law on Residential Mortgage Lending. Emerald Publishing Limited. *Journal of Property, Planning and Environmental Law*, 11(1), p 52.

2. DEFINITIONS OF REAL ESTATE FOR RESIDENTIAL PURPOSES

In his article *Towards an essential legal definition of property,* Dr. Glen Anderson defines the concept of property in a manner that meets the needs of this thesis. According to Anderson, property is a constellation of legal rights of certain objects, resources, or interests to the exclusion of others, which are limited by responsibilities.[29] Property can be further categorized as movable or immovable.[30] Definitions of immovable and movable property vary in different legislations, thus in order to compare different states, the distinctions shall be made in accordance with each state's domestic law.

2.1 Finland

Finland has an extraordinary system in the legal conceptualization of property. Any property which does not fall under the definition of immovable property is considered movable. Finnish Real Estate Formation Act defines the extent of immovable property.[31] According to Chapter 1 Section 2(1), real estate refers to an independent unit of land ownership, which under the Real Estate Register Act[32], is to be entered into the Real Estate Register as real estate. The real estate comprises the area belonging to it, the shares of the joint property units and of the joint special benefits as well as the easements and the private special benefits belonging to the real estate.

Real Estate Register Act §2(1) determines which types of property shall be entered into the Real Estate Register as real estates: 1) estates, 2) plots of land, 3) public areas, 4) state-owned forest lands, 5) conservation areas, 6) areas partitioned based on redemption, 7) areas partitioned for

[29] Anderson, G. (2019). Towards an Essential Legal Definition of Property. *DePaul Law Review*, 68(3), p 514-515.
[30] Hollo, E. J. (2019). Property and Trust Law in Finland. (2nd ed.) the Hague, the Netherlands: Kluwer Law International.
[31] Finnish Real Estate Formation Act (554/1995), Chapter 1, Section 2, Paragraph 1, *kiinteistönmuodostamislaki*
[32] Finnish Real Estate Register Act (392/1985), Section 2, Paragraph 1, 1-9, *kiinteistörekisterilaki*

public needs, 8) separate reliction areas, and 9) public water areas. The list is exhaustive. Any other type of property is considered movable, thus the definition of immovable property under Finnish domestic law can be deemed relatively narrow. The ownership of apartments in the apartment buildings is based on housing company shares. Housing company *de facto* owns the building including the apartments therein. The person purchasing an apartment in Finland in fact owns shares that entitles to the possession of the apartment, but not the building itself. Shareholders of the housing company (persons in the possession of the apartment) are joint owners of the housing company. The distinction between the ownership of real estate and housing company shares is significant due to their completely different tax treatment.

2.2 Estonia

Similar to Finnish legislation, the extent of immovable property is enacted in the statute that provides the provisions for the land register. Estonian Land Register Act §5 recognizes independent units 1) an immovable (plot of land), 2) right of superficies, 3) apartment ownership, 4) right of superficies in apartments as immovable property.[33]

2.3 Sweden

Swedish Land Code Chapter 1 Section 1 defines real property as land.[34] Martin Lilja found in his text *National Report on the Transfer of Movables in Sweden* that “what is not immovable property is movable property”.[35] Similar interpretation is found under the Finnish domestic law. Lilja states that in addition to land, buildings, structures and other objects that are permanently fitted into the building, are governed by the rules of immovable property.[36]

[33] Estonian Land Register Act (RT I 1993, 65, 922)
[34] Swedish Land Code (1970:994)
[35] Lilja, M. (2011). National Report on the Transfer of Movables in Sweden. In: W. Faber, B. Lurger (Eds.), *National Reports on the Transfer of Movables in Europe: Sweden, Norway, and Denmark, Finland, Spain.* Münich, Seller, p 45.
[36] Ibid, p 45.

2.4 France

French Civil Code defines immovable property. According to Article 517, “property is immovable, either by its nature or by its destination or by the object to which it applies.”[37] Article 518 enacts that lands and buildings are immovable by their nature.

[37] French Civil Code, consolidated version 14.02.2020

3. TAX LIABILITY ARISING FROM PRIVATE OWNERSHIP OF REAL ESTATE

3.1 Finland

3.1.1 Real estate tax (kiinteistövero)

Finnish Real Estate Tax Act Section 1 enacts that property tax is paid based on the value of the property to the municipality in which the property is located.[38] Only immovable property in the meaning of Real Estate Register Act is subject to property tax. Section 11 of the Act grants the councils of municipalities the power to determine the rate of property tax on their territory. The standard property tax rate is set at a minimum of 0,93% and a maximum of 2,00%. The standard property tax rate is amended in the Section 12, which enacts the tax rate for buildings used for permanent residential purposes. A building is considered to be mainly used for the purpose of permanent residence, if at least half of its surface area fulfils the requirement of permanent residence.[39] Buildings, which have been begun to be built mainly for this purpose are treated equally with the buildings mainly used for permanent residential purposes. The property tax shall be set between 0,41% and 1,00% for buildings used for permanent residual purposes within the meaning of Section 12.[40] The calculation of the value of the real estate is enacted in a separate statute, Act on the Valuation of Assets for Taxation.[41]

3.1.2 Transfer tax (varainsiirtovero)

Owners of real estate and shareholders of housing company are subject to transfer tax imposed by state as provided in the Finnish Transfer Tax Act.[42] According to Section 4, the transferee shall be subject to the transfer tax in case of transfer of ownership of real estate. Transferee is released from the obligation to transfer tax, if the acquisition of the property is wholly or partially based on a gift, inheritance, will or dissolution of co-ownership. According to Section 11, transferee is also not subject to transfer tax, if he/she 1) has acquired real estate; 2) uses or starts to use the building

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[38] Finnish Real Estate Tax Act (654/1992, *kiinteistöverolaki*)
[39] Ibid, Section 12.
[40] Ibid, Section 12.
[41] Finnish Act on the Valuation of Assets for Taxation (1142/2005, *laki varojen arvostamisesta verotuksessa*)
[42] Finnish Transfer Tax Act (931/1996, *varainsiirtoverolaki*), Section 4.

as his own permanent residence; 3) has not previously owned at least half of the residential building or shares in a housing company, and 4) has attained 18 but not 40 years of age before signing the deed of transfer. Therefore, tax exemption is applied for persons purchasing their first home. The level of tax rate is determined in the § 6 of the Transfer Tax Act, according to which, tax rate of 4% applies to the transfer of real estates. Amount of tax is calculated of the purchase price or any other consideration that has been agreed upon, and the unpaid part of any housing-company loan ("debt-free price"). According to § 20, the tax rate for the transfer of shares in a housing company, housing association or real estate cooperative shall be 2,0%.

3.1.3 Capital income and capital gains tax (pääomatulovero, luovutusvoittovero)

Income tax is legislated by Income Tax Act, according to which property income, gains on the transfer of assets, and other income that is regarded as having accumulated wealth constitute taxable capital gains.[43] According to § 32 of the Act, capital income includes, inter alia, interest income, dividends, rental income, profits and land income. Section 46 determines the calculation of the capital gains. Taxable capital gain is calculated by deducting the amount of the cost of acquisition and the costs incurred in acquiring the assets from the selling price. A natural person selling his/her primary home is exempt from transfer tax, if two conditions apply simultaneously: 1) the real estate or an apartment for residential purposes has been owned by the seller for two years minimum; and 2) the seller or his/her family members have *de jure* lived in the dwelling for two years.[44] Unless the aforementioned conditions apply, the tax rate for capital gain is 30% for the gain amounting up to €30,000, and 34% for the amount exceeding €30,000.[45]

In 2011, Finnish capital loss deduction rules in cross-border real estate ownership were under examination of the CJEU.[46] In the case C-322/11, a Finnish resident sold his real estate located in France. Since French law did not allow deductions on the grounds of capital losses, the Finnish resident attempted to deduct the losses in Finland, which was refused by Finnish tax authority. The CJEU held that Finland's capital loss deduction rules were discriminatory and forbidden under the Union policy. The decision reflects the CJEU's previous judgements in favor of the equal tax treatment of residence state and source state income. It has been argued that the CJEU will play a

[43] Finnish Income Tax Act (1532/1992, *tuloverolaki*)
[44] Verohallinto. *Selling Residential Property.* Retrieved from: https://www.vero.fi/en/individuals/housing/selling_your_home/, 5 May 2020.
[45] Ibid.
[46] Judgement of 7.11.2013 – Case C-322/11 – K v. Finland.

significant role in the justification of such taxation rules due to the fact that the field of taxation rules has not reached stability across the EU.[47]

Rental income from a Finnish source is taxed in Finland. Tax on rental income is always assessed at the tax rate for capital income, which is not affected by the residency of the taxpayer.[48] The tax is based on the net amount of the rental income. Tax rate is 30% up to EUR 30,000, and 34% for the amount exceeding EUR 30,000.[49] Rental income from abroad is *per se* taxable in Finland. Due to tax treaties of Finland, rental income from immovable assets outside of Finland can be taxed in the source state (location of the property), which means that double taxation is eliminated in Finland either by credit method or exemption method. According to the tax treaty between Finland and France, exemption method shall be applied to rental income derived from immovable property locating in France. Consequently, rental income is not taxed in Finland.

3.1.4 Inheritance and gift tax (perintö- ja lahjavero)

According to the Finnish Inheritance and Gift Tax Act, inheritance tax shall be paid on 1) the property obtained by inheritance or will, if the deceased or heir resided in Finland at the time of the death of the deceased, 2) immovable property acquired by inheritance or will located in Finland.[50] A person is considered to be living in Finland if she/he has a domicile and home therein. Inheritance tax rates are categorized based on the relation between the decedent and heir. Close relatives, including decedent's spouse, inheritors in direct line of descent or ascent (children, grandchildren, parents and grandparents), and former spouses follow tax bracket I.

Table 1. Tax bracket I.

Value of inheritance, €	Tax at minimum threshold, €	Tax rate on exceeding portion, %
20,000-40,000	100	7
40,000-60,000	1,500	10
60,000-200,000	3,500	13
200,000-1,000,000	21,700	16
over 1,000,000	149,700	19

Source: Finnish Inheritance and Gift Tax Act (378/1940), §14.

[47] Peetermans, M.; Staes, M. (2014). K v. Finland: EU Developments in the Area of Foreign Loss Deduction Rules. *EC Tax Review*, 23(1), p 56-59
[48] Verohallinto. *Property: Rental income*. Retrieved from: https://www.vero.fi/en/individuals/property/rental_income/rental-income-from-property-abroad/ , 30 March 2020.
[49] Ibid.
[50] Finnish Inheritance and Gift Tax Act (378/1940, *perintö- ja lahjaverolaki*), Section 4.

All other relatives and non-relatives falling outside of the scope of the first tax bracket pay inheritance tax on the following rates.

Table 2. Tax bracket II.

Value of inheritance, €	Tax at minimum threshold, €	Tax rate on exceeding portion, %
20,000-40,000	100	19
40,000-60,000	3,900	25
60,000-200,000	8,900	29
200,000-1,000,000	49,500	31
over 1,000,000	297,500	33

Source: Finnish Inheritance and Gift Tax Act (378/1940), §14.

3.2 Estonia

Estonian tax system consists of state taxes and local taxes.[51] State taxes include, for instance, income tax, social tax and land tax.[52] Local Taxes Act regulates the scope of local taxes.[53]

3.2.1 Land tax (maamaks)

Land tax is paid by the owner of the land to the municipality in which the land is located.[54] All land, except land specified in the § 4 of the Estonian Land Tax Act, is subject to land tax. Exceptions do not affect land for residential purposes owned by natural persons, thus further examination does not correspond to the purposes of this thesis and will be excluded. The rate of the land tax shall be 0,1-2,5% of the taxable value of land annually, which is established by the local government council.[55] Section 11 legislates an individual's tax incentives on land tax. Landowners or users shall be exempt from the obligation to pay land tax on residential land, if the person's residence is in the building located on this land as entered in the population register.[56]

[51] Estonian Taxation Act (RT I 2002, 26, 150), Section 3, Paragraph 1.
[52] Ibid, Section 3, Paragraph 2.
[53] Estonian Local Taxes Act (RT I 1994, 68, 1169), Section 3.
[54] Estonian Land Tax Act (RT I 1993, 24, 428), Sections 3 and 5.
[55] Ibid, Section 5, Paragraph 1.
[56] Ibid, Section 11, Paragraph 1.

Contrary to the Finnish property tax system, Estonia does not levy a separate tax on the building, nor does it take the value of the building into calculation of land tax. McCluskey, Almy and Rohlickova concluded in their article "The development of property taxation in the new democracies of Central and Eastern Europe" that Estonia was one of the European countries in the economic transition in the 90s, which chose not to broaden the property tax base to cover both land and buildings located therein.[57] McCluskey, Almy and Rohlickova suggested that the political decision to exclude buildings from the tax base aimed at encouraging proficient use of land and its improvements.[58] They noted that a proposal for inclusion of the buildings into the tax base was brought before parliament in the late 90's.[59] The proposal did not result in any tax reform, and yet to this date, residential buildings are not subject to land tax in Estonia. Therefore, in this respect Estonia remains attractive for private foreign real estate investors.

3.2.2 Stamp duty (riigilõiv)

According to the Law of Property Act, acquisition or disposal of an immovable by a transaction, shall be notarially authenticated.[60] Contrary to Finland, Estonia does not impose direct tax to the buyer for the transfer of ownership of a real estate or an apartment. Instead, other inevitable costs arise to the buyer for the registration of the ownership transfer. Notary fees are dependent on the transaction value, the list of which is exhaustively enacted in the Estonian Notary Fees Act § 22. Contrary to other countries in the comparison, Estonian legislation provides the amount of notary fee in euros in each transaction value instead of setting a standard percent to be applied in every case.

3.2.3 Capital income tax (kapitalitulu maks)

Income Tax Act §12(1) enacts that income tax is *per se* charged on income derived by a resident natural person from all sources of income in Estonia and abroad, including gains from transfer of property, which is specifically regulated in § 15. Gains from the sale or exchange of any transferable and monetarily appraisable objects, including real property, usufructs, real rights and other proprietary rights are subject to income tax.[61]

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[57] McCluskey, W.J., Almy, R., Rochlickova, A. (1998). The Development of Property Taxation in the New Democracies of Central and Eastern Europe. *Property Management*, 16 (3), p 153.
[58] Ibid.
[59] Ibid.
[60] Estonian Law of Property Act (RT I 1993, 39, 590), Chapter 3, Division 1, Section 119, Paragraph 1.
[61] Estonian Income Tax Act (RT I 1999, 101, 903), Section 15, Paragraph 1.

Income tax is not levied on the gains derived from the transfer of immovable property, if any of the following exemption clauses apply: 1) an essential part of the immovable or apartment ownership is a dwelling used by the taxpayer as his or her place of residence until transfer, 2) the transfer of ownership occurred through restitution of unlawfully expropriated property, 3) the transfer was completed through privatization with the right of pre-emption, and the registered immovable property does not exceed 2 hectares; 4) a summer cottage has been in the taxpayer's ownership as a movable or an essential part of an immovable for more than two years, and it does not exceed 0,25 hectares.[62] If an owner transfers two or more real estates of theirs within the period of two years, only the first transfer is exempt from capital income tax related to capital gains.[63]

Rental income falls under Income Tax Act §16(1), according to which income tax is charged on rent or other consideration arising from immovable property. Tax rate is flat 20% for both residents and non-residents.[64]

Estonian tax law used to apply discriminatory measures for tax exemption practices on the real estate income earned by investment funds.[65] In 2011, the European Commission requested Estonia to amend its tax legislation, since the tax provisions treated non-residents in a more disadvantageous manner than residents.[66] Even though the Commission's request did not concern the direct taxation of natural persons, it is important to understand the types of tax measures in Estonian legislative history that have been considered discriminatory. Erki Uustalu explained in his article "Compatibility of the Estonian Tax Treatment of Real Estate Income with EU Law" that non-discrimination principle is violated, if there is either different tax rate or tax base applied to non-residents than to residents.[67]

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[62] Estonian Income Tax Act (RT I 1999, 101, 903), Section 15, Paragraph 4.
[63] Maksu ja Tolliamet. Ulkomaisen Henkilön Omaisuuden Luovuttamisesta Syntyvät Verovelvollisuudet. 2.
[64] Tax and Customs Board of Republic of Estonia. *Income, Expenses, Supply, Profit: Tax Rates*. Retrieved from: https://www.emta.ee/eng/business-client/income-expenses-supply-profits/tax-rates, 25 April 2020.
[65] Uustalu, E. (2011). Compatibility of the Estonian Tax Treatment of Real Estate Income with EU Law. *Intertax*, 39(8/9), p 449.
[66] European Commission. Taxation: Commission Requests Estonia to Amend Discriminatory Tax Rules for Non-Resident Investment Funds.
[67] Uustalu, E. (2011). Compatibility of the Estonian Tax Treatment of Real Estate Income with EU Law. *Intertax*, 39(8/9), p 453-454.

3.3 Sweden

3.3.1 State property tax (fastighetsskatt)

Property owners in Sweden shall pay a municipal property fee or state property tax.[68] Property tax is levied on the real estates that are referred to as a detached unit, owner-occupied unit, apartment building unit, industrial unit, electricity production unit or agricultural unit on the grounds of the Section 1 of the Swedish State Property Tax Act (1984:1052). Property tax is to be paid by the person, who is the owner of the property at the beginning of the calendar year.[69] Property tax rate varies between 0,2% and 1,0% depending on the type of the real estate.

3.3.2 Local property fee (fastighetsavgift)

Swedish Municipal Property Fee Act[70] establishes the legislative ground for levying municipal property fees on the real estates. Similar to property tax, property fee shall be paid for such properties that are considered a detached house unit, owner-occupied unit, apartment building or agricultural unit, if the agricultural unit has a building for residential purposes.[71] Property fee shall be paid by the person who is the owner of the property in the beginning of the calendar year.[72]

The property fee is calculated by computing the fee rate (%) from the designated property value for each tax year. The Swedish Tax Agency establishes the maximum amount that each property fee shall not exceed. The amount of property fee is dependent on the type of the real estate for residential purposes.[73] For income year 2019 (declaration in 2020), the property fee for a fully built detached house is 0,75% of the property's valuation value for 2019, but in maximum SEK 8,049 per residential building. The rates for current income year 2020, will be declared in 2021 followingly: 0,75% is calculated from the property's valuation value for 2020, but will not exceed SEK 8,349.[74]

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[68] Skatteverket. Swedish Tax Agency. *Fashighetsavgift och Fastighetsskatt*. Retrieved from: https://www.skatteverket.se/privat/fastigheterochbostad/fastighetsavgiftochfastighetsskatt.4.69ef368911e1304a625800013531.html, 19 April 2020.
[69] Swedish State Property Tax Act (1984:1052), Section 2, Paragraph 1.
[70] Swedish Municipal Property Fee Act (2007:1398).
[71] Ibid, Section 1.
[72] Ibid, Section 2.
[73] Skatteverket. Swedish Tax Agency. *Fastighetsavgift och Fastighetsskatt*. Retrieved from: https://www.skatteverket.se/privat/fastigheterochbostad/fastighetsavgiftochfastighetsskatt.4.69ef368911e1304a625800013531.html, 19 April 2020.
[74] Swedish Act on Stamp Duty at Registration Authorities (1984:404).

Newly built residential houses and condominiums are exempt from property fees depending on the year they were completed. The houses completed in 2011 and earlier were exempt from property fee for the first five years. The following five years, the owner of a newly built residential house or condominium shall pay only half the property fee. The residential houses and condominiums built and completed in 2012 or later are exempt from any real estate fees for the first 15 years.[75]

Table 3. Exemptions and/or deductions from property fee in accordance with the completion year of the residential building.

Completion year of the residential building	Full exemption	Deducted amount
2010	2011-2015	2015-2020
2011	2012-2016	2017-2021
2012	until the end of 2027	not applicable
2013	until the end of 2028	not applicable
2014	until the end of 2029	not applicable
2015	until the end of 2030	not applicable
2016	until the end of 2031	not applicable
2017	until the end of 2032	not applicable
2018	until the end of 2033	not applicable
2019	until the end of 2034	not applicable
2020	until the end of 2035	not applicable
2021	until the end of 2036	not applicable

Source: Swedish Tax Agency, skatteverket.se/privat/fastigheterochbostad

3.3.3 Stamp duty (stämpelskatt)

The duty to perform stamp tax is regulated in the Swedish Act on Stamp Duty at Registration Authorities.[76] Section 1 enacts that stamp tax shall be paid to the State for the acquisition of real estate, plot rights and upon granting mortgages. Acquisitions of real property by natural persons are taxable, if they are completed through 1) purchase or exchange, -- --, 3) expropriation or other redemption due to the statute of right or obligation to redeem real estate.[77] Exemptions from tax liability are listed in the Section 6. Transfers of real estate are not subject to stamp tax, if the

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[75] Skatteverket. Swedish Tax Agency. *Fastighetsavgift och fastighetsskatt*. Retrieved from: https://www.skatteverket.se/privat/fastigheterochbostad/fastighetsavgiftochfastighetsskatt.4.69ef368911e1304a625800013531.html, 19 April 2020.
[76] Swedish Act on Stamp Duty at Registration Authorities (1984:404).
[77] Ibid, Section 4.

acquisition 1) by spouse is made for the purpose of consolidating uniform legal conditions for the spouses' real estate, 2) constitutes exchange insofar as the compensation consists of other real estate in order to achieve more suitable property classification or forms a part of rationalization measures for agriculture.[78] According to § 8, rate for stamp duty is "SEK 15 for each full thousand SEK of the value of the property". When purchasing real estate, the value is determined by comparing the purchase price with the valuation value the previous year. The highest of these values is considered to be the value of the property.[79] If the valuation does not exist for the year, the comparison is made with the values that the enrollment authority, with the guidance of an expert, assesses the property having had at the time of preparation of the document on which the acquisition is based.[80]

3.3.4 Capital income tax (inkomst av kapital)

In respect of the ownership of real estate, income derived from leasing private property, and the profits from the selling of the real estate are classified as capital gains under the Swedish Income Tax Act.[81] Other types of income need not to be taken into account to support the purpose of this thesis. Capital income is subject to capital gains tax at a flat rate of 30 percent.[82] Capital income is exempt from capital gains tax up to SEK 40,000, meaning that only the rental income or the profit from the sale of real estate that exceed SEK 40,000 is taxed.[83] The deduction is calculated per dwelling per year.

3.3.5 Inheritance and gift tax (arvs- och gåvoskatt)

Sweden no longer levies inheritance and gift tax on natural persons. In accordance with the decision of the Swedish national legislature *Riksdag*, the Inheritance and Gift Tax Act ceased to apply at the end of 2004.[84] However, the repealed Act still applies in cases where tax liability occurred before 2005.

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[78] Swedish Act on Stamp Duty at Registration Authorities (1984:404), Section 6.
[79] Ibid, Section 9, Subsection 1.
[80] Ibid, Section 9, Subsection 2.
[81] Swedish Income Tax Act (1999:1229), Chapter 41
[82] Skatteverket. Swedish Tax Agency. *Inkomst av kapital.* Retrieved from: https://www.skatteverket.se/servicelankar/innehallao/innehallao/dokumentbaraao/inkomstavkapital.4.53a97fe91163dfce2da80001269.html?q=skatt+på+kapital, 19 April 2020.
[83] Skatteverket. Swedish Tax Agency. *Hyra ut privatbostad*. Retrieved from: https://skatteverket.se/privat/skatter/arbeteochinkomst/inkomster/delningsekonomi/hyrautprivatbostad.106.1c68351d170ce554527ef5.html, 26 April 2020.
[84] Swedish Inheritance and Gift Tax Act (1941:416)

3.4 France

French tax system makes considerable differences in tax liability between residents and non-residents. Therefore, it is important to define the concept of residency for tax purposes. According to the General Tax Code of France, an individual is deemed to be a tax resident in France, if 1) their place of domicile (main residence) is in France, 2) they exercise professional activity in France, 3) France is the center of their interests, or 4) they spend more than 183 days in France in a calendar year (physical presence).[85]

3.4.1 Property taxes (impôts fonciers)

Property taxes refers to annual direct taxes collected by the State for the benefit of local authorities.[86] Local property taxes are subcategorized into 1) residence tax, 2) property tax on built properties, 3) property tax on non-built property, and 4) business property contributions.[87] In the following subchapters, the residence tax, and property tax on built property will be examined.
Due to property taxes' nature as local tax, local councils determine the tax rates applicable on their territories.

Property tax on built property (*taxe foncière sur les propriétés bâties*) is to be paid on built property on the grounds of General Tax Code of France. According to Articles 1380-1382, the definition of built property consists of any real estate and its constructions, regardless the nature of commercial or private use. Public buildings are exempt from the property tax. Another tax closely connected to the property tax on built property is garbage tax (*taxe d'enlèvement des ordures ménagères*), which is a compulsory municipal tax levied on all properties that are subject to property tax on built properties.[88]

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[85] General Tax Code of France, Book 1, Part 1, Title 1, Chapter 1, Section 1 I, Article 4B.
[86] Bulletin Officiel des Finances Publiques – Impôts. IF – Impôts Fonciers. Section 1. Retrieved from: https://bofip.impots.gouv.fr/bofip/7768-PGP.html/idenfiant%3DBOI-IF-20140509, 3 January 2020.
[87] Ibid, Section 10
[88] General Tax Code of France, Book 1, Part II, Title 1, Chapter 1, Section VII, Article 1520-1521.

Residence tax (*taxe d'habitation*), is imposed on individuals who have, for whatever reason, the disposition or the enjoyment of the taxable premises.[89] The amount of residence tax depends on the type of housing and other personal aspects of the occupier. Taxpayer may be subject to residence tax until 2023 on the grounds of both principal residence and secondary residence. In 2018, the residence tax policy was reformed gradually decreasing the residence tax liability of French households. The tax reform provides a complete abolition of the residence tax on main residences by the end of 2022.[90] No households or taxpayers are liable to residence tax on their primary residence from 2023 on.[91]

3.4.2 Income tax (impôt sur le revenu)

A single annual income tax is imposed on natural persons, whose overall net income consists of, for instance, salaries, wages, property income, capital gains from the transfer of goods or rights of any kind.[92] The list is not exhaustive. Although natural persons are taxed at a single income tax, the incomes and profits of the various categories shall be determined separately, in accordance with the rules applicable to each income category.[93] Income is taxed progressively, thus there is no uniform tax rate.[94] According to the Article 14 of the General Tax Code category of property income consists of 1) income from the rental of built or non-built properties, 2) income from property for which the owner reserves the right, or 3) income distributed by a real estate investment fund.

3.4.3 Capital gains tax (impôt sur les plus values)

The grounds for imposing taxes on capital gains in the Article 150 U of the General Tax Code of France. Capital gain is subject to income tax upon the realization of buildings, land and shares. A natural person is subject to income tax for real estate gains, in cases of 1) sale of real estate, 2) sale of rights attached to it, 3) sale through a real estate company or real estate investment fund.[95]

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[89] General Tax Code of France, Book 1, Part 2, Title 1, Chapter 1, Section III, Article 1408
[90] Ministère de l'Èconomi des Finances et de la Residence. *Suppression de la Taxe d'Habitation: Combine Allez-Vous Gagner?* Retrieved from: https://www.economie.gouv.fr/particuliers/suppression-taxe-habitation-combien-allez-vous-gagner, 30 April 2020.
[91] Ministère de l'Èconomi des Finances et de la Residence. *La taxe d'habitation: comment ça marche?* Retrieved from: https://www.economie.gouv.fr/particuliers/taxe-habitation, 30 April 2020.
[92] Bulletin Officiel des Finances Publiques – Impôts. *IR – Impot Sur le Revenu*. Section 30. Retrieved from: https://bofip.impots.gouv.fr/bofip/6430-PGP.html/identifiant%3DBOI-IR-20121127, 3 January 2020.
[93] Ibid, Section 100.
[94] Ibid, Section 130
[95] République Française. French Administration. *Impôt sur le Revenu: Plus-Value Immobilière.* Retrieved from: https://www.service-public.fr/particuliers/vosdroits/F10864, 30 April 2020.

Again, French law applies exemptions from tax liability under certain circumstances. The provisions on tax liability do not apply to buildings, parts of buildings or rights relating to these properties, which constitute the principal residence of the transferor.[96]

3.4.4 Wealth tax (impôt de solidarité sur la fortune immobilière, IFI)

Until the end of 2017 France imposed wealth tax on all personal assets.[97] Since 2018, the wealth tax is only paid by real estate owners, who are registered as the owner of the property as of the 1st of January, and whose net value of the real estates located in the territory of France exceeds 1,3 million euros.[98] IFI is paid on an annual basis. Real estates for residential purposes, whether or not used as the owner's main residence or vacation homes, are subject to wealth tax. Other assets, such as shares in property funds or companies, are also taxable under the wealth tax, but are not further analyzed in this thesis.

The calculation method of the wealth tax depends on the individual's residency. In the determination of the assets of French residents, worldwide assets are taken into account. Instead, non-residents' calculation of assets is limited to the property and income in France.

France applies multiple exemptions or deductions on the liability of the wealth tax. Individuals becoming residents in France benefit from a 5-year-exemption rule for their foreign assets in the calculation of the wealth tax. In other words, new residents have to pay wealth tax solely on their French assets for the first five years of their residency.

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[96] General Tax Code of France, Book I, Part 1, Title 1, Chapter 1, Section II, Article 150 U, II.
[97] Sénat. *Transformation de l'Impôt de Solidarité sur la Fortune (ISF) en Impôt sur la Fortune Immobilière (IFI) et Création du Prélèvement Forfaitaire Unique (PFU): Un Premier Bilan*. Retrieved from: www.senat.fr/rap/r19-042-1/r19-042-12.html, 27 July 2020.
[98] République Française. *Impôt sur la Fortune Immobilière (IFI): Personnes et Biens Concernés*. Retrieved from: https://www.service-public.fr/particuliers/vosdroits/F563 , 30 April 2020.

4. ISSUE OF DOUBLE TAXATION INCOMPATIBILITIES

International double taxation can be subcategorized as juridical and economic double taxation. Juridical double taxation refers to situations where the taxpayer is subject to taxes levied by two or more states regarding the same income or capital.[99] International juridical double taxation occurs when two or more states' taxing rights over the same income overlap. Economic double taxation arises in situations where two or more different taxpayers are subject to the same income or capital.[100]

Juridical double taxation can be eliminated by the application of exemption method, credit method, deduction method, or reduced rate method. In the full exemption method, the foreign income is completely disregarded in the calculation of tax base in the taxpayer's state of residence. Exemption method can also be performed with progression meaning that the foreign income is not taxed at all in the taxpayer's residence state, but it is taken into account in the determination of the tax rate of taxpayer's income arising from the state of residence. In the credit method the taxpayer is taxed on their income globally by their residence state, but the residence state provides a credit for taxes paid in the source state. The credit is used to balance the taxes paid in the source state with the tax liability in the residence state. The credit method is applied either in full or ordinary manner. In full credit method the taxpayer receives full credit from his/her residence state for the taxes paid in foreign state, thus he/she shall pay only the difference in case the amount of tax would be higher in the residence state. Taxpayer will receive a refund for the excess tax, if the foreign tax exceeds the tax liability arising from residence state.[101]

In ordinary credit method, if the foreign tax rate is lower than equivalent tax computed under the provisions of the residence state, the taxpayer is liable to pay the difference to the residence state. However, application of ordinary credit method does not grant the taxpayer credit from the residence state, if the foreign-sourced tax exceeds the calculated amount of tax base in the residence state. Therefore, in case the ordinary credit method is, in the tax agreement, defined as

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[99] Helminen, M. (2016). *Finnish International Taxation*. (3rd Ed.) Helsinki, Finland: Faculty of Law, University of Helsinki, p 28.
[100] Ibid, p 28.
[101] Verohallinto. *Elimination of Double Taxation – Receipts of Foreign-Sourced Income by Finnish-Resident Individuals*. Retrieved from: https://www.vero.fi/henkiloasiakkaat/verokortti-javeroilmoitus/ulkomailta_suomeen/kaksinkertaisen_verotuksen_poistaminen_/, 20 April 2020.

the relief method for the elimination of double taxation, the tax treatment is always more detrimental to the taxpayer than application of full credit method.

As mentioned in the Chapter 1.1.4, tax agreements divide the taxing rights of the contracting states and determine the applicable double tax relief methods. The purpose of a tax agreement is to protect a taxpayer against double taxation. Tax agreements define the scope of the application, including the definition of immovable property. A natural person investing in real estate shall pay special attention to the national legislation of the country in which the real property is located, if that state does not have a tax agreement with his/her state of residence. The purpose of the tax treaties goes beyond the sole protection of a taxpayer against double taxation. The objective of the avoidance of double taxation is also to improve international trade, investments and the transfer of technology.[102]

Tax agreements do not have power to determine the extent of the tax liability of a natural person in his/her state of residence. The definition and extent of general tax liability falls under the sovereignty of the national legislature, which is, in Finland, enacted in Chapter 1 Section 9 of the Finnish Income Tax Act. Finland recognizes two types of tax liabilities: general and limited. General tax liability under Finnish law means that a person residing in Finland is taxed in Finland on his/her global income.[103] However, under § 11 of the Finnish Income Act, a Finnish citizen residing in abroad, is held tax liable in Finland for three years starting from the end of the year, in which he/she moved abroad. It means that Finland has taxation right over the income of its citizens for extra three years, even if they have *de facto* moved out of the country. On a quick scan this may seem blatantly unfair disadvantage for those Finnish citizens, who have decided to reside elsewhere. How can they be held generally tax liable in Finland for their global income, if they do not even live in Finland any longer?

This is where the closer inspection of tax agreements comes to question. Tax agreements are to eliminate situations, where the same income is taxed by two states. In the given case, where a Finnish citizen has moved to another state (Finland still considering its citizen being generally tax liable for extra three years), Finland is obliged to eliminate the double taxation on its end by using the method provided in the tax agreement. Therefore, Finland cannot directly levy taxes on the

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[102] United Nations Model Double Taxation Convention between Developed and Developing Countries (2001) p iv.
[103] Finnish Income Act (1535/1992, *tuloverolaki*) Section 9

income arising from another state, but the Finnish citizen's global income will be taken into consideration in the calculation of his/her tax rate in Finland. Therefore, a Finnish citizen pays the taxes only to the foreign state but to the detriment of the taxpayer, Finland has a right to impose a higher tax rate for his/her income in Finland on the grounds of Estonian income.

Generally, tax agreements grant the taxing right over income arising from real estate to the state where the real estate locates. According to the Finland's tax treaties, Finland shall eliminate double taxation through application of credit method or exemption method.[104] Credit method is used as a primary elimination tool in Finland, but for instance, in cases of double taxation between Finland and France, Finland shall apply exemption method.

The tax agreement between Estonia and Finland includes a few extraordinary material features. In general, the type of income that is not specified under a tax agreement, is taxed in the residence state of the taxpayer. However, according to tax treaty between Finland and Estonia, Finland has been granted a general taxing right over Finnish citizens, even if they are deemed tax residents in another State.[105]

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[104] Helminen, M. (2016). *Finnish International Taxation*. (3rd Ed.) Helsinki, Finland: Faculty of Law, University of Helsinki, p 30.
[105] Asetus Viron kanssa tulo- ja varallisuusveroja koskevan kaksinkertaisen verotuksen välttämiseksi ja veron kiertämisen estämiseksi tehdyn sopimuksen voimaansaattamisesta ja sopimuksen eräiden määräysten hyväksymisestä annetun lain voimaantulosta, 30.12.1993/96.

5. TAX PLANNING IMPLICATIONS

In the assessment of tax planning, it is crucial to distinguish unlawful actions from those that are not regulated (in legal evaluation, allowed). According to the President of the Court of Justice (ECJ), Koen Lenaerts, "the Court of Justice has made clear that EU law does not protect natural or legal persons who seek to pay less tax by creating situation that artificially fall within the scope of application of the fundamental freedoms."[106] Regulatory competition between the Member States, however, enables minimization of taxes.[107] Lenaerts notes that Member States' legislative competence in the direct taxation allows the organization of distribution of tax profits. Therefore, a natural person has a possibility to profit from tax advantages by exercising economic activity in another Member State than of his or her residence.[108] In his article, Lenaerts referred to the case C-364/01 *Barbier v. the Netherlands,* where the ECJ ruled that an EU citizen cannot be deprived of the right granted by the Treaty solely on the grounds that he is taking advantage of tax profits provided by the legislation of another Member State than his state of residence. As a result, the anti-abuse principle cannot overrule the fundamental freedoms even if the exercise of such freedom is motivated by an individual's desire to alleviate his or her tax obligations.[109] However, the interpretation of aforementioned freedom shall not derogate the effectiveness of the Member States' taxation rights over an individual's property.

The concept of tax planning is not recognized by (inter)national legislatures, nor does a universal definition exist. According to Reijo Knuutinen, tax planning may refer to situations where the decision-making of a legal person is guided by tax considerations.[110] Knuutinen has stated that tax planning does not always automatically seek for minimization of payable taxes but evaluates the benefit of the taxpayer as a whole.[111] Therefore, tax planning can be considered as a part of overall financial planning of the tax subject. Tax laws are silent on the actions that are allowed in the field of taxation, but they set the limits to tax planning by criminalizing certain tax arrangements. It is limited by the criminal and punishable actions described by criminal codes of each state.

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[106] Lenaerts, K. (2015). Tax The Concept of 'Abuse of Law' in the Case Law of the European Court of Justice on Direct Taxation. p 329.
[107] Ibid.p 329.
[108] Ibid, p 329-330.
[109] Ibid, p 330.
[110] Knuutinen, R. (2020). *Verosuunnittelun Oikeudelliset ja Yhteiskunnalliset Rajat.* Helsinki, Finland: Alma Talent.
[111] Ibid, p 34.

As concluded in the previous chapters, direct taxation is not unified or harmonized by the EU legislation due to the lack of legislative competence of the European Union. The Court of Justice has systematically emphasized in its case law that the application of the freedoms provided by the EU does not create protection to natural or legal person who seeks to reduce or avoid their tax obligations through artificial arrangements.[112]

One of the recognized challenges in property taxation across the EU is the evaluation of the property value, and the variety of methods used by different Member States.[113] A generally used method for the evaluation is to assess the value of property on the grounds of the purchase price. Naturally, not all real estates are transferred and re-evaluated annually, which may rise an issue in the annual taxes based on property value, i.e. property tax and land tax.[114]

Another remarkable aspect of tax planning implication is deduction possibilities in cross-border cases. The decisions of the cases C-152/03 *Ritter-Coulais v. Germany* and C-322/11 *K v. Finland* held that negative income from foreign real estate shall be taken into account for the purposes of determining the tax rate of an individual, if positive income of the same real estate has had an effect on an individual's tax rate calculation. Therefore, the CJEU has extended the principle of non-discrimination to the deduction possibilities between residents and non-resident property owners.

The last question to be evaluated is whether effective tax planning of an individual can be performed due to or regardless the lack of harmonization of direct taxation within the EU. Based on the qualitative research concluded in previous chapters, Finnish residents investing in the countries in comparison currently benefit from the non-harmonization of the direct taxation in respect of tax liability. However, the level of predictability of taxation practices in cross-border situations suffer from non-harmonization.

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[112] Cases: Judgement of 03.12.1974 - C-33/74 – Van Binsbergen v. the Netherlands; and Judgement of 20.09.2018 – C-685/16 – EV v. Germany

[113] Shanske, D. (2014). Revitalizing Local Political Economy through Modernizing the Property Tax. *Tax Law Review*, 68(1), 143-ii.

[114] Ibid, p 159.

CONCLUSION

Tax agreements between the EU Member States have been established for the purpose of the protection of a taxpayer against double taxation, not to create policies for tax liability or tax rates. The EU has coordinating function in the circle of tax measures between the Member States, leaving the tax regulations onto the consideration of each State. In respect of taxation, the legal instruments of the EU have focused on the elimination of tax evasion, as well as harmonization of indirect taxation, placing the decision-making of direct taxation practices under the sovereignty of the States. The Court of Justice of the European Union intervenes mainly, if the general principles of the Union are breached, i.e. non-discrimination principle.

As presented in the introduction, ownership of real estate in another Member State than of residence, is a form of significant execution of free movement of goods and capital. It was claimed that the execution of free movement of capital in real estates could be even more meaningful for an individual and the economics of the Member States, if the taxation rules were clear and simple. Non-harmonization of direct taxation increases unpredictability of fiscal duties imposed on an individual, and complicates his/her tax planning. Even though tax planning is not recognized in legal terms, it forms a part of the financial planning connected to property ownership.

Tax planning is generally understood as minimization of amount payable taxes through lawful means, but it shall be emphasized that minimization forms only a part thereof. In respect of natural persons' ownership of real estates, tax planning possibilities are dependent on the content of the tax agreement between the private investor's state of residence and the state, where the real estate for residential purposes is located. Additionally, the legal definition of immovable property plays a crucial role in the context of real estate tax planning. Indeterminacy of the legal language in taxation across the EU does not lay an easy base for harmonization procedures.[115] Finnish national legislation has a relatively limited definition for immovable property in international comparison.

[115] Snape, J. (2015). Tax Law: Complexity, Politics and P
olicymaking. *Social & Legal Studies*. 24(2), p 158.

One of the research questions was whether Finnish private real estate investors profit from the Finnish narrow definitions of real estate in cross-border situations. To the detriment of an individual's point of view, some tax treaties that Finland has entered into provide Finland a possibility to tax income from shares in a real company as immovable, even though under Finnish national law they are considered a movable property.[116]

To conclude the material differences between the tax systems, Estonia seems to remain the most attractive and beneficial state for a Finnish real estate investor with its simple and low-cost tax system. The recent tax reform in France eliminating the general wealth tax liability has resulted to the benefit of the foreign middle class. Naturally, the consequence of the French tax reform from general wealth tax liability onto real estate wealth tax is that the burden of tax liability is placed upon those residents and non-residents, whose net wealth of their real estates exceeds 1,3M euros. Rental income derived by a Finnish resident from immovable property located in France is not taxed in Finland. However, even if the rental income is not directly taxed in Finland, the owner shall declare the income in Finland, because the overall income may increase the tax rate of other capital gains of the Finnish taxpayer. The comparison between Finland and Sweden shows that tax systems, in general, are based on the similar policies, presumably due to their common legislative history. Even though the tax rates *per se* are relatively similar to each other, applicable tax deductions and exemptions granted under Swedish law encourage to a larger extent for homeownership than the Finnish model.

[116] Helminen, M. (2016). *Finnish International Taxation*. (3rd ed.) Helsinki, Finland: Faculty of Law, University of Helsinki, p 198.

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