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## **Swiss Digital Nomads: from Vis-a-vis to Visa**

### **International attractive strategies for remote work**

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Digital nomadism: a spreading phenomenon involving all those workers able to carry forward their activities only through a laptop and a wi-fi connection. High mobility and the absence of a mandatory physical link challenge current international tax rules. Thus, several countries decided to invest in attracting such high-skilled professionals by releasing the so-called Digital Nomads Visas. The author tries to approach the issue from a fiscal perspective, giving an overview of tax issues and evaluating the pros and cons of introducing such a permit to stay in Switzerland.

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## 1. Introduction to digital nomads

[1] The pandemic boosted the increasing *scenario* of telework. A new reality, detached from physical presence, challenges our everyday life. This situation, already existing even if «less publicly», is set to become increasingly popular.

[2] If authors and institutions are discussing the tax future of remote work, it is not possible to ignore the development of the so-called digital nomads. Usually left aside due to their «low impact» on society, the *phenomenon* seems to snowball<sup>1</sup>.

[3] Digital nomads are, generally, workers able to carry forward their activity from everywhere through a laptop and a wi-fi connection<sup>2</sup>. According to TSUGIO MAKIMOTO and DAVID MANNERS' «foreboding», «*companies would continue to adapt to be competitive in the (virtual) global market place, and, as a result, people would be forced to choose whether to live the life of a settler or nomad*»<sup>3</sup>. Indeed, in 1997, they published their future-looking *manifesto* entitled «Digital Nomads,» predicting a globalized world led by new technologies and different work arrangements. Their expectations concerning people free from daily commuting to/from their offices came true<sup>4</sup>.

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<sup>1</sup> SVETISLAV V. KÔSTIC, In search of the digital nomad – Rethinking the Taxation of Employment Income under Tax Treaties, in *World Tax Journal*, n. 2, vol. 11, 2019, quoting the WYSE Travel Confederation, *New Horizons IV – A global study of the youth and student traveler*, p. 13: «*Even though digital nomads are still not numerically important (we estimate around 1.8 million globally on the basis of the survey), they have an influence on other young travelers through their blogging, travel advice and apparently desirable lifestyle*».

<sup>2</sup> ULF HANNERZ, *Transnational connections: Culture, People, Places*, Routledge 1996, p. 106: «*[...] digital nomads can be understood as an emerging sub-population of nomadic workers with a distinct motivation for world travel adventure and independent remote work. The motivation most often associated with the digital nomad's mobile lifestyle is travel adventure and an escape from the office atmosphere*». KATE BLATT/JOHN GALLAGHER, *Mobile workforce: the rise of the mobilocracy*, in: Peter Bruck/Madanmohan Rao (eds), *Global Mobile: applications and innovations for the worldwide mobile ecosystem*, Information Today Inc., pp. 275–292: «*[...] <digital nomads>, who can work almost anywhere, anytime, thanks to the ubiquity of digital infrastructure and technological advances*». According to ANNIKA MULLER, *The digital nomad: buzzword or research category?* in *Transl. Soc. Rev.*, 6, p. 344–348; WILL SUTHERLAND/MOHAMMAD HOSSEIN JARRAHI, *The gig economy and information infrastructure: the case of the digital nomad community*, in *Proc. ACM Hum Comput. Interact*, 2017 (<https://doi.org/10.1145/3134732>, last accessed on 12 October 2022); INGE HERMANN/CODY MORRIS PARIS, *Digital Nomadism: the nexus of remote working and travel mobility*, in *Information Technology and Tourism*, 2020 (<https://doi.org/10.1007/s40558-020-00188-w>, last accessed on 12 October 2022). See, also, RACHAEL A. WOLDOFF/ROBERT C. LITCHFIELD, *Digital Nomads: In search of freedom, community, and meaningful work in the New Economy*, in Oxford University Press, 2021, p. 331: «*The urge to be <location independent> is often associated with a search for (personal) freedom, adventure, and an escape from the traditional work environment*».

<sup>3</sup> TSUGIO MAKIMOTO/DAVID MANNERS, *Digital nomad*, Wiley, New York 1997.

<sup>4</sup> BEVERLY Y. THOMPSON, *The digital lifestyle: (remote) work/leisure balance, privilege, and constructed community*, in *Int J socio Leis*, 2, 4, 2019, p. 1–16 (<https://link.springer.com/article/10.1007/s41978-018-00030-y>, last accessed on 12 October 2022).

[4] Simply going online and seeking «digital nomads», one may have an idea of the issue. Terms such as «best places to live for digital nomads» fill the top-ten results. Those links show lists of the most suitable countries (or cities) for remote-nomad work. They are ranked considering key *criteria*, such as cost of living, internet speed, and – drumroll – taxation.

[5] Digital nomadism brings several implications. In particular, tax consequences are more than one could expect. The old-fashioned fundamentals of international taxation are inadequate for this modern individuals' mobility. Such a complex topic requires a regulation that may be reached only through a profound change in principles and approaches.

[6] This paper aims to overview the growing *phenomenon* of digital nomads from a fiscal perspective, describing the so-called «Digital nomads visas», spread among different countries. A proposal about implementing a similar permit to stay in Switzerland will be addressed in more detail. The study is limited by the absence of quantitative *data* on the exact number of digital nomads living/working in Switzerland. Moreover, it must not be deemed a complete analysis but an experimental one, thinking aloud about a Swiss Digital Nomads' proposal<sup>5</sup>.

## 2. Tax issues related to digital nomads

[7] First of all, it is essential to highlight that digital nomads have to face different tax implications from teleworkers<sup>6</sup>.

[8] These latter contend the potential claim of an employer's State to tax their income despite having no physical presence in the jurisdiction. Otherwise, mobile workers (and so, digital nomads) have to deal with potential multi-State taxation because of their physical presence in different territories. Indeed, it is possible to define a mobile worker as «*someone who produces income from multiple States because they have a physical presence in each state during a taxable year*»<sup>7</sup>.

[9] This represents an obstacle in applying general international tax rules. Under provisions of the OECD Model Convention on Income and Capitals (hereinafter, OECD MDT),<sup>8</sup> such a *scenario*

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<sup>5</sup> The study is limited to an evaluation of a scheme attracting digital nomads in Switzerland (inbound). Swiss residents who wish to move abroad as digital nomads (outbound) are excluded from the present paper.

<sup>6</sup> See. YOUNG RAN (CHRISTINE) KIM, Taxing Teleworkers, in: University of California, Davis, vol. 55, p. 1149–1164; EDWARD A. ZELINSKY, The Proper State Income Taxation of Remote and Mobile Workers, Colum.J.Tax.K, 2020 (<https://journals.library.columbia.edu/index.php/taxlaw/announcement/view/350>, last accessed on 12 October 2022).

<sup>7</sup> KIM (note 6), p. 1164.

<sup>8</sup> OECD, Model Tax Convention on Income and on Capital: Condensed Version 2017, OECD Publishing, Paris 2017 ([https://doi.org/10.1787/mtc\\_cond-2017-en](https://doi.org/10.1787/mtc_cond-2017-en), last accessed on 12 October 2022).

should be traced to article 15<sup>9</sup> concerning the taxation of income from employment<sup>10</sup> or art. 7 OECD MDT, dealing with self-employed workers.

[10] Accordingly, taxing rights generally belong to the State of residence of the worker due to the premise that tax residence can be considered «sufficient proof»<sup>11</sup> of the strong connection with a jurisdiction, able to limit the source State's power to tax. This latter can tax the income from employment (under art. 15 OECD MDT) when the activity is physically carried forward in its territory. In this case, also other conditions must be satisfied, such as the temporal threshold fixed within 183 days of physical presence in the source State, the residence of the employee, or his permanent establishment in that country<sup>12</sup>. Also, self-employed are generally taxed in their residence State unless they exercise their activity in the source State through a permanent establishment.

[11] A contrast immediately appears between international rules and the definition of digital nomads. If the OECD MDT provisions deal with the concepts of residence and source, mobile workers cope with a multi-jurisdictional approach, where it is difficult to identify without doubt the two<sup>13</sup>. As KÔSTIC underpins: «[...] in the case of the digital nomad, only the ease of defining residence stands up to criticism, although it is the ease of changing residence that is (one of) the concept's Achilles heels»<sup>14</sup>.

[12] Where is a digital nomad resident for fiscal purposes? Art. 15 OECD MDT, as well as art. 7, rely on the so-called tie-break rules (defined under art. 4 OECD MDT<sup>15</sup>). More than ever, concepts such as the permanent house, the center of vital interest, and the 183-day rule sound old-

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<sup>9</sup> FRANK PÖTGENS, *Income from International Private Employment: An Analysis of Article 15 of the OECD Model*, 12 IBFD Doctoral Series, p. 332 ss.; BERNARD PEETERS, *Article 15 of the OECD Model Convention on «Income from Employment» and its Undefined Terms*, in *European Taxation*, Feb/Mar 2004, pp. 72–82; MICHAEL LANG, *Introduction to the Law of Double Taxation Conventions*, 3<sup>rd</sup> ed., Linde 2020, p. 81 ss.; ROBERT WADBURGER, *Income from employment (Article 15 OECD Model Convention)*, in Michael Lang/Pasquale Pistone/Josef Schuch/Claus Staringer (eds.), *Source versus Residence Problems Arising from the Allocation of Taxing Rights in Tax Treaty Law and Possible Alternatives*, Kluwer Law International, 2008, p. 186; LUC DE BROE et al., *Interpretation of Article 15(2)(b) of the OECD Model Convention: «Remuneration Paid by, or on Behalf of, an Employer Who is not a Resident of the Other State»*, in: *Bulletin – Tax treaty Monitor*, Oct. 2000, p. 503 ss.; KASPER DZIURDZ/FRANK PÖTGENS, *OECD – Cross-Border Short-Term Employment*, in: *Bulletin for International Taxation*, vol. 68, n. 8, 2014; GIORGIO BERETTA, «Work on the Move»: *Rethinking Taxation of Labour Income under Tax Treaties*, ITAX, IBFS, 2-2022, pp. 10 ss.

<sup>10</sup> Here, some concerns run on the up-to-dateness of the distinction between employment and self-employed workers. The author shares Dr. KÔSTIC considerations in: *In search of the digital nomad – Rethinking the Taxation of Employment Income under Tax Treaties* (note 1). For the aim of the present contribution, the *focus* will be mainly on digital nomads working as employees.

<sup>11</sup> KÔSTIC (note 1), p. 195.

<sup>12</sup> PÖTGENS (note 9); PEETERS (note 9); LANG (note 9); WADBURGER, (note 9); DE BROE et al. (note 9); DZIURDZ/PÖTGENS (note 9).

<sup>13</sup> It is worth pointing out that AVI-YONAH affirmed that: «*In the case of individuals, residence-based taxation makes sense. First, residence is relatively easy to define in the case of individuals. Second, because most individuals are part of only one society, distributive concerns can be addressed most effectively in the country of residence. Third, residence overlaps with political allegiance, and in democratic countries, residence taxation is a proxy for taxation with representation*». REUVEN S. AVI-YONAH, *International Tax as International Law – An analysis of the International Tax Regime*, Cambridge University Press 2007, p. 23.

<sup>14</sup> KÔSTIC (note 1), p. 211.

<sup>15</sup> *Ex multis*, FEDERICA PITRONE, *Tax Residence of Individuals within the European Union: Finding New Solutions to Old Problems*, in: *World Tax Journal*, n. 3, vol. 8, 2016; KÔSTIC (note 1); GIORGIO BERETTA, «Work on the Move»: *Rethinking Taxation of Labour Income under Tax Treaties*, ITAX, IBFS, 2-2022, pp. 10 ss.

fashioned. Does it make sense to persist in seeking to adapt physical links to a mobile reality «without fixed roots»<sup>16</sup>?

[13] Nevertheless, assuming art. 4 OECD MDT successfully identifies the tax residence of a digital nomad, does such a solution align with the ability-to-pay principle? Taxpayers are asked to contribute to the society they live in, exploiting services and infrastructures. A digital nomad, for definition, is not using, for instance, infrastructures made available by the «claimed» residence State, moving from one jurisdiction to another.

[14] Moreover, there is a run to the market of tax residency (or citizenship). Several countries offer attractive programs allowing foreigners to get residency permits, usually valid for fiscal purposes<sup>17</sup>, against a fee, or an investment in real estate, philanthropy, etc. Such schemes play a key role in individual tax planning, especially for digital nomads.

[15] Times are changed. Unlike in the past, (tax) residency no longer revolves around material aspects of life, such as offices, work environments, and infrastructure. Digital nomads are the best sample: they are free to move from one place to another without geographic bounds. They pursue their expectations in terms of good living<sup>18</sup>.

[16] So, coming back to the OECD MDT provisions, these concerns make it harder to correctly identify residence and source States<sup>19</sup>. Thus, a correct assessment is also tricky<sup>20</sup>: through intelligent tax planning, individuals working as digital nomads may result in a double (or triple) non-taxation.

### 3. Digital Nomads Visa: make your offer!

[17] The current trend in international tax competition is the so-called Digital Nomad Visa offering. These specific visas allow digital nomads to move to a specific country, where they decide to stay for a certain period, working remotely for a foreign employer.

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<sup>16</sup> In this sense, MICHAEL J. GRAETZ, The David Tillinghast Lecture: Taxing International Income – Inadequate Principles, Outdated Concepts, and Unsatisfactory Policy, 54 Tax L. Rev., 2000/2001, p. 269, affirms: «*We have been blinded by the adherence to inadequate principles and remain wedded to outdated concepts. As a result, we have no sound basis for pronouncing our international tax policy satisfactory or unsatisfactory*». Also, KÓSTIC (note 1), p. 196 ss.; BERETTA (note 15), p. 10 ss.

<sup>17</sup> In 2018, the OECD identified a list of countries offering residency-by-investments (RBI) and citizenship-by-investments (CBI) allowing to avoid the exchange of information mechanism, implemented through the Common Reporting Standard (CRS). For more information, see: <https://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/residence-citizenship-by-investment/> (last accessed on 12 October 2022). Also, the European Commission published a report providing an analysis of such schemes: AMANDINE SCHERRER/ ELODIE THIRION, Citizenship by investment (CBI) and residency by investment (RBI) schemes in the EU, EPRS – European Parliamentary Research Service, 2018 (<https://op.europa.eu/it/publication-detail/-/publication/4ab574c8-e62e-11e8-b690-01aa75ed71a1>, last accessed on 12 October 2022).

<sup>18</sup> CALEECE NASH/MOHAMMAD JARRAHI/WILL SUTHERLAND/GABRIELLA PHILLIPS, Digital nomads beyond the buzzword: Defining digital nomadic work and use of digital technologies, in Transform Digit Worlds, 10766:207-217, 2018: «*While nomadic workers typically travel by their work, digital nomads travel while working and, therefore, instead of moving merely between spaces and location for work, digital nomads also have to be flexible around whatever spaces they find in the locations they choose to travel*». See, also ANNIKA MULLER, The digital nomad: buzzword or research category?, in Transl. Soc. Rev. 6, 2016, p. 344–348: «*[...] movement between places is driven by a quest for the 'good life' rather than purely employment opportunities*».

<sup>19</sup> The same reasoning may be extended also to art. 7 OECD MDT.

<sup>20</sup> Interesting concerns can be found in KÓSTIC (note 1), p. 211 ss.

[18] Estonia has been a pioneer in approaching this nomadism, adopting its Visa in 2020<sup>21</sup>. Its permit to stay allows «*eligible location-independent workers [to] apply for the chance to come to Estonia to live for up to a year with peace of mind that they can legally work*»<sup>22</sup>.

[19] Requirements for eligibility under the Estonian Visa are:

- ability to work independently of location;
- ability to perform work duties remotely using telecommunications;
- have an active employment contract with a company registered outside of Estonia, conduct business through an own company registered abroad, or work as a freelancer for clients mostly outside of Estonia;
- a *minimum* income, actually fixed at €3'504 (gross of tax) during the six months preceding the application (and proper evidence).

[20] Its spirit of initiative is not surprising: Estonia has been ranked first in the Tax Competitiveness Index for the last nine years<sup>23</sup>. Its attitude towards digitalization and, more generally, new fiscal challenges makes it a winner.

[21] Shortly after, Digital Nomad Visa mushroomed worldwide. Many European countries implemented such a permit to stay, even with different features and conditions<sup>24</sup>. In general, nomads are allowed to stay in the visa jurisdiction from a *minimum* of six months to a *maximum* of five years. Some of the visas released are listed in the table below.

Country	Max Lenght	Local taxes	Requirements	Living cost	Wi-fi speed
Croatia <sup>25</sup>	1 year	No <sup>26</sup>	Annual income (approx) €28'000.	medium	60 Mbps
Czech Republic <sup>27</sup>	1 year	Yes	At least (approx.) €5'084 in your bank account. Only <i>freelancer</i> . Difficult to obtain, embassy interview required.	medium	63 Mbps
Estonia <sup>28</sup>	1 year (max. 1,5 year)	Yes, after 183 days	Annual income (approx) €42'000.	medium	70 Mbps

<sup>21</sup> For more information please check the Estonian government's official website: <https://www.e-resident.gov.ee/nomadvisa/> (last accessed on 12 October 2022). It is also interesting to have a look at the so-called «digital nomad guide» realized to help (and to incentive) workers to become digital nomads and, move to Estonia, published in the official website: <https://www.e-resident.gov.ee/blog/posts/the-complete-guide-to-being-a-digital-nomad-key-things-to-know> (last accessed on 12 October 2022).

<sup>22</sup> Republic of Estonia, e-residency, official website: <https://www.e-resident.gov.ee/nomadvisa/> (last accessed on 12 October 2022).

<sup>23</sup> For more details, see Tax Foundation, International Tax Competitiveness Index, 2022 (<https://taxfoundation.org/publications/international-tax-competitiveness-index/>), last accessed on 4 November 2022).

<sup>24</sup> BERETTA (note 15) makes the point, p. 10 ss. See also, in italian, FRANCESCA AMADDEO, Telelavoro, e-residency e digital nomad visa, in: NF 5/2022, p. 281 ss.

Country	Max Length	Local taxes	Requirements	Living cost	Wi-fi speed
Germany <sup>29</sup>	Up to 3 years	yes	Only <i>freelancer</i> . Accommodation in Germany required, mandatory announcing to competent authorities.	medium	68 Mbps
Greece <sup>30</sup>	1 year	To be defined	Annual income €42'000.	medium	-
Iceland <sup>31</sup>	180 days	No (< 183 days)	Annual income (approx.) €85'000.	high	117 Mbps
Italy <sup>32</sup>	1 year	yes	Annual income € to be defined.	medium	30.15 Mbps
Malta <sup>33</sup>	1 year	no	Annual income (approx) €34'000.	medium	53 Mbps
Norway <sup>34</sup>	3 years	Yes, after 183 days	Annual income (approx.) €37'000.	high	167 Mbps
Portugal <sup>35</sup>	5 years	Yes, after 183 days	Only <i>freelancer</i> . Annual income (approx.) €90'000.	medium	53 Mbps

<sup>25</sup> Republic of Croatia, Ministry of the Interior, Temporary stay of digital nomads, (<https://mup.gov.hr/aliens-281621/stay-and-work/temporary-stay-of-digital-nomads/286833>, last accessed on 12 October 2022).

<sup>26</sup> Stjepan Gadzo, Croatia: A New (Tax-Free) Promised Land for Digital Nomads? (Part I), Kluwer International Tax Blog, (<http://kluwertaxblog.com/2022/02/24/croatia-a-new-tax-free-promised-land-for-digital-nomads-part-i/>, last accessed on 12 October 2022).

<sup>27</sup> Ministry of Foreign Affairs of the Czech Republic, Kde podát ádost – místní příslunost, ([https://www.mzv.cz/jnp/cz/informace\\_pro\\_cizince/pobytova\\_opravneni\\_k\\_pobytu\\_nad\\_90\\_dnu/mistni\\_prislunost\\_zu\\_v\\_rizeni\\_o\\_vizum\\_a/index.html](https://www.mzv.cz/jnp/cz/informace_pro_cizince/pobytova_opravneni_k_pobytu_nad_90_dnu/mistni_prislunost_zu_v_rizeni_o_vizum_a/index.html), last accessed on 12 October 2022).

<sup>28</sup> Republic of Estonia, E-residency, Estonia is launching a new Digital Nomad Visa for remote workers, (<https://www.e-resident.gov.ee/nomadvisa/>, last accessed on 12 October 2022).

<sup>29</sup> Federal Office for Migration and Refugees of Germany, Self-employment and freelancing, (<https://www.bamf.de/EN/Themen/MigrationAufenthalt/ZuwandererDrittstaaten/Arbeit/SelbstaendigeTaetigkeit/selbstaendigeTaetigkeit-node.html>, last accessed on 12 October 2022).

<sup>30</sup> Elina Bosinaki, Greece: Digital nomad visa – a tax perspective, International Tax Review, 10 December 2021, (<https://www.internationaltaxreview.com/article/b1vtky0g5j6232/greece-digital-nomad-visa-a-tax-perspective#:~:text=The%20digital%20nomad%20visa%20is,on%20a%20fast%2Dtrack%20process.&text=The%20applicant%20is%20required%20to,clients%20or%20employers%20outside%20Greece>, last accessed on 12 October 2022).

<sup>31</sup> Utlendingastofnun, The Directorate of Immigration, Long-term visa for remote workers and their family members, (<https://utl.is/index.php/en/long-term-visa-for-remote-workers-and-their-family-members>, last accessed on 12 October 2022).

<sup>32</sup> Italy enacted in March 2022, the so-called Sostegni-ter, (Decree n. 4/2022), providing an amendment to art. 27 of the Italian Foreign Act, providing the possibility to release a digital nomad visa for those extra-UE citizens, who are able to work remotely from Italy independently or for their foreign employers. The ministerial decree for the implementation is expected in the following months.

<sup>33</sup> Residency Malta Agency, Nomad Residence Permit, (<https://residencymalta.gov.mt/>, last accessed on 12 October 2022).

<sup>34</sup> The Norwegian Directorate of Immigration official website, (<https://www.udi.no/en/checklists-container/work/checklist-for-self-employed-persons-with-a-company-abroad-/>, last accessed on 12 October 2022).

<sup>35</sup> Serviço de Estrangeiros e Fronteiras, official website, (<https://imigrante.sef.pt/en/>, last accessed on 12 October 2022).

Country	Max Length	Local taxes	Requirements	Living cost	Wi-fi speed
Spain <sup>36</sup>	1 year	Only after 183 days	Only <i>freelancer</i> . Annual income (approx.) €27'000.	medium	59 Mbps

**Table 1: Digital Nomad Visas introduced by some EU countries. Data collected by the author from governments' official websites.**

[22] Such visa grant nomads neither citizenship nor permanent residence in the country. But what about the fiscal perspective? Before tax treaties, individuals' tax residency responds to national rules and tax liability.

[23] From the table, it is possible to identify countries where digital nomads may benefit from a non-taxation due to domestic provisions: in some circumstances, they are exempted<sup>37</sup>. In other cases, they must exceed a specific threshold of days spent in the territory<sup>38</sup>. Bothers arise when nomads cannot be taxed in the visa jurisdiction. Under international tax rules, the State of origin may not exercise power to tax income from (self-)employment. A misalignment between provisions adopted by different countries risks to result in illicit tax planning and double non-taxation.

[24] Notwithstanding, this is not a blanket statement. In the majority of cases, precise conditions oversee the granting visa procedure. Checks and evaluations made by the competent authority are rigorous. It follows that the possibility of abuse cannot invalidate the Digital Visa initiative as a whole. Such an instrument represents the first step in the right direction to set rules for mobile workers. People living as a nomad and working everywhere are used to facing difficulties in understanding how to deal with their duties (not only concerning taxation). They may feel more comfortable in a regulated position granted by a specific visa recognized by the jurisdictions' competent authorities.

#### 4. A Swiss Digital Nomad Visa: why not?

[25] Almost all neighboring countries adopted such a permit-to-stay scheme; others are working on a similar intervention (Italy, for instance<sup>39</sup>). It could be a lost opportunity for Switzerland to stand by and watch. The Swiss trailblazing approach to digitalization and international challenges makes the country one of the most cutting-edge. Indeed, given its attractiveness in terms of well-being, education, and taxation, it could be interesting to explore whether these factors can also be used to increase investments in this new category of workers in Switzerland.

[26] According to the scope of the present paper, the idea is trying to understand if it would be possible to implement a Swiss Digital Nomad Visa in line with national rules. It aims to define the basis of a proposal introducing a permit-to-stay to attract digital nomads in our country,

<sup>36</sup> Gobierno de España, Ministerio de asuntos exteriores, Union Europea y Cooperacion, Self-employment work visa, official website, (<https://www.exteriores.gob.es/Consulados/londres/en/ServiciosConsulares/Paginas/Consular/Visado-de-trabajo-por-cuenta-ajena.aspx>, last accessed on 12 October 2022).

<sup>37</sup> Croatia chose to exempt income earned by digital nomads under its *ad hoc* scheme. See GADZO (note 26).

<sup>38</sup> Usually, national rules provide a 183-days threshold to get tax residency.

<sup>39</sup> See note 31.

ruling their fiscal *status*. Due to the sensitivity of this issue, the proposal intends to evaluate the opportunity for a real incentive for nomads to move and live in Switzerland without radical changes in the existing legal framework. Therefore, it would avoid the exploitation of such a scheme to get illicit advantages or to round specific regulations (*i.e.*, aggressive tax planning and illegal immigration). This Visa will not be combined with *ad-hoc* tax relief to prevent a tradeoff between taxes and immigration issues. It may increase the acceptance of the program at the international level. Notwithstanding, applicants shall benefit from the favorable Swiss tax regime<sup>40</sup>.

#### 4.1. A brief analysis of the legal framework: State of the art

[27] The proposal for the Swiss Digital Nomads Visa must be addressed from two different perspectives: according to immigration law, which encompasses rules for entering Switzerland and getting a permit to stay, and tax law concerning the fiscal regime of workers from abroad.

##### 4.1.1. Entry and stay permits in Switzerland

[28] Swiss immigration law rules inbound flows, providing mandatory requirements. Applicants must fulfill several conditions depending on the different kinds of permit-to-stay requested.

[29] Usually, visas are granted to individuals depending mainly on the following:

1. Their nationality (and related international agreements between Switzerland and the country of origin);
2. The duration of their staying in Switzerland (short or long term);
3. If they are carrying forward a gainful work activity or not.

[30] Leaving aside peculiar permits-to-stay (*i.e.*, those for refugees or commuters), the main categories applied to individuals are the L permit (a short-term residence permit valid for up to a year and not renewable) and the B permit (temporary residence permit usually issued for more than one year but renewable). This last category of Visa addresses all those foreigners who wish to move their center of vital interest to Switzerland.

[31] The Foreign Nationals and Integration Act (FNIA; RS 142.20) encompasses provisions ruling the immigration *phenomenon*, listing different permits. Moreover, it distinguishes between those who move to Switzerland carrying forward a gainful work activity and those who would not work<sup>41</sup>. For the purposes of this paper, the focus will be only on the former group.

[32] Those mobile workers who move to Switzerland «*carrying forward a gainful activity*» fall under art. 11 FNIA. Accordingly, employees and self-employed may apply for a permit to stay in Switzerland as long as the working activity is physically exercised on the Swiss territory<sup>42</sup>.

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<sup>40</sup> The fiscal treatment of digital nomads will be treated in more detail in the following paragraphs.

<sup>41</sup> It is worth noting that FNIA provisions must be read consistently with rules defined by the Ordinance on admission, stay and gainful activity (SR 142.201; OASG).

<sup>42</sup> JEAN-BLAISE PASCHOUD/DANIEL DE VRIES REILINGH, in: Yves Noël/Florence Aubry Girardin (eds.), *Commentaire Romand de la loi sur l'impôt direct*, 2 ed. Bâle 2017, Art. 3 N. 25: «[...] *On considère que l'activité est exercée en*

[33] Art. 18 FNIA rules the case of an employed worker. The requirements are: (i) the existence of national interest for the Swiss economy; (ii) the submission of the proper application by the employer; (iii) the fulfillment of the conditions laid down in art. 20–25 (i.e., limitations, the priority of nationals, measures for persons seeking employment, salary and employment conditions, and compensation for expenses incurred by posted employees, accommodation, and commuters).

[34] Art. 19 FNIA addresses self-employment workers. In this *scenario*, the conditions required are (i) the existence of national interest for the Swiss economy; (ii) asked financial and operational requirements for carrying forward the activity are fulfilled; (iii) that the worker has an adequate and independent source of income; (iv) requirements under art. 20 and 23–25 are met.

[35] Promoting sustainable economic development, on the base of both socio-political interests and national policy, is crucial. The «national interest for the Swiss economy» represents a common condition. As the Federal Message concerning FNIA<sup>43</sup> explains, the law does not define the «economic interest» of the country, but it also comprehends the labor market. Consistently with the strict immigration policies, individuals allowed to move to Switzerland shall contribute to the economy, giving their own added value, agreeing with future policies<sup>44</sup>. Only avoiding the improvement of low-skilled workers to low cost shall grant the long-term economic goal<sup>45</sup>.

[36] However, art. 23 FNIA, entitled «Personal conditions», waives the mentioned general rules. Its first two paragraphs limit the release of an L or B permit to «*managers, specialists and other qualified workers*», identified considering «*the professional qualifications of applicants and their professional and social adaptability, language skills and age*». The welcome of a foreigner in Switzerland responds to a medium-long-term perspective of integration in the local labor market and social environment. Despite this, art. 23(3) FNIA allows some exceptions. It provides the possible admission of, namely:

- investors and entrepreneurs who maintain existing jobs or create new jobs;
- recognized persons from the world of science, culture, and sport;
- persons with particular professional knowledge or skills, provided there is a need for their admission;
- persons who are part of an executive transfer between internationally active companies;
- persons whose activity in Switzerland is indispensable for economically significant international business relationships.

[37] A solid economic national interest justifies the listed exceptional cases<sup>46</sup>.

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*Suisse si la personne est physiquement présente lorsqu'elle exerce l'activité en cause, c'est-à-dire l'activité donnant droit à la rémunération.».*

<sup>43</sup> Messaggio relativo alla legge federale sugli stranieri dell'8 marzo 2002, FF 2002 3327.

<sup>44</sup> Digital nomads represent the future for a lot of high-skilled workers. Allowing them, respectfully of all the conditions under immigration law and in line with Swiss economic objectives, to move to our country for a defined period may contribute to Swiss attractiveness not only for individuals but also for enterprises (even in the light of the near *minimum* global tax implementation).

<sup>45</sup> FF 2002 3327 (note 43), par. 1.2.3.1.

<sup>46</sup> FF 2002 3327 (note 43), p. 3400. Another solution could be to evaluate art. 26 FNIA as the legal base for the Digital Nomad Visa. Indeed, this provision recalls cross-border services, usually provided in Switzerland for a limited period. Anyway, such an alternative seems to be a stretch.

#### 4.1.2. Tax regime of beneficiaries of permits to stay in Switzerland carrying forward a gainful activity

[38] Once received the permit, the immigrant has to deal with the liability to tax in Switzerland. The question is addressed by art. 3–5 Federal Direct Tax Act (SR 642.11; FDTA)<sup>47</sup>.

[39] Relevant to this kind of Visa is art. 3 FDTA. Unlimited tax liability is given if the individual resides in Switzerland intending to settle permanently or when the law assigns a particular tax domicile. Law provides the tax domicile if an individual stays in Switzerland for more than 30 days pursuing a (self-)employment or 90 days without employment<sup>48</sup>. Furthermore, art. 4 and 5 FDTA list a set of assets, revenue streams, or activities subject to taxation in Switzerland, even if the individual has no domicile in Switzerland. In any of these cases, the tax liability is limited to the extent of these taxable items.

[40] Unlike Swiss citizens and people granted a domicile (C permit), L and B permit beneficiaries work as employees fall under art. 83 FDTA. It provides that employed workers without a permit of domicile (C permit) who have tax residence in Switzerland are generally taxed through a withholding tax on their income from employment.

[41] Tax rates applied are determined by Federal and Cantonal authorities, as stated by art. 85 FDTA and art. 2 Federal Department of Finance (FDF) Ordinance on withholding tax (SR 642.118.2; OWT). They periodically publish specific tariffs and tables on their official websites<sup>49</sup>.

[42] It is worth noting that art. 89 FDTA provides mandatory ordinary taxation in specific circumstances: (i) if the gross income exceeds a specific threshold (fr. 120'000 per year, *ex art.* 9 OWT), and (ii) when the withholding tax does not apply to their income, *ex art.* 84 FDTA. For instance, art. 4 OWT provides that the taxpayer must be ordinarily taxed in case of foreign income.

[43] Differently, self-employed workers, beneficiaries of an L or B permit, are ordinarily taxed under FDTA provisions.

#### 4.2. Swiss Digital Nomad Visa: proposed eligibility criteria and legal basis

[44] Given the above, the Swiss legal framework already provides the basis for introducing such a scheme without upheaval. Indeed, under current rules, foreign workers may benefit from permits to stay (*i.e.*, L or B) and work in Switzerland, as employees or as self-employed.

[45] The point here is to interpret art. 23(3) FNIA correctly. The extendibility of the entry in Switzerland, as FNIA provides, whether the individual has a particular «high profile» must be stressed. His/her ability to meet the national economic interest<sup>50</sup> tips the balance.

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<sup>47</sup> The Swiss Digital Nomad Visa proposal requires the identification of the leading tax concerns. It is well known that, according to the Swiss fiscal federal system, taxes are levied on three different levels (Federal, Cantonal, and by municipalities). Thus, the main reference is FDTA, which the Federal Law widely reprises on Harmonization of the Cantonal and Communal Taxes (FTHA; SR 642.14), and in each Cantonal Tax Law.

<sup>48</sup> Along the lines of art. 3 FTHA, Cantons have the same requirements.

<sup>49</sup> All Cantonal tariffs (including withholding tax for Federal Direct Tax) are listed in the official website: <https://www.estv.admin.ch/estv/it/home/imposta-federale-diretta/imposta-alla-fonte/tariffe-cantionali.html> (last accessed on 12 October 2022).

<sup>50</sup> FF 2002 3327 (note 43), p. 3339 ss.

[46] The inputs offered by digital nomads seem to fulfill such a *criterion* for a series of socio-economic reasons. Their contribution to the Swiss economy may be influential and effective. Thus, attracting this increasing category of workers shall represent a crucial choice for Switzerland.

[47] In the opinion of the author, the lettering of art. 23(3) FNIA may justify *per se* the concession of a digital nomad visa in Switzerland. For the sake of completeness (and tax certainty), it would be possible to introduce another letter *f*) to the provision, including digital nomads in the list.

[48] Hypothetically, the wording could be: «*f. digital nomads, defined as foreign workers able to carry forward their activity remotely, through the use of technologies, acting independently or as employees of an employer sited abroad*»<sup>51</sup>.

[49] In this way, it would be possible to implement a similar scheme within FNIA without radical changes. Moreover, such an intervention allows competent authorities to rely on a well-known procedure, based on precise steps, both in evaluating requests and in bureaucracy. The legal framework's respect for immigration law can be assured<sup>52</sup>.

[50] From the tax perspective, no provision would have to be implemented within the FDTA (nor in Cantonal tax laws).

[51] As regards employees, beneficiaries of an L or B visa fall under art. 83 FDTA and OWT. Here, there are two possible *scenarios*.

[52] The first one does not require any change in the OWT provisions. Art. 4 will apply to digital nomads. Indeed, they get income from abroad, and accordingly, this must be ordinarily taxed. In this case, the scheme may be less attractive for Cantons with a high personal income tax rate<sup>53</sup>.

[53] The second one, instead, could be the introduction of an exception for digital nomads to art. 4 OWT, allowing them to be taxed through a withholding tax until their gross income does not exceed the fixed threshold of fr. 120'000 (according to art. 9 OWT).

[54] The main difference is not purely quantitative: aspects such as less bureaucracy for the taxpayer in applying withholding taxes may represent an *atout* in presenting the Visa.

[55] Following this reasoning, it would be possible to add a letter to the list of art. 4, para. 2 OWT, mentioning digital nomads among the exceptions to ordinary taxation in case of income coming from abroad. Thus, lit. *d* could sound like «*d. employed digital nomads, as defined by art. 23, para. 3, lit. f FNIA*».

[56] One issue which must be further examined is the application of the withholding tax under current rules. It is well known that this system is preferable since it grants a correct and immediate tax assessment. Indeed, as enforced provisions rule, the Swiss employer directly applies the withholding tax on the employee's wages. In the case of foreign employers, a solution must be found, evaluating a specific mechanism to be implemented. Such a problem should not im-

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<sup>51</sup> Specific examples and concrete cases will be clarified by authorities through circulars or ordinances.

<sup>52</sup> It is necessary to remember that, eventually, an amendment in art. 18 FNIA could be preferable: the requirement related to the application submitted by the employer should be derogated, allowing the individual to apply personally. Alternatively, the employer could be discouraged from accepting his/her worker's request.

<sup>53</sup> Indeed, in terms of tax rate applicable to individuals, the medium tax rate is 34, as identified by SAMUELE VORPE, *Il prelievo fiscale nei Cantoni e nella Confederazione ai fini delle imposte dirette, 2021*, ([https://www.supsi.ch/fisco/dms/fisco/docs/publicazioni/articoli/Concorrenza\\_2021.pdf](https://www.supsi.ch/fisco/dms/fisco/docs/publicazioni/articoli/Concorrenza_2021.pdf), last accessed on 12 October 2022). Accordingly, Canton Ticino, for instance, is actually ranked 21 with a medium tax rate of 40.1.

pact self-employed workers: self-employed digital nomads will be ordinarily taxed under FTDA provisions.

[57] If this may seem an obstacle, it is necessary to remember the origin of the described withholding tax mechanism. History teaches us that before being introduced within the FTDA, Cantons were used to apply withholding tax to «seasonal or temporary workers» on the Swiss territory. Such a *ratio legis*<sup>54</sup>, which still justifies art. 83 ss FTDA, may be extended to nowadays. Even digital nomads shall be deemed as «modern temporary workers».

## 5. Swiss Digital Nomad Visa: some remarks

[58] Given the above premises, in pills, an individual:

- who is an EU/AELS citizen or extra-UE citizen,
- independently from his/her *status* of employee or self-employed,
- may apply for a permit to stay under FNIA (L or B permit) under conditions generally required by immigration law<sup>55</sup>,
- for a *minimum* of 120 days to a maximum of 5 years<sup>56</sup>,
- giving evidence to have earned in the six months before moving a *minimum* income of fr. 55'000.

[59] The release of the permit will follow already enforced FNIA rules.

[60] As tax consequences, the beneficiary of the Visa would be (i) ordinary taxed, accordingly to FDTA and Cantonal provisions, independently if employed or self-employed (*first scenario*) or (ii) taxed through the application of a withholding system, up to CHF 120'000, extending the existing legal framework even if in the presence of foreign income (*second scenario*). This latter is limited only to employees.

[61] Obviously, this is only a proposal: requirements must be aligned with the Swiss economy's goals. Particular attention must be given to constitutional principles, such as equality and the ability to pay principle.

[62] Moreover, it must be noticed that in the case of employment, according to current rules: (i) the employer must apply for his/her employee's Visa, (ii) the employer has, eventually, to apply the withholding tax and, (iii) (s)he has to deal with the social security provisions.

[63] All these (and other) aspects must be carefully evaluated, but the risk of incompatibility is low by exploiting the legal basis already defined.

[64] From a comparative point of view, a Swiss digital nomad visa may reasonably succeed in its scope. Indeed, even without official statistics, many individuals show interest in moving to Switzerland, where they will work remotely. The general picture is clear when searching on the net, especially on social media groups, such as Swiss Digital Nomads, Swissescape, and so on.

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<sup>54</sup> GUIDO JUD/ADRIAN RUFENER, in Martin Zweifel/Michael Beusch (Hrsg.), Kommentar zum Schweizerischen Steuerrecht. Bundesgesetz über die direkte Bundessteuer, 4. Aufl., 2022, Vor Art. 83–101.

<sup>55</sup> Concerning art. 5 ss. FNIA. In particular, it is required to have accommodation in Switzerland, health insurance, and sufficient financial instruments.

<sup>56</sup> This hypothesis can be modified.

[65] Moreover, on October 1<sup>st</sup> 2022, the association named «*Digitale Nomaden Schweiz*» held a conference in Bern, concerning the issue, with the aim of «*provid[ing] practical information about location-independent work*»<sup>57</sup>.

[66] Digital nomadism is a *phenomenon* that must not be underestimated since it represents a new way of living. Remote workers' inbound and outbound flows may represent an undiscovered booster for the Swiss socio-economic context. The present paper aims to challenge the introduction of an attractive scheme, evaluating its potentiality in the next future<sup>58</sup>. Indeed, the evolution of the international tax *scenario* leans in this direction. Tax competition requires the adoption of new strategies even more concerning individuals. The minimum global tax defined by the OECD, fixing the corporate income tax rate to 15% for multinationals, will sooner result in a run-to-the-bottom on personal income tax and attractive tax regimes, especially for high-skilled workers, managers, and entrepreneurs.

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<sup>57</sup> It is possible to find more information on the official website of the association: <https://www.digitalenomaden.ch/konferenz/> (last accessed on 12 October 2022).

<sup>58</sup> The other side of the coin deals with questions arising from Swiss residents who are abroad experiencing digital nomadism. Also, this issue needs to be addressed promptly through an in-depth analysis, which falls outside the present contribution.