Chapter 8

The Expression "Centre of Vital Interests" in Art. 4(2) of the OECD Model Convention

by Philip Baker[1]

This chapter discusses the expression CVI in Art. 4(2) of the OECD Model Convention.[2] The chapter discusses the provision in the OECD MC and its Commentary, and then a brief history of the expression, while the core of the chapter seeks to identify various known features of the meaning of the expression. Lastly, the chapter concludes with some comments and suggestions.

8.1. Art. 4(2) of the OECD MC and its Commentary

Art. 4(2) OECD MC sets out a series of "tiebreaker" tests which apply where, by reason of an individual being liable to tax in both of the states that are party to a DTC, it is necessary to decide where an individual is resident for purposes of the Convention. Art. 4(2) provides as follows:

> 2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:
>
> *a)* he shall be deemed to be a resident only of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident only of the State with which his personal and economic relations are closer (centre of vital interests);

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2. There is relatively little literature on the meaning of the expression "CVI". There is a discussion in *Klaus Vogel on Double Taxation Conventions* (3rd, English edn., 1997, Kluwer Law International) Art. 4, Paras. 72-75c and in the German edition, Vogel and Lehner, *Doppelbesteuerungsabkommen* (2003, Verlag C H Beck, Munich), at Art. 4, Paras. 78–87. See also the present writer's *Double Taxation Conventions* (Sweet & Maxwell, loose-leaf), at Paras. 4B.12 to 4B.14. These books refer to the decided cases on CVI and reference should be made to those texts for a discussion of the cases, which are not discussed further in this chapter.

b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident only of the State in which he has an habitual abode;

c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident only of the State of which he is a national;

d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

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ıe Commentary to Art. 4(2) relating to CVI is quite short and states as llows:[4]

> 14. If the individual has a permanent home in both Contracting States, paragraph 2 gives preference to the State with which the personal and economic relations of the individual are closer, this being understood as the centre of vital interests. In the cases where the residence cannot be determined by reference to this rule, paragraph 2 provides as subsidiary criteria, first, habitual abode, and then nationality. If the individual is a national of both States or of neither of them, the question shall be solved by mutual agreement between the States concerned according to the procedure laid down in Article 25.
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> 15. If the individual has a permanent home in both Contracting States, it is necessary to look at the facts in order to ascertain with which of the two States his personal and economic relations are closer. Thus, regard will be had to his family and social relations, his occupations, his political, cultural or other activities, his place of business, the place from which he administers his property, etc. The circumstances must be examined as a whole, but it is nevertheless obvious that considerations based on the personal acts of the individual must receive special attention. If a person who has a home in one

3. There are no differences with respect to CVI between the OECD MC and the UN Model Convention or, for that matter, the US Model Convention. The wording of Art. 4(2) has also remained relatively constant over time: the only significant change being the addition of the word "only" in 1995 to the OECD MC.

4. The Commentary has remained unchanged since the 1977 Model. The 1963 Draft simply had the following:

14. If the individual has a permanent home in both Contracting States, the Article gives preference to the State with which his personal and economic relations are closest, this being understood as the centre of vital interests.

This was identical in substance to the draft Commentary contained in the First Report of the Fiscal Committee of the OEEC in 1958. Thus, there has been consistency both in the wording of the MC and in the Commentary over more than 50 years.

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> State sets up a second in the other State while retaining the first, the fact that he retains the first in the environment where he has always lived, where he has worked, and where he has his family and possessions, can, together with other elements, go to demonstrate that he has retained his centre of vital interests in the first State.

Aspects of this Commentary are discussed below.

8.2. A brief history of CVI

So far as one can tell, the earliest use of CVI in a DTC was in two conventions concluded on the same date, 16 October 1948, between Sweden and Switzerland.[5] The first of these conventions is a Death Duties Convention and Art. 4(2) provided as follows:[6]

> 2. For the purposes of the present Convention, domicile shall be deemed to be in the State in which the deceased had, at the time of death, a permanent dwelling available. If there is more than one such place, the deceased shall be deemed to have been domiciled at the place with which his personal relations were closest (centre of vital interests; actual home). In case of disagreement respecting the centre of vital interests, the deceased shall be deemed to have had his domicile in the place where he was permanently resident at the time of his death. If the deceased was not permanently resident in either of the two States, he shall be deemed to have had his domicile in the State of which he was a national at the time of his death.

The German original version of this paragraph was as follows:

> 2. *Wohnsitz im Sinne dieses Abkommens wird in dem Staate angenommen, in dem der Erblasser zur Zeit seines Todes eine standige Wohngelegenheit hatte. Unter mehreren derartigen Orten gilt derjenige als Wohnsitz, zu dem der Erblasser die starksten personlichen Beziehungen hatte (Mittelpunkt der*

5. This is the earliest use found in the collection of double taxation conventions on the Tax Analysts database.

6. It is interesting that the official text of the Convention (and of the income tax convention) were in Swedish and German. Thus, the first use of the expression "centre of vital interests" is in the English translation and not in the Swedish or German original. The translation (both into English and French) appears in the United Nations Treaty Collection and the Convention was registered with the UN by Sweden. What is unknown at this extent of time is whether the English (and French) translations were prepared by Sweden (whether with or without the agreement of Switzerland) or by the UN. Either way, it is clear that the use of the specific expression "centre of vital interest" was chosen by a translator and not by the treaty negotiators themselves. It has not been possible to consult the Swedish original of the two 1948 Conventions, but the German original is discussed in the text.

> *Lebensinteressen; wirkliches Heim). Ist eine Einigung uber den Mittelpunkt der Lebensinteressen nicht zu erzielen, so gilt als Wohnsitz der Ort, wo der Erblasser zur Zeit seines Todes dauernden Aufenthalt hatte. Fehlt auch ein dauernder Aufenthalt, so wird der Wohnsitz in dem Staate angenommen, dessen Staatsangehorigkeit der Erblasser zur Zeit seines Todes besass.*

As can be seen, the German original used the term "*Mittelpunkt der Lebensinteressen*".[7]

On the same date as the Death Duties Convention, the two countries concluded an Income Tax Convention which used similar wording in Art. 2(2) as follows:

> 2. A physical person is domiciled, for the purposes of this Convention, in the place in which he has a permanent dwelling available. If there is more than one such place, the place of domicile shall be deemed to be that where the personal relations are closest (centre of vital interests; actual home). In case of disagreement respecting the centre of vital interests, the place of domicile shall be determined in the manner provided in the third paragraph.

Subsequent to the two Conventions between Sweden and Switzerland of 16 October 1948, the expression CVI was used in the following conventions prior to its adoption by Working Party 2 of the OEEC:

- Netherlands–Switzerland Income Tax Convention, 12 November 1951, Art. 2(2);
- Austria–Switzerland Income and Death Duties Convention, 12 November 1953, Art. 2;
- France–Switzerland Income Tax Convention, 31 December 1953, Art. 2(2);
- Austria–Germany Income Tax Convention, 4 October 1954, Art. 16; and
- Finland–Switzerland Income Tax Convention, 27 December 1956, Art. 2(2).

Given that Switzerland was party to every one of these conventions which used CVI prior to 1957 (and the only exception was a convention involving Austria which had already used the terminology in a convention with Switzerland), it is reasonable to speculate that it was Switzerland that first proposed and propounded the use of the CVI concept as a preference

7. The Swedish original uses the phrase *centrum för levnadsintressena*, which had no established meaning in tax or general law. This suggests that the term was suggested by the Swiss negotiators. I am grateful to Prof. Bertil Wiman for this information.

criterion.[8] Evidence for the direct Swiss influence can also be found from the records of the OEEC Working Party No. 2, which, between 1956 and 1957, developed the proposed wording which became Art. 4 of the OECD MC.[9] Although Working Party No. 2 was made up of Denmark and Luxembourg, they were heavily influenced by Switzerland in two respects. First, their initial report dated 2 October 1956 cited Art. 2 of the Netherlands–Switzerland Convention of 1951, which included the CVI concept. Secondly, the reports of the Working Party note that the Swiss delegation had made comments on the drafts. The Fiscal Committee adopted the proposals of Working Party No. 2 in November 1957, and wording substantially identical to that now found in Art. 4(2) OECD MC appeared in the First Report of the OEEC Fiscal Committee. With a clarificatory change in 1995, the wording has remained identical to the present time.

8.3. Analysis of the expression "centre of vital interests"

This section of the chapter seeks to identify various known features of the CVI concept.

8.3.1. CVI as a preference criterion between the two Contracting States in both of which there is a permanent home

Although CVI appears as part of Art. 4(2)(a), it is effectively a second preference criterion to be applied where the individual as a permanent home available to him in both Contracting States. The preference criterion decides within which of these two states, in both of which the individual has a permanent home, the individual's personal and economic relations are closer.

If one leaves aside cross-border workers (who may be the group most likely to be liable to tax by reason of residence in two Contracting States but have a permanent home in one state only), for most other cases of dual resident

8. This is also confirmed to an extent by the Swiss Country Report (Chap. 20) in this volume, which explains how preference criteria were developed by Switzerland in the context of intercantonal conflicts of jurisdiction over individuals.
9. The documents relating to Working Party No. 2 can be found on the History of Tax Treaties website at: http://www.taxtreatieshistory.org.

individuals the first preference criterion is unlikely to resolve the tiebreaker.[10] The implication is that (again with the exception of cross-border workers) the CVI tiebreaker is therefore particularly important. In the usual situation where the individual has a permanent home available to him in both Contracting States, the CVI preference criterion may identify in which of those states the individual is to be regarded as resident for purposes of the convention. As a practical matter, therefore, the CVI tiebreaker is an important criterion in practice and relevant to a significant number of cases of dual residence.[11]

8.3.2. More than one CVI; no CVI

A priori, it seems correct to assert that an individual can only ever have one CVI. In a different context, it has been discussed whether a company may have its central management and control split between more than one centre. It is submitted, however, that an individual's CVI is different. The CVI is a preference criterion, intended if possible to identify only one state: like the criterion of place of effective management in Art. 4(3), it would be destructive of this purpose if an individual could have more than one CVI in the two Contracting States.[12]

While it seems correct to assert that an individual can have only one CVI as between two Contracting States, the point should be made express that

10. This is certainly consistent with my own experience as a tax adviser where, in the case of high-net wealth individuals who are dual residents, it is almost invariably the situation that if they are resident in the two Contracting States, they will have a permanent home available to them in both states. This is partly because the availability of a permanent home does not require that the home is particularly large or particularly permanent, so that anything other than clearly temporary accommodation is likely to give rise to a permanent home. It is also because an individual who spends a significant amount of time in two states so as to become resident in both is likely to have acquired at least a pied-à-terre in both states.

11. Some indication of the significance of the CVI tiebreaker can be found from the frequency of cases which turn on the meaning of that tiebreaker. For example, a brief search on the *Juris Classeur* database of decision of the French courts identified more than 70 cases from 1971 to 2009 where CVI was relevant to the outcome of the case.

12. It might be quite interesting to consider a triangular situation where, as between States A and B (in both of which the individual has a permanent home), the CVI is in State B, whilst as between States B and C (again, in both of which the individual has a permanent home), the CVI is in State C. In theory this would be possible because of the bilateral nature of the conventions concerned and because one is asking as between the two Contracting States with which the individual's personal and economic relations are closer.

an individual may have no CVI as between those two states. This follows from the wording of Art. 4(2)(b) of the OECD MC, which contemplates the possibility that an individual's CVI "cannot be determined". Presumably, this means that it cannot be determined because the various factors point in different directions, to the extent that it is not possible to identify one state or the other as the CVI. In that situation, all of the MCs provide the third preference criteria of habitual abode.

A point in practice that seems to follow from this is that there should be no particular pressure on competent authorities to reach a conclusion where an individual's CVI is located. The Models clearly contemplate that an individual's CVI may not be capable of being determined, and there is a subsequent preference criterion. Perhaps one might draw from this a speculative conclusion that an individual's CVI should only be determined to be in a particular state if personal and economic relations point clearly towards that state: where there is uncertainty, the third preference criterion should apply.

8.3.3. Domestic law meaning or international fiscal meaning?

The concept of CVI exists in the domestic law of some, but by no means all, states. An examination of the Country Reports in this volume, for example, shows that the term is sometimes used in domestic law: the Swiss report is particularly significant in this context, in showing that the concept was developed in connection with intercantonal tax law. The brief discussion of the history of Art. 4(2) OECD MC also indicates how influential Switzerland was in introducing the concept into tax treaty practice.[13] This is somewhat speculative, but the fact that the OECD MC refers to "the State with which his personal and economic relations are closer (CVI)" – placing CVI in brackets – may suggest that the OECD had in mind that there was a pre-existing concept of CVI existing in domestic law which was borrowed for this purpose by the MC.[14]

13. Some countries also appear to use a cognate: see, for example, the Canadian concept of "ordinary mode of living" based on the case of *Thomson v. MNR* [1946] SCR 209, discussed in the Canadian Country Report (Chap. 13).

14. I am not aware of any explanation as to why the OECD MC contains occasional references to concepts from domestic law that are placed in brackets. Another example is Art. 26(3)(c), which refers to "disclosure of which would be contrary to public policy (ordre public)". The concept of "*ordre public*" is found in the domestic law of a number of countries and so the OECD may have intended to draw on the domestic understanding of that expression.

Given this domestic law background to the CVI concept, one might be tempted to suggest that Art. 3(2) of the OECD MC should apply and the term should take its domestic law meaning.

It is submitted, however, that this approach would be incorrect: that this is one of the situations where the context otherwise requires that the domestic law meaning is not followed. There are several reasons for suggesting this. First, CVI is used by some states in their domestic law but not by others and it is not thought to be used in the role of a tiebreaker in domestic law. Secondly, as a tiebreaker it is particularly important that the term is given a common meaning in both Contracting States. It would defeat the purpose of a tiebreaker if the two states gave a different interpretation to CVI, with the possible result that both states would conclude that the individual had his CVI in that state. As a tiebreaker, the CVI preference criterion has a particularly strong argument that it should be given an international fiscal meaning, not dependent upon any meaning (if one exists) under the domestic law of either of the states. This is a point which might helpfully be clarified by the OECD Commentary.

8.3.4. A facts and circumstances test, based on objective (or partly objective) factors

It is clear (and supported by the first sentence of Para. 15 of the Commentary quoted above) that the CVI tiebreaker is a facts and circumstances test, which requires an examination of the external manifestations of an individual's lifestyle to determine the outcome of the tiebreaker. As a facts and circumstances test, it is harder to manipulate, but also much harder than a bright-line test to apply in practice. In principle, the facts and circumstances of an individual's life should be those that are externally observable and so the test should depend entirely on objective criteria without any subjective elements at all. Subjective statements by an individual as to where his personal and economic relations are closer should, at least in principle, play little part in the application of the tiebreaker.

That being said, one of the difficulties with CVI is the question of how far subjective factors should be excluded. To take an example: it is clear that in deciding with which state an individual's personal relations are closer, an important consideration is where that individual's "family" resides. However, how does one define an individual's "family"? Some individuals will have close relations only with their immediate, nuclear family; others will remain very close to their wider family. Grown-up children are a good

example: some individuals will have cut the umbilical tie and may keep little contact with grown-up children; other individuals will be very close to them. There is a danger here that a test which, it is submitted, should depend primarily on an observance of external factors can become heavily influenced by subjective elements if one pays too great a regard to the individual's own conception of the personal relations to which the tiebreaker refers.

In theory, there are two approaches that those applying the CVI tiebreaker could take. First, they could try to exclude the subjective element as much as possible and look only at objective factors: thus, for example, where an individual's nuclear family (including grown-up children, ex-spouses, etc.) and wider family reside would always be a relevant factor, regardless of whether the individual kept close relations with those particular members of the family or not. Secondly, one could allow a subjective element by asking the individual that who were the members of his family with whom he kept close contact.

One can apply the first (largely objective) approach with respect to family members: it is difficult to see, however, how one could ever apply that with regard to an individual's friends where the selection of friends must be a purely subjective process. The overall conclusion may be that one may try to exclude the subjective element as much as possible, but one cannot exclude it entirely when looking at a tiebreaker based upon, inter alia, an individual's personal relations.

The OECD Commentary is not entirely helpful in deciding whether an objective or a subjective approach should be adopted when it says, in Para. 15 "it is nevertheless obvious that considerations based on the personal acts of the individual must receive special attention ..." What this appears to be saying is not that the facts and circumstances approach of the CVI tiebreaker should depend to a significant degree on the subjective intentions of the individual. Rather, it seems to be making the very obvious point that particular weight should be given to factors chosen by the individual as opposed to ones over which the individual had no control. Perhaps an example would be an individual who voluntarily chose to relocate his employment to another country, as opposed to an individual seconded to the other country by his employer where the individual had no control over that secondment.

What the Commentary is not implying is that the individual should have a subjective choice over his CVI. It is submitted that the CVI test should, so far as possible, depend upon objective, externally observable criteria.

8.3.5. Testing the application of "the State with which his personal and economic relations are closer"

It is clear that in determining an individual's CVI both personal and economic factors are to be taken into account. That both are to be taken into account is clear from Para. 14 of the Commentary, and also from the history of the OEEC development of the wording. It had originally been proposed that only the Commentary would refer to both personal and economic relations; in the final process, however, it was decided that the text of the article should refer to both personal and economic relations.

Before looking at what personal and economic relations mean, mention should be made of the period of time over which CVI is tested.[15] In principle, the tiebreaker tests need to be applied with regard to the period of time (which may be less than a calendar year) where there is an overlap between the fiscal year of the two states concerned, to determine where the individual is resident for treaty purposes during that overlap period. However, even though one is looking at the application of the tiebreaker to determine residence over a relatively short period, there is nothing to stop an examination of factors over a wider period of time. This is made express in the OECD Commentary with regard to habitual abode,[16] but there is no equivalent statement made with regard to CVI. However, the example in Para. 15 to the Commentary suggests that in determining CVI less weight should be given to a temporary attachment to a state.

8.3.6. The meaning of personal relations and the meaning of economic relations

The Commentary to the OECD MC at Para. 15 states that "regard will be had to his family and social relations, his occupations, his political, cultural or other activities, his place of business, the place from which he administers his property, etc." "Personal relations" would seem to embrace "family and social relations" and "political, cultural or other activities". The question that then arises is how widely the enquiry should go into the details of the individual's life, particularly with the ominous inclusion of "etc." at the end of the sentence.

15. Although this is referred to expressly in the Austria Country Report (Chap. 11), where it is stated that an individual's CVI should be tested over a period of more than 1 year.
16. See Para. 19 of the Commentary to Art. 4.

No one would doubt that the location of an individual's family is an important factor in determining the state with which an individual's personal relations are closer. However, as indicated above, issues may arise in determining the scope of an individual's family: does it include adult children; does it include ex-spouses? The contrast between "family and social relations" would suggest an examination of where an individual's friends (outside his family) are located. But what about an individual's pets: is that part of an individual's social relations? What about covert personal relations, such as mistresses?

Case law in this area[17] includes an examination of factors such as where an individual obtains his driving licence, where his cars are registered, where he places his medical insurance, where his doctors are located, where his bank accounts are located and where he carries out his leisure activities. The Commentary to the OECD Model, at Para. 15, states that "the circumstances must be examined as a whole ...". This suggests a broad examination of the circumstances of an individual's life.

There are at least two dangers in this approach. First, that too much weight would be given to factors which the individual can select personally so that, well-advised, he can influence the outcome of what should be a determination based upon objective criteria. Thus, for example, the place where an individual obtains his driving licence, where he registers his cars and where he obtains his medical insurance could all be manipulated relatively easily. The second danger is that the more factors one takes into account, the more likely it is that they will point in different directions to the two states concerned and therefore make it less likely that a CVI can be identified.

Turning to economic relations, the Commentary to the OECD MC at Para. 15 refers to "his occupations ... his place of business, the place from which he administers his property ...." This wording seems to be intended to take into account different types of economic activity so that the employed, the self-employed, the retired (and, one supposes, the unemployed) are all catered for.

An interesting question which arises here is whether certain types of economic activity result in a stronger link with a particular territory as compared with others. It might be suggested that a manager of a business has

17. Some of which is discussed in the Country Reports in this volume and which is also analysed in the present writer's book and in *Klaus Vogel on Double Taxation Conventions* (see note 2).

a stronger link with the location where the business is carried on than, say, a retired person whose income derives from pension funds built up and located in the state where the individual was previously resident.[18] Perhaps this question of weight to be given to different types of economic activity can be considered under the next subsection.

8.3.7. The relative weight of different factors

Unquestionably, one of the most difficult issues relating to the application of the CVI concept is the relative weight to give to different factors. Most specifically, what is the position where an individual's personal relations are closer with State A, while his economic relations are closer with State B? The experience of the author is that this is not an unusual situation. Where an individual has a permanent home in both Contracting States, this may well arise from the fact that the individual's employment or self-employment is centred on State A, while the individual's family (immediate, nuclear and possibly wider family) is located in State B. Should preferential weight be given to some factors over others?

The Commentary to the OECD MC gives no guidance on this other than to say that "considerations based on the personal acts of the individual must receive special attention". "Personal acts" could, however, either relate to economic activities – seeking employment in a particular country – or personal relations – retaining one's family home in a particular country, for example.

The Country Reports in this volume indicate a variety of state practice: in Austria, personal relations take precedence; in France, the *Conseil d'Etat* has held that personal and economic relations are on an equal footing; in the Netherlands some preference is given for personal relations; in Germany the *Bundesfinanzhof* has concluded that the answer depends upon which factors are given greater significance by the taxpayer; in Spain neither factor has priority.

18. This comment is prompted in part by the discussion in the Swiss Country Report of the Swiss Federal Tribunal decision of 17 October 2005 concerning the strength of attachment of a manager of a company to the location where the company's business is carried on. It is understood that this reflects a particular aspect of Swiss jurisprudence, but, even so, it is a fair comment to make that some economic activities give rise to a stronger link with a territory than others.

This divergence in state practice is somewhat worrying. As a tiebreaker test, ideally CVI should have the same meaning in both Contracting States, including the weight to be given to different factors. It is easy to imagine a situation where two Contracting States, both presented with an identical set of facts, conclude that CVI is in one state because that state gives greater emphasis to personal relations, while the other state concludes that it is located there because that state gives greater preference to economic relations.

Unless the OECD Commentary is to jump in one direction or the other and to indicate that either personal relations are more significant or economic relations are more significant, two answers seem possible. The first answer is for the Commentary to state clearly that neither economic relations nor personal relations are to be given greater prominence (with the possible result that there may be more cases where a CVI cannot be determined, but, as discussed above, there is nothing particularly wrong with that). Alternatively, one might adopt the German approach and ask whether the taxpayer gives greater significance to personal relations or economic relations. However, that would be another step towards subjectivity within what – it has been argued – should primarily be an objective test. If one is persuaded that (a) the test should primarily be objective, and (b) one should not strain to find a CVI, given that it is only the second of several preference criteria, then the solution one would propound would be an amendment to the OECD Commentary to state that neither personal nor economic relations should be given any predominant weight.

8.4. Concluding comments

This chapter argues that the preference criterion of CVI is important in practice, resolving cases which are becoming increasingly common of individuals who have permanent homes in both Contracting States. Although it is perfectly feasible and appropriate to conclude that an individual has no CVI, it is obviously undesirable that there may be uncertainty or divergences of interpretation over CVI to the extent that two Contracting States might reach a different conclusion as to the location of an individual's CVI.

The Country Reports suggest that there is uncertainty over several aspects of the CVI criterion. First, there is some variation as to the scope of the examination to be made of an individual's pattern of life, particularly the scope of examination of an individual's personal relations. Secondly – and particularly significant – there is a clear difference in practice between

states as to the relative weight to be given to personal and economic relations. Finally, there seems to be some divergence as to the extent to which an individual's subjective preferences should be a significant factor in determining the individual's CVI.

All this suggests that there is value to be added by a clarification to the OECD Commentary with regard to CVI.[19] Changes to the Commentary might include the following:

- clarification that CVI is to be given an international fiscal meaning and not a meaning dependent upon the domestic law of the Contracting States concerned;
- personal and economic relations are to be afforded equal weight, with no preference given to one over the other;
- preference should be given to an examination of objective criteria outside the control of the taxpayer (and, as a corollary, that little if any weight should be given to minor factors which are within the choice of the taxpayer and could be manipulated, such as the place where an individual takes out medical insurance, or registers his car);
- as a corollary to the previous point, that as little weight as possible should be given to an individual's subjective preferences: where an individual's family resides should be a factor, regardless of how close the individual is to those particular family members; and
- though it may be unnecessary to do so, the Commentary could confirm that taxpayers may have no CVI.

19. For the avoidance of doubt, absolutely no suggestion whatsoever is being made here that the wording of the Model article should be changed. The author has no grumble whatsoever with the tiebreakers for individuals or the use of a concept such as CVI. Quite the contrary, the author would strongly argue against a change of wording which has remained constant since the First Report of the OEEC in 1958 and which does not appear to lead to significant problems in practice. A CVI test based upon externally observable objective factors is also attractive in principle and seems to have commanded support by states concluding double taxation conventions.