



**Clarifications for the Case
VIII Iberoamerican Tax Moot Court Competition
2019**

1. What are the distances between each city mentioned in the case?

The distance between the relevant cities is the following:

- a) Larco – Ombligue: 557 kilometers.
- b) Sina – Larco: 8127 Kilometers.
- c) Sina – Ombligue: 8431 Kilometers.
- d) Sina – Terna: 338 Kilometers.
- e) Sina – Telev: 444 Kilometers.
- f) Terna – Telev: 194 Kilometers.

2. What is the travel route of the domestic flight between Larco-Ombligue? Where does the traveler depart from: Sina or Larco?

WA customers depart from Sina.

3. Are the eighty-three (83) employees that “regular complement” the company’s aircraft included in the two hundred thirty-three (233) employees? If not, what is their tax residence?

Yes, said 83 employees are included in the total 233.

4. Considering that *only the CEO, the board of directors and the advisory council* were transferred to the Republic of Baguette in 2011 (topic II.A., 5th paragraph), where was the operation in charge of *entertainment services* located before its transference to the Republic of Relojonia in 2016 (topic II.C., 1st paragraph)?

Before 2016 the entertainment services were provided from several countries, among them Relojonia.

5. Has the tax benefit established by Law No. 4,010/2016 been under peer-review of Action 5?

Yes. While in the 2016 report the benefits were reported as harmful, the 2019 update was amended and sets forth the following:

“Tech box Not harmful (amended). Substance requirements (nexus approach) in place. Grandfathering in accordance with FHTP timelines.”

6. Was the decision of WA to transfer its entire operation to the Republic of Relojonia taken before or after the acknowledgement of Law No. 4,010/2016?

The law was in process of its admission in the Congress of Relojonia when the decision was made. Nevertheless, the financial analysis that were taken into account in order to make such decision were based upon the assumption that WA would be subject to a 23% tax rate in Relojonia.

7. What does ATO mean? Is it WA?

ATO was the old name of the airline and is another way to refer to WA.

8. Is Mr. Pictor Stark CEO of WA or ATO?

Mr. Pictor Stark is the CEO of WA.

9. How many days after the accident have Mr. Pictor Stark, the board of directors and the advisory council decided to transfer its offices to Larco?

5 days after the accident. After several extraordinary meetings.

10. Regarding the sentence “the sales between Larco and Terna (which includes the route to Telev) represented 17 million Moons in profits” (topic II.D.), would not be Sina instead of Larco?

Yes, such sentence refers to the route that goes from Sina to Terna (which includes the route to Telev).

11. Are Republic of Relojonia, Llamaland and Republic of Baguette developed countries Are they members of the OECD and/or of the Inclusive Framework?

Relojonia and Baguette are OECD members. Llamaland is not. All three nations participate in the inclusive framework.

12. How did Republic of Relojonia, Republic of Baguette and Llamaland adopt the Article 4 of the Multilateral Instrument?

The countries did not submit any reserve regarding article 4 of the MLI. Likewise, all

countries notified the Depositary that none of their Covered Tax Agreements contain a provision as the one described in paragraph 2 of article 4 of the MLI.

13. Which were the clauses adopted by Republic of Baguette, Republic of Relojonia and Llamaland regarding minimum standards related to treaty abuse prevention?

Llamaland and Baguette adopted the preamble established in paragraph 1 of article 6 of the MLI. While Relojonia adopted said preamble as well as the one established in paragraph 3.

14. With respect to Pleading B, what tax rate does Llamaland apply to taxation of dividends?

In Llamaland the income tax rate is 30% and such rate covers dividends.

15. Were the employees of WA transferred to Larco together with the board of directors, the CEO and the advisory council? If so, were all of them transferred? Or solely the eighty-three (83) employees?

Most of WA's employees carried out their jobs in the same manner as they did before the accident. Regarding the 83 employees, their tasks were not altered because of the accident. Hence, they continued to carry on their jobs as they did before the accident.

With the CEO, the advisory council and the board of directors, a staff of 12 employees who work directly with them in administrative matters was also transferred to Llamaland, for the same period of time.

By cause of the accident an additional special team of 50 employees was transferred to Llamaland, as well. They stayed in the country for 68 days. Said 50 employees worked directly at the airport during their time in Llamaland. Their job was to reduce, by all means, the risk of accident to a minimum. Therefore, they had to ensure the good condition of the aircrafts and the welfare of the crew.

In that context, they were in charged of aircraft maintenance (which before the accident was outsourced to another company), the good condition of the jetties, supervising the aircraft fueling and defueling procedures, the parking process, aircraft cleaning procedure, assign the crew for each flight departing from Llamaland, the compliance of all regulations regarding the aircraft and its crew before each flight.

Additionally, WA had an insurance policy with Pac Inc. (Pac) an insurance company situated in Llamaland, which is a tax resident therein. Pursuing the insurance agreement, Pac paid all the expenses related to the accident, which included the costs of transferring the special team of 50 employees to attend the calamity in Llamaland.

During the stay of such employees in Llamaland, their salaries and living expenses were borne and paid directly by Pac, as a consequence of the insurance policy.

16. Are the board of directors, the CEO and the advisory council considered to be “employees” within the meaning of this term under Pleading C?

The CEO is an employee. While the members of the board of directors and the advisory council are not.

17. Which of the alternatives of Article 8 of United Nations Model Convention (2014) was adopted by the Double Taxation Convention between Republic of Relojonia and Llamaland?

We clarify that the Double Taxation Convention between Llamaland and Relojonia follows **2011** UN Model Tax Convention. Article 8 of said tax convention, follows alternative A of the model. Such article prescribes:

“1. Profits from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

2. Profits from the operation of boats engaged in inland waterways transport shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

3. If the place of effective management of a shipping enterprise or of an inland waterways transport enterprise is aboard a ship or a boat, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship or boat is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship or boat is a resident.

4. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.”

18. What is the applicable residence rule in Republic of Relojonia domestic legislation?

The Republic of Relojonia applies three criteria in order to determine the residence of a person other than an individual: domicile, place of incorporation and place of effective management.

19. Did the Double Taxation Convention between Republic of Relojonia and Llamaland apply the wording of Article 4(3) of United Nations Model Convention (2014)?

Stick to the facts of the case. Nevertheless, we clarify that the Double Taxation Convention between Llamaland and Relojonia follows 2011 UN Model Tax Convention.

20. Which criteria does the Llamaland's domestic law follow to locate the place of management (POEM) of a company?

This question is part of the exercise.

21. Where did the CEO, the board of directors and the advisory council have their tax residence before 2018 and during that year? And the pension fund manager?

Before 2018, the CEO, board members, and advisory council members had their tax residence in Relojonia. Even though, they travel to Baguette regularly to comply with the formal transfer of the managerial bodies, their tax residence was located in Relojonia.

Nevertheless, in 2018, due to their permanence in Llamaland by cause of the accident, a dual residence conflict arose between Llamaland and Relojonia regarding the CEO and the members of the board of directors and the advisory council. Such conflict was solved in favor of Relojonia by the application of the DTC between Llamaland and Relojonia.

The pension fund manager has her tax residence in Baguette.

22. Considering that both routes offered by WA include two flights, does it take place a change of aircraft after the first flight (Sina – Terna or Sina – Larco) to realize the second flight or the internal one (in Relojonia, between Terna and Telev, or in Llamaland, between Larco and Ombligue)?

Once the aircraft lands in the first city, all the passengers get off the plane. In the case of Llamaland, the people who continue to Ombligue have to board a flight operated by Purple Line (PL), a local airline that flies from Larco to Ombligue. PL is a tax resident in Llamaland

Although the code that enables the route Larco - Ombligue is owned by WA, there is a code sharing agreement between PL and WA, by virtue of which PL can operate the flight from Larco to Ombligue. According to the code sharing agreement, PL transports WA's passengers from Larco to Ombligue, displays the publicity that WA indicates during the flight, and pays to WA an annual fee for sharing the code. The fee for 2018 was agreed on 3 million moons.

The exact same operation takes place in the case of Relojonia. That is to say, the flight Terna-Telev is operated by Red Line (RL) a local airline by means of a code sharing

agreement, which sets forth the same conditions as the one in place between PL and WA. In this case, for 2018, the annual fee that RL paid to WA for sharing the code was agreed on the equivalent of 3 million moons. RL is a tax resident of Relojonia.

PL, RL and WA are completely independent companies.

23. Do the passengers leave the plane after the first flight? If so, how much time do they spend in the first city before taking the second flight?

See the answer to the previous question. The passengers spend approximately 40 minutes in one city before they board the second flight.

24. In practice, is there a relevant number of passengers that buy the ticket of the routes offered by WA but that only take the internal flight in Relojonia (only flying form Terna to Telev) o in Llamaland (only flying form Larco to Ombligue)?

WA does not offer the internal flight, it only offers Sina – Larco and Sina – Ombligue (as well as Sina – Terna and Sina – Telev). Nevertheless, PL and RL do offer the internal flights (see question 22).

60% of WA costumers go to the second cities (Ombligue and Telev).

25. According to the legal framework of Llamaland, are advertising services practiced on board considered subsidiary and directly connected to the core service of international transportation?

There is no special provision on this regard. Nevertheless, Llamaland’s internal legislation prescribes a definition of digital services, as follows:

“The following services are considered a digital service:

- a) Provision of audiovisual services, such as music, videos, movies and games of any kind, as well as the broadcasting of any type of event.
- b) Services provided through digital platforms.
- c) Provision of online advertising services”.

26. According to the tax Audit that took place in 2014, what was the proportion of benefits derived from advertising services in relation with the benefits from transportation services?

In 2014 profits derived from advertising services were the 16% of WA’s profits. The

remaining 84% was due to transportation services.

27. Does the internal legislation or case law of Llamaland provides a definition of “digital services”?

See question number 25.

28. Have WA’s employees by any means spent more than 183 days in Llamaland?

Only the CEO and the 12 employees that worked directly with the managerial bodies.
See question number 21.

29. Who is obliged to withhold tax on the salaries under Llamaland’s domestic law?

Under Llamaland’s domestic law, all tax residents have to withhold tax on salaries paid to their employees.

30. Llamaland’s Tax authority is arguing that WA should have withheld dividends which were paid in 2019. By that time, WA advisory council had already left the country and returned to Sina. In 2019, does Llamaland’s tax authority considers WA as a resident for tax purpose in 2019?

The tax authority has made an amendment to their initial assessment and clarifies that pleading B regards the dividends paid in 2018 with respect of the profits obtained in 2017. Therefore: Pleading B of the case has changed for the following:

“The Tax Administration argues that WA should have withheld the dividends paid by WA in 2018 regarding profits that arose in 2017, in accordance with the double taxation convention in force between Llamaland and Baguette.”

31. Normally, dividends are taxed according to the moment in which they are paid without considering the year in which the profits are generated. Is there any kind of norm in Llamaland which establish a different temporal criterion for the taxation of dividends?

According to Llamaland’s domestic legislation, dividends are sourced in Llamaland if such dividends are paid by a Llamaland’s tax resident.

32. When Llamaland’s companies decide to pay dividends, do they have to identify the year in which the distributed profit arose?

No.

33. Those dividends were paid to a pension fund and that kind of entities are normally exempted or not subjected to tax. Are Llamaland's national pension funds subjected to corporate income tax? If so, is there any special feature applicable to pension funds according to domestic law (e.g. full or partial exemption, zero or lower tax rate)? Is there any withholding tax on inbound dividends received by pension funds?

Stick to the facts of the case. In any case, see answer to question number 36.

34. Furthermore, does Llamaland either recognize or belong to an international organization which recognizes the free movement of capitals in the same terms as the European Union?

No.

35. There is an entity mentioned in part C called ATO. Is there a chance that this could be a typo, or is it a completely different entity?

ATO is another way to refer to WA.

36. Is Planning the Future a fiscal resident in Baguette according to this country's domestic legislation and its Double Tax Conventions? If so, is it subject to corporate income tax in that country, or does it benefit from any kind of exemption?

PTF is a tax resident in Baguette and it is considered a tax payer in such jurisdiction. The applicable rate is 2%.

37. Being the case that Planning the Future it is subject to tax in Baguette, it would be useful to know what charge rate is applicable to these entities and if there is any kind of exemption applied to dividends.

See the answer to the previous question.

38. What is the commercial relationship between AT and WA?

ATO and WA are the same person. See question number 7.

39. Where is Aviaper considered as a resident, in Baguette or in Llamaland?

This question is clearly answered in the case. Please read the case carefully.

40. Does the financial year of WA match the fiscal period of Llamaland's

domestic law?

Yes.

41. Did WA pay dividends to the pension fund PTF in 2018? What was the total amount received by PTF?

See answer to question number 30. Yes, on may 2nd, 2018 WA paid dividends to PTF regarding profits that arose on 2017. The dividends distributed were 52 million moons

42. What is the minimum time of permanence established in Llamaland for a company to be considered a fiscal resident?

Please read the case carefully.

43. Is the pension fund PTF a fiscal resident in Baguette?

Please see question number 36.

44. What is the period of retention of the dividends by WA?

Stick to the facts of the case.

45. What does Baguette's and Relojonia's internal legislation provide in respect to fiscal residence? Who are considered tax residents under said legislations?

Both countries apply three criteria in order to determine the residence of a person other than an individual: domicile, place of incorporation and place of effective management.

46. Apart from the CEO and the board of directors, where is the WA's headquarters located in 2018?

The headquarters are located in Relojonia. Where all the managerial bodies have their offices (CEO, board members, advisory council members).

The transfer of WA's three managerial bodies to Baguette, as a result of its internationalization process, was merely formal. All decisions were still made in Relojonia until the accident occurred.

On the other hand, WA has a Founder's Council located in Relojonia that has never moved from that country. This council is composed by 9 members that were elected in the foundational meeting of WA. The members are elected for life time and when one of them dies the shareholders elect the new member.

The Founder's Council elaborates the expansion plans of the company. Therefore, this council provides the policies that will be followed in the expansion of the company and in the new business plans. It also establishes the general guidelines of new business models put in place by WA. All members of the Founder's Council are tax residents in Relojonia.

47. Which are the country's laws that govern the legal status of WA?

Stick to the facts of the case.

48. Did the members of the board of directors and the CEO move physically, together with the offices, to Llamaland? Or were the offices moved but the meetings were maintained by electronic means?

The CEO and the board members moved physically to Llamaland.

49. Where are WA's daily operations managed from?

Stick to the facts of the case.

50. What is the tax over the profits obtained by a company in Llamaland?

See question number 14.

51. Were WA's employees also transferred, altogether with the offices, to Larco in order to face the crisis generated by the accident? If so, for what period of time?

See question number 15.

52. Which are the requirements of Llamaland's domestic law to consider an individual resident on its country?

Article 6 of Llamaland's Internal Revenue Code establishes:

"Without consideration to their nationality, an individual shall be considered a tax resident in Llamaland if such individual has stayed in the country for more than one hundred eighty-three (183) calendar days during any period of twelve (12) months".

53. How do the "national" flights work? Does each national flight have to depart from Sina?

See questions 22 and 23.

54. While WA offers a national flight in Llamaland is the flight to Larco from Omblique an “international” flight because it goes through Sina or does the transaction for the ticket just occur in Sina?

This is part of the exercise and stick to the facts of the case.

55. Are Baguette, Llamaland and/or Relojonia OECD and/or UN members?

All of them are UN members. Baguette and Relojonia are OECD members, Llamaland is not.

56. Did Baguette, Llamaland and/or Relojonia sign the Vienna Convention on the Law of Treaties?

Yes, all of them signed it.

57. Did Llamaland Tax Administration raise any issues regarding the the taxation of the income derived from the provision of advertising services during fiscal year 2018?

During the administrative tax procedure, the advertising services issue was discussed. The tax administration stated that Llamaland has taxing rights over the income derived from such services in consideration of its domestic law and the applicable tax treaties. First of all, because the Administration considers that WA is a tax resident in Llamaland. Likewise, the tax administration asserted the following: *“In any case, the advertising services must be taxed in Llamaland because they constitute a digital service, in accordance with article 12 of the double taxation convention in force between Llamaland and Relojonia. Bearing in mind that the service is rendered within Llamaland’s jurisdiction”*.

58. Is PTF considered a person under any of the DTAs mentioned in the case or under Baguette’s, Relojonia’s or Llamaland’s internal legislations?

PTF is entitled to apply all the double taxation conventions signed by Baguette.

59. Who are PTF’s investors? Where are they considered fiscal residents? What is the amount of their participation in the fund?

PTF is a private pension fund whose investors are approximately 7 million workers who have their tax residence in Baguette. Their participation on the fund depends on the amount of their investment.

60. When did WA distribute dividends to its shareholder? How much were those dividends worth?

WA distributed dividends in 2018 and 2019. As for the worth of the dividends, please stick to the facts of the case.

61. What does managing “logistics of its international flights” refer to in paragraph 4 of issue A?

It refers to the organization and implementation of the WA’s flights. For instance, the aircrafts that will be used on each flight, the pilots and crew assigned to each of them, the prevision of the food that will be served, the counters and jetties that will be used, among other organizational matters.

62. Was WA’s operation center always located in Relojonia or was it transferred to Baguette with WA’s three main managerial bodies in 2011?

The operation center has always been in Relojonia.

63. What does WA’s branch in Llamaland do? Does it have any offices and/or employees therein?

WA was legally bound to have a branch in Llamaland in order to carry out its operations therein, but such branch does not constitute a permanent establishment. The employees are directly hired by WA. Up until the accident the branch did not have any offices. However, the branch leased a floor in Larco that was used as an office for the CEO and its team while he was in Llamaland. The board and advisory council meetings took place in such office as well, until the crisis was appeased.

64. Does Llamaland’s internal legislation contain any special provisions related to the taxation of branches belonging to non-residents?

No.

65. Does Llamaland’s internal legislation include a permanent establishment clause?

No.

66. Is Relojonia’s Law 4010 ring-fenced from the country’s domestic economy? Does said regime lacks transparency? Does Relojonia have an effective exchange of information with respect to said regime?

See question number 5.

67. What are the general income tax rates in Llamaland and in Baguette?

Llamaland has an income tax rate of 30%, while Baguette’s rate is 21%

68. Do the tax benefits created by Law 4010 only cover services directly rendered through technological platforms or do they also cover other similar services like customer service rendered through call centers?

Stick to the facts of the case.

69. Which model convention did Llamaland and Relojonia followed when negotiating their DTA? If said countries followed UN Model Tax Convention, which alternative (A or B) of article 8 did they chose?

See question number 17.

70. Do Llamaland, Relojonia and/or Baguette have entered into any double taxation conventions related, specifically, to income derived from shipping, inland waterways transport and air transport?

No.

71. What does Baguette's and Relojonia's internal legislation provide in respect to fiscal residence? Who are considered tax residents under said legislations?

See question number 45.

72. Does Llamaland's internal legislation provide that income derived from the provision of services is national-sourced income? In what cases?

Article 19 of the Llamaland Internal Revenue Code establishes:

“Article 19. Regardless of the nationality, tax residence or domicile of the parties involved in the operations and the place of signature or performance of the contracts, it is considered Llamaland sourced income:

a) Those produced by properties and the rights related thereto, including those arising from their sale, when the properties are located in the territory of the Republic.

b) Those produced by goods or rights, including those arising from their alienation, when the goods are physically located or the rights are economically used in the country. In the case of the royalties referred to in Article 27, the rent is Llamaland sourced when the goods or rights for which the royalties are paid are economically used in the country or when the royalties are paid by a person domiciled in the country.

c) Those produced by capital, as well as interest, commissions, premiums and any additional sum to the interest agreed for loans, credits or other financial operation, when the capital is placed or is economically used in the country; or when the payer is a subject domiciled in the country.

d) Dividends and any other form of distribution of profits, when the company or

company that distributes, pays or credits them is domiciled in the country.

e) Those originated in civil, commercial, business or any other kind of activities that take place in the national territory.

f) Those originated in personal work that take place in national territory.

Subparagraphs e) and f) do not include income obtained by a non-resident individual, who enter the country temporarily in order to carry out activities related to: acts prior to the execution of foreign investments or business of any kind; acts intended to supervise or control the investment or the business, such as data or information gathering or conducting interviews with people in the public or private sector; acts related to the hiring of local personnel; acts related to the signing of agreements or similar acts.

g) Annuities and pensions that have their origin in personal work, when they are paid by an individual or entity domiciled, incorporated, or that has its tax residence in the country.

h) Those obtained by the alienation or redemption of shares and shares representing the capital, investment shares, certificates, securities, bonds of any kind and commercial papers, securities representing mortgage certificates, and other transferable securities When the companies, Investment Funds, Mutual Funds or trusts that have issued them are incorporated or established in Llamaland.

i) Those obtained by digital services provided through the Internet or any adaptation or application of protocols, platforms or technology used by the Internet or any other network through which equivalent services are provided, when the service is economically used, used or consumed in the country.

j) The one obtained by technical assistance, when it is used economically in the country”.

73. Is the MAP achieved in 2017 between Baguette and Relojonia the result of a double residence dispute?

Yes.

74. Are Relojonia, Llamaland and Baguette members of OECD and/or members of the United Nations?

See question number 55.

75. Are Relojonia, Llamaland and Baguette parties of the Vienna Convention on the Law of Treaties?

See question number 56.

76. When were the Double Tax Conventions mentioned in the case signed?

DTC between Baguette and Llamaland was signed in August 2nd, 2014 and it entered

into force in October 2nd, 2014.

DTC between Baguette and Relojonia was signed in November 22nd, 2017 and it entered into force in November 25th, 2017.

DTC between Llamaland and Relojonia was signed in January 12th, 2016 and it entered into force in April 2nd, 2016.

77. When each State involved (Baguette, Llamaland and Relojonia) signed the MLI and when the MLI was put into force in each of these States?

For all purposes the MLI was put into force on December, 2017 in each country.

78. Are Relojonia, Llamaland and Baguette parties of the Warsaw Convention (1929) and Montreal Convention (1999)? Is there a legal definition (statutory or case Law) of international transport in the domestic Laws of Relojonia, Llamaland and Baguette?

Yes, all three countries are parties to both the Warsaw Convention and the Montreal Convention. There is no legal definition of international transport in the domestic legislation of neither of the countries.

79. Notwithstanding the obligation to buy the tickets for trips necessarily departing or arriving from/to Sina, is it possible to board only from Larco or Terna towards the final destination, Ombligue or Telev, respectively?

See question number 22 to 24.

80. Are Larco and Terna only stop-points or are they connecting points? In case they are connecting points, is the aircraft changed or does the same aircraft operate the whole trip?

See questions number 22 and 23.

81. Is there a legal definition of “digital services” in Llamaland’s domestic Law (statutory Law or case-Law) regarding income tax or, if not, in Llamaland’s domestic Law in general?

82.

See question number 25.

83. What are Baguette's domestic Law provisions regarding pension funds located in this state? Especially, is a pension fund located in Baguette a legal entity and is it subject to tax in Baguette?

See question number 36.

84. Who are the beneficiaries of the pension fund PTF? Where are they residents for tax purposes?

See question number 59.

85. Where was the area in charge of entertainment services operated before it was transferred to Relojonia, following the decision taken upon the shareholding meeting in February 2016?

See question number 4.

86. Besides the period of time between April 2nd 2018 and November 15th 2018, does WA's branch in Llamaland have any physical facility or any "presence" other than the right to use the 6 jetties and the 10 counters? Did this situation change between 2014 and 2018?

No.

87. Were there physical facilities for the CEO, the board of directors, and the advisory council during the period of time in which they operated in Llamaland? Did these people stay in Llamaland the whole period of time between April 2nd, 2018 and November 15th, 2018 or if they stayed part of this time in another country, how long did they do it? Which were the activities performed by this organs and people during the time they were in Llamaland? Were these activities performed from the physical facilities mentioned in the beginning of this question?

See questions 15 and 63. Yes they stayed in Llamaland from April 2nd until November 15th. Regarding the activities performed by the above-mentioned organs, such activities were the same they performed in Relojonia.

88. What are the others WA's managerial bodies besides the CEO, the board of directors and the advisory council and where are they located?

See question number 46.

89. Which are the activities performed by WA's employees and where are these activities performed? Where do the employees live and, if they live in a different State in relation to where their professional activities are performed, do they daily

move between such State and the State in which their activities are performed?

Stick to the facts of the case.

90. In which situations does Llamaland domestic Law (statutory or case Law) apply withholding tax for salaries and dividends and what are the criteria for withholding tax (payment and/or production)?

Stick to the facts of the case and see number 29 and 31.

91. Where are the sources of payment of dividends and salaries paid by WA located?

This is part of the exercise.

92. The case states that the “WA’s CEO, board of directors and advisory council decided to return its main operations to Sina”. Does it mean that part of their operations remained in Llamaland? If so, which operations remained therein?

WA’s operation continued to be carried out in the exact same manner as it was before the plane accident occurred. That is to say, that when the crisis was appeased all the decisions were made again in Relojonia, with a formal office in Baguette.

93. Regarding the sales of tickets, are all the phone sales made by means of the call center located in the operation center (Relojonia)? Is the server used to online sales also located in the operational center? In case the server is located in a country other than Relojonia, how much of the corresponding revenues are attributable to online sales in comparison to phone sales?

Yes, all phone sales are made by means of the call center. Yes, the server is located in Relojonia.

94. Is there a legal definition for “place of effective management” (POEM) in Llamaland’s domestic Law (statutory Law or case Law) regarding income tax or, if not, in Llamaland’s domestic Law in general? Does the domestic legislation provide for rules on cases of change of the POEM during the same fiscal year or is it enough to verify where the POEM is located in the beginning and/or at the end of the fiscal year?

There is no legal definition of POEM under Llamaland’s domestic legislation.

95. Did the competent authorities of Llamaland and Baguette settle the mode of application of Article 10(2) of the Double Tax Convention signed between these

countries by means of a Mutual Agreement Procedure (“MAP”)?

No.

96. Do Baguette and Llamaland have a mutual agreement establishing limitations as mentioned in article 10.2 of the Double Taxation Convention celebrated between the above-nominated countries? If yes, what is the content of such an agreement? Does it impact the amount of the taxes paid by WA Branch through its activities in Llamaland?

No, the competent authorities have not reached a mutual agreement on that regard.

97. Where are the servers responsible for the ads displayed by WA located at? And the servers responsible for WA online sales?

See question number 93.

98. How is the payment made through the online platform? All the tickets are considered sold directly to the finance of the headquarters? Is it directly paid to the company’s center in Baguette or is there some cash flow in the branch located in Llamaland? Have the amounts of revenues recognized been paid or effectively transferred in between the branch and the headquarters? Has the company made some international transfer of funds between the branches and the headquarter as a distribution of profits?

The payments are made through credit cards. Yes, all the tickets are considered to be sold directly by WA and paid directly to the company. Hence, there is no cash flow that goes through the branch.

99. The shareholder meeting presents the results of WA economic activities in “moons” currency. To which country does this currency belong?

Moon is the currency of Llamaland.

100. Tickets Largo-Omblique are sold as individual tickets (and, therefore, sold and treated exclusively as domestic flights) or as two different tickets (Sina – Omblique and Omblique – Larco; and therefore sold and treated exclusively as two international flights)? Is it the same to Telev and Terna? Is it mandatory to buy the ticket Terna-Telev from Sina, as well it is to buy the ticket Larco-Omblique? Is there any specific platform for the payment? For which establishment payment is sent? How much does it represent in the revenues of WA?

See questions 22 to 26.

101. Can WA assume that it is subject to the beneficial treatment established by the Law 4010? Under Relojonia's domestic legislation, are there requirements/criteria companies have to attend/meet in order to be granted the tax benefit? If yes, does WA and Aviaper attend/meet the aforementioned requirements/criteria? Have the tax authorities already recognized the application of this differential treatment? If so, when?

Stick to the facts of the case.

102. Regarding Planning The Future (PTF): is it established under the disposal and characteristics enacted by the article 18 §3 and article 3rd of the OECD Model Treaty 2017?

Stick to the facts of the case.

103. Considering that the above mentioned article establishes the requirements to define a pension fund as a "recognized pension fund" is it the circumstances of PTF?

Stick to the facts of the case.

104. As a consequence, should PTF be subject to regulation by the Security Exchange Commission or the equivalent agency in the Republic of Baguette?

Stick to the facts of the case.

105. Can PTF be considered as an investment vehicle of multiple individuals?

See question number 59.

106. Under its constitution, does the fund fulfil those requirements?

Stick to the facts of the case.

107. During the past few years, especially 2018, did Planning the Future change its operations in any significant manner?

Stick to the facts of the case.

108. Did PTF remain constituted and regulated under the rules of the Republic of Baguette throughout this time?

Stick to the facts of the case.

109. What is the Llamaland’s domestic legislation towards the tax impacts over the salaries paid to employees?

Stick to the facts of the case.

110. Llamaland’s Internal Revenue Code mentions the expression “relevant fiscal period” in article 9. How does Llamaland’s domestic legislation define ‘relevant fiscal period’?

It’s the same period referred to in article 13 of Llamaland’s Internal Revenue Code.

111. WA informed Aviaper that advertising services are accessory services to international transportation”. However, if WA plans to take advantage of the tax benefit (3%) would it be necessary to submit their returns and treat its revenues separately? What is the concept of accessory services?

This is part of the exercise and stick to the facts of the case.

112. Considering the possible transfer pricing impacts if Aviaper is related to WA within their corporate structures, can we consider that Planning The Future owns shares from other companies? Is WA or PTF investors in Aviaper? If yes, is there any relevance to the case?

No transfer pricing problems arise in this case. WA and Aviaper are completely independent entities. Neither PTF or WA have invested in Aviaper.

113. When ATO reallocated to Llamaland in April 2018, did the operations center also move with the Board of Directors and the Advisory Council? Is ATO advisory council independent of the company or also part of the managerial structure? Do WA have permanent staff in Llamaland?

The operation center did not move. WA does not have staff in Llamaland up until the accident (see question number 15). Stick to the facts of the case.

114. What was the purpose of transferring the entire operation to Relojonia since WA is already subject to global income tax in Relojonia?

Stick to the facts of the case.

115. Has the core business and general activities related to WA been kept in Relojonia?

See questions 46.

116. Is it proper to assume that only the directive of the company is located in Baguette (since the internalization process in 2011?) How relevant this reduction will be to the results accrued by WA?

See question number 46.

117. Is the advertisement company (Aviaper) characterized as a travel agency? In which purpose? Do they sell any kind of service directly related to transportation or entertainment other than the advertisement? Or is the advertisement company part of an economic or corporate group related to WA or PTF? Is WA in some way related through the ownership with this advertisement company?

Stick to the facts of the case.

118. Has Llamaland issued any memorandum of understandings regarding the Mutual Agreement Procedure established between Relojonia and Baguette?

No.

119. Are the airport payments, used by WA in its operations, subject to any withholding tax?

Stick to the facts of the case.

120. Were all of WA's profits distributed as shares or were there undistributed shares?

Stick to the facts of the case.

121. In its payments to WA for the ads displayed during the national flights, is Aviaper subject to withholding tax?

Aviaper pays WA to have its ads displayed during the flights, but such payments have not been subject to withholding.

122. Which is the main source of income of WA, international flights or on-board advertising services, as well as the main expenses of such entity?

Stick to the facts of the case.

123. Regarding flights from Larco-Obligue and Terna-Telev, does the case refer that there isn't really a direct flight between those cities, but that there are only connections (where the plane must stop before arriving at final destination)? Which is the route of these flights?

See questions number 22 and 23.

124. Does “complement of the company’s aircraft” has the same meaning as the one included in the 2017 Commentaries to the OECD Model Tax Convention?

This is part of the exercise.

125. Do passengers make any payment for cabin luggage in Llamaland? If the answer is yes, does WA make any payments for the use of the machines at the airport?

Stick to the facts of the case.

126. What is the legal nature of WA’s branch, is it a branch office of WA or a separate legal entity?

It is a branch office of WA.

127. Does WA make any payment for the use of the jetties and the counters? If the answer is yes, do these payments are made directly by WA or by the branch?

Yes. The payments are made by WA throughout its branch.

128. How is the flow of funds from Aviaper to WA regarding the payments for advertising and for the dividend thereafter to PTF? Is there a re-investment of WA or all funds are sent to PTF?

The advertisement services are paid by Aviaper to WA directly. PTF only receives income from WA when dividends are distributed.

129. Is there any interference of PTF in the operations of WA (other than customary actions as shareholders of a company (i.e. taking direct operations decisions)?

Only the customary actions as shareholders.

130. Is PTF a tax resident of Baguette? Is it fiscally transparent for purposes of the investors of the fund?

See question number 36.

131. Before the operation of the entertainment services was transferred to Relojonia, where was it located?

See question number 4.

132. What UN Model Tax Convention should we use for this case?

See question number 17.

133. When WA (i) transferred its three main managerial bodies to Republic of Baguette, (ii) changed its board of directors, CEO and advisory council to Larco, (iii) board of directors, CEO and advisory council return its main operations to Sina, and (iv) transferred the operation of its area in charge of entertainment services to Relojonia, is there any restriction in domestic legislation upon changing residency to another State where WA will continue to be resident of the original State for a certain period of time because of the change to a different territory (i.e. where there is no treaty of double taxation in force or the tax rate is lower)?

No, there is no such restriction and this is part of the exercise.

134. When WA transferred its operation between countries (as in question 12 above), how were those operations carried out (i.e. transfer of employees, incorporation of a subsidiary, etc.)?

See question number 15.

135. Were the digital advertising services performed during fiscal year 2016, 2017 and 2018?

Yes.

136. Under which arguments do the mutual agreement procedure between Relojonia and Baguette decided to establish the tax residence for WA in Relojonia?

The negotiations between the competent authorities were not disclosed. Therefore, there is no prove on the matter other than a press release where it was established that the competent authorities reached the decision based upon the place of incorporation criterion.

137. Pursuant to commentaries on article 8 of the 2014 OECD model tax convention, Contracting States are allowed to tax income derived from



international transportation according to: (i) the Contracting State where the company is from, or (ii) principal place of business of the company. Which method was chosen by the tax authorities in order to tax the income of WA?

This is part of the exercise.

138. In section III, part D, it is mentioned that all three countries submitted reservations regarding minimum standard of the MLI. What reservation was submitted regarding the minimum standard?

All three countries accepted the minimum standard.

139. In section III, part D, it is mentioned that all three countries submitted reservations regarding article 4 of the MLI. What reservation was submitted regarding such article 4? Specifically, which reservation was made.

All three countries accepted article 4 of the MLI, but the DTC between Relojonia and Llamaland is not a covered tax agreement.