



**Clarifications for the Case
IX Iberoamerican Tax Moot Court Competition
2020**

1. Is XNH Inc. fully liable to income tax in Granadonia? Or the taxation is exclusively attributable to investors?

Yes, XNH Inc. (herein after XNH) is fully liable to income tax in Granadonia and it is considered to be a tax payer.

2. Who are the XNH Inc. investors? Are they related parties to Ubresisimo Inc.? If yes, how?

XNH investors are corporations and individuals located around the globe. They are not related to Ubresisimo Inc. (herein after Ubresisimo).

3. Are the three (countries involved in the case (Patella, Granadonia and Austral Republic) members of the European Union?

No.

4. When was Ubresisimo Inc. incorporated? Does the company carry out its core business, i.e., the rent of cars with a driver for customers to go from one place to another, since its incorporation? Did the company expand the provision of its core business to other countries ever since?

Ubresisimo was incorporated on October 1st, and it has carried out its core business since its incorporation. Although it started in Patella, currently Ubresisimo renders the same service in 64 countries.

5. What are the risks in Ubresisimo Gra's business? Were they relevant? Could such risks financially impact Ubresisimo?

Ubresisimo Gra has to bare the same risks as every business. Some positive changes are good for the economy, which lead to booming purchase environments, while negative events can reduce sales. Ubresisimo has to bare also security and fraud risks (data breaches), financial risks, reputation risks, operational risks (lose business continuity), among others.

Those risks may impact Ubresisimo.

6. Who concludes contracts with the drivers available in the app? Is it the same person that concludes contracts with clients? Is it the same person that

supervises the drivers' courses and is responsible for potential indemnifications concerning claims?

Ubresisimo concludes contracts with the drivers (terms and conditions to use the app as drivers) and the customers (terms and conditions to use the app as costumers). Although Ubresisimo keeps track of the courses, the costumers are free to set or change them as they see fit.

The parties to the rental contract are the costumer and the driver. The contract last for as long as the ride lasts. Pursuing to such contract, the customer rents a car with a driver, hence, the client is entitled to use the car for as long as needed. In exchange for the rental, the costumers pay a price, which is determined in accordance with the particularities of the ride (duration, distance, location, time during the day, and additional stops).

Once the customer has used the app for the first time and has finished the first trip, the contract does not show up automatically anymore in the app, but the client may access and read the contract at anytime because it is available in the app. In that context, every time the costumer requests a service, he or she is concluding a new contract with a new driver. In that sense, Ubresisimo only acts as a connection between the client and the drivers.

Concerning claims, the rental contract states that the driver has acquired an insurance that covers any indemnifications in case of accident. However, the contract also states that if the rented car is stopped and taken away by the police due to violations of the transportation laws of Granadonia, the client will have to reimburse the driver any payments made in order to recover the car.

The aforementioned is what is prescribed in the rental contract and in the terms and conditions of the app. Nevertheless, Ubresisimo is currently being investigated by the transportation authority in Granadonia. Such authority believes that Ubresisimo is rendering transportation services in the country without the authorizations required by law. However, this investigation is not a tax issue, and the Court you will be pleading before has no authority over that matter.

7. Has Ubresisimo Gra any influence on a driver's acceptance? Who checks the drivers' background in the Kingdom of Patella? Do drivers provide their services exclusively to Ubresisimo Group?

Ubresisimo Gra runs the background check of each driver un Granadonia, hence it accepts or rejects the drivers, all in accordance with the guidelines set by Ubresisimo.

Ubresisimo runs the background check of the drivers located in Patella.

The drivers are not bound on that regard. Therefore, they may provide services to any

company they want. Likewise, they may have another job and just connect to the app whenever they see fit. Although, due to the amount of money the drivers earn by using the app, 89% of them connects to the app 8 hours a day.

8. Is there a cost-sharing contract between the companies controlled by Ubresisimo Inc. determining the attribution of 400.000, corresponding to right to use Ubresisimo’s domain name in Granadonia, to Ubresisimo Gra? Which are the sharing methods used?

There are no cost-sharing contracts between the companies controlled by Ubresisimo. For the right to use the domain name, Ubresisimo pays a total amount to Bandz pursuing a licensing contract in force between Ubresisimo and Bandz. In said contract it is established how much of the total amount paid by Ubresisimo correspond to each country, in accordance with the profits obtained by Ubresisimo in each country. The total amount that Ubresisimo has to pay is adjusted every year.

9. What are the operations carried out by Bandz in the conduction of its activities in the Austral Republic? Are they part of Ubresisimo Group’s core business, i.e., the rent of cars with a driver for customers to go from one place to another?

Bandz does nothing but hold and manage the domain name referred to in the case. In that context, Bandz pays the fee associated to the registration of the domain name, the renewals of the registration, and the protection of the domain name.

10. What is the meaning of “owned or is considered as owned” with the aim of application of Article 957 of Granadonia’s Income Tax Act? Does the term comprise economic rights to stocks?

Stick to the facts of the case. This is a part of the exercise.

11. What is the tax treatment of income from dividends and swap operations under Granadonia’s domestic legislation, paid both locally and abroad? What are the tax rates applicable?

In Granadonia, dividends obtained by Granadonian tax residents are subject to a dividend tax, regardless of the tax residence of the corporation paying the dividends. The rate of such tax is 20%. Nevertheless, private hedge funds are not subject to said dividend tax.

Notwithstanding any tax agreement concluded by Granadonia, dividends paid by corporations considered residents in Granadonia in favor of non-residents are subject to a withholding tax of 20%.

Income derived from swap operations are not subject to special tax rules, hence, such

income follows the general rules of income tax in Granadonia. The income tax rate in Granadonia is 26%.

12. Are there judicial precedents regarding the qualification of swap payments under Double Tax Treaties signed by Granadonia?

No.

13. Did the Austral Republic, Kingdom of Patella and Granadonia sign the MLI? Were the DTTs between these countries listed for the application of MLI's provisions? If so, when the MLI was put into force in each of these States?

Yes, all three countries signed the MLI and listed the tax conventions between them as covered tax agreements. The MLI is in force in all three countries since November 2018.

14. Are Patella, Granadonia and the Austral Republic parties of the Vienna Convention on the Law of Treaties (VCLT)?

Yes.

15. What is the provision of article 51 from Granadonia's domestic legislation?

Article 51 of Granadonia's Tax Act sets forth:

"For tax purposes, an entity shall be deemed resident in Granadonia if during the relevant fiscal period its place of effective management is located in Granadonia.

For tax purposes and individual shall be deemed resident in Granadonia if such individual meets the substantial presence test. The substantial presence test is met if:

(i) Such individual was present in Granadonia on at least 31 days during the calendar year, and

(ii) The sum of the number of days on which such individual was present in Granadonia during the current year and the 2 preceding calendar years (when multiplied by the applicable multiplier determined under the following table) equals or exceeds 183 days:

In the case of days in:	The applicable multiplier is:
Current year	1
1st preceding year	$\frac{1}{3}$
2nd preceding year	$\frac{1}{6}$

16. Does Granadonia foresee in its domestic legislation the OECD standards for assigning assets to Permanent Establishments?

No.

17. Is there a provision for “special tax regimes” in Granadonia’s domestic tax legislation? Are they in line with BEPS standards?

No, there are no provisions for special tax regimen in Granadonia.

18. When was the special tax regime instituted in the Austral Republic?

The special tax regime of the Austral Republic has been in place since February, 2013.

19. Who are the workers/employees of Ubresisimo Gra? Were they previously working in Ubresisimo Inc. and then moved to Ubresisimo Gra? Or were they directly hired by Ubresisimo Gra?

Ubresisimo Gra has 26 employees for its operation. All of them were directly hired by Ubresisimo Gra. They work at the floor referred to in the case in administrative matters, advertising services, brand protection, and driver’s registration. Furthermore, they also contact the clients with the drivers in case it is needed.

20. Under the Total Return Swap contract, what does the term “economic rights from shares” comprise? Are there any other rights or obligations given to XNH Inc. beyond paying the total return of the reference asset and receiving the set rate payments? If yes, which ones? Is there a fixed duration for the Total Return Swap contract?

Economic rights from shares comprehends the right to receive, collect or claim (if need be) the dividends distributed by Ubresisimo Gra. Once the dividends are paid, XNH is entitled to spend them freely. Nevertheless, such rights do not include the political rights derived from the shares.

Other than the ones stated in the case and in this document, there are no additional rights or obligations derived from the Total Return Swap contract.

The contract was originally concluded with a duration of 5 years. Nonetheless, the parties may extend the contract for another five years (and so on) if they see fit.

21. Other than article 201 of Granadonia’s Income Tax Act, is there any other provision in Granadonia’s domestic legislation regarding the definition of the term permanent establishment?

Yes. Article 202 of Grandonia’s Income Tax Act reads as follows:

Article 202. The term “permanent establishment” also encompasses:

(a) A building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only if such site, project or activities last more than six months;

(b) The furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only if activities of that nature continue within a Contracting State for a period or periods aggregating more than 183 days in any 12-month period commencing or ending in the fiscal year concerned.

22. When was Bandz incorporated?

The case has a typographical error. Bandz was incorporated in April 15th 2018.

23. On page 3, third paragraph of topic A there is the following "follows article 23B of the 2017 OECD Model Convention (...) Article 29 of such convention reads as follows (...)". Was the intention to mention Article 23 or the proper Article 29 of the OECD Convention?

Article 23 of the double taxation convention in force between Patella and Granadonia follows the wording of article 23B of the 2017 OECD Model Convention. Furthermore, article 29 of the double taxation convention in force between Patella and Granadonia has the wording stated in the case, that is to say:

“Notwithstanding the other provisions of this Convention, a benefit under this convention shall not be granted in respect of an item of income or capital if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangements or transaction that resulted directly or indirectly in that benefit, unless that it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of this Convention.”

24. Article 58 of the domestic legislation lists as income tax payers “1. Entities and individuals that are considered a resident pursuant to article 51”. What is the content of Article 51 of the same law? In addition to Article 51, is there any other article in the internal jurisdiction that would provide information about residents of Granadonia who are deemed to pay income tax?

See answer to question number 15. There are no other provisions in Granadonia’s domestic legislation regarding residence for tax purposes.

25. Is there any other provision in the Granadonia legislation on the definition of auxiliary or preparatory activities? Are there any other criteria that help to

distinguish between auxiliary and preparatory activities?

No, there is no definition of auxiliary and preparatory activities. That is part of the exercise.

26. For legal purposes, what is the essence of the Hedge Fund XNH? What are XNH's strategies to achieve profits? Is there any type of income portfolio available for shareholder consultation? Is there any domestic or international legislation that regulates a Hedge Fund like XNH Inc?

Stick to the facts of the case.

27. The dividend distribution between XNH and Ubresisimo Gra's is presented in "pessets". To which country does this currency belong? Is it an exclusive currency of this country?

Pessets is the currency of Granadonia. No other country has this currency.

In the case, all reference to currency or to amounts of money are expressed in Pessets only for clarity reasons.

28. How is the payment made through the App? The bank account mentioned on the 4th paragraph of section A is located in Patella or Granadonia? In case it is in Patella, the rentals of the cars with drivers are paid directly by the customers to Ubresisimo Inc through credit cards? Or is there some cash flow in the branch located in Granadonia with the customers paying the rental to Ubresisimo Gra, and then transferring them to Ubresisimo Inc?

The bank account is in Patella. The payment is made directly to Ubresisimo. The rest of the questions are answered in the case.

29. Does Ubresisimo Gra only operate in Granadonia? Or does it provide advertising, brand protection, and driver's registration services for Ubresisimo Inc to operate in other countries?

Ubresisimo Gra only operates in Granadonia.

30. Where are the servers for the Ubresisimo.com website located at? Is it an outsource server?

As stated in the case, the servers are located in Patella.

31. Are Ubresisimo's drivers in Granadonia obliged to agree with a contract in order to perform runs through the app? If so, who are the parties in this contract? Is it the very same contract that the customers have to agree on when

downloading the app? Is there a specific app for the drivers to perform the run?

See answer to question number 6.

The drivers use the Ubresisimo app in order to carry out the service.

32. Is the contract object the rental of the car and the driver for a determined period of time? Does the distance matter for the price of the service?

Please read the case carefully.

33. Are the Kingdom of Patella, the Republic of Granadonia and the Austral Republic considered Common Law or Civil Law countries? Are the Kingdom of Patella, the Republic of Granadonia, and the Austral Republic signatories of the Vienna Convention on the Law of treaties and the General Agreement on Tariffs and Trade?

See answer to question 14. All the countries are signatories to the the General Agreement on Tariffs and Trade.

34. Considering that Granadonia's Income Tax Act sets forth "Article 58. For purposes of the income tax, the following individuals and entities are deemed to be tax payers: 1. Entities and individuals that are considered a resident pursuing to article 51.", what is the content of Article 51, of Granadonian's Income Tax Act?

See answer to question 15.

35. Is there a DTT in force between the Austral Republic and the Kingdom of Patella following the OECD or the UN Model Tax Convention?

No.

36. Considering that there is a rental contract which shows up on the app the first time a customer uses Ubresisimo, who are the parties of the rental contract: Ubresisimo and the customer, or the driver and the customer? How long is the duration of the contract, and which are the obligations set forth regarding both the driver and Ubresisimo?

Please see answer to question number 6.

37. Are there any requirements that the driver has to meet during their contract, like a minimum hours rendering services to Ubresisimo? Does Ubresisimo establish a Code of Conduct? Can a failure in following the terms of the Code result in the driver's inability to access or use the app?

See answer to question number 7.

According to the terms and conditions of the app the driver has to follow a code of conduct. Such code includes obligations such as: compliance with the criminal code, dressing appropriately (no t-shirts or flip flops), being respectful towards the client (no insults), and asking if the client would like any particular radio station.

If the driver fails to comply the code of conduct for three times in less than one month, he or she may not access the app for 3 days. If the driver breaks the criminal code, he or she will be banned from the app indefinitely.

38. Regarding the following extract "payments made by the customers are received by Ubresisimo in a bank account", in which country is Ubresisimo's bank account located?

See answer to question 28.

39. Does Ubresisimo Gra have the power to conclude contracts or habitually concludes contracts in favor of Ubresisimo Inc?

Ubresisimo and Ubresisimo Gra have concluded an advertising service agreement. By virtue of this agreement Ubresisimo Gra renders advertising services to Ubresisimo. According to such contract, Ubresisimo Gra has the power to conclude contracts on behalf of Ubresisimo with social networks (Facebook, Instagram, Twitter, YouTube), and online gaming platforms in order to publish Ubresisimo's adds in those platforms.

Other than the contracts with the aforementioned platforms, Ubresisimo Gra is not entitled to conclude contracts in favor of Ubresisimo.

40. Does Ubresisimo Gra exercise other activities in Granadonia other than "advertising, brand protection, and driver's registration"? Is there any rental car activity in Granadonia?

No.

41. Regarding the services rendered in Granadonia, is the rental contract agreed between the Granadonian users and Ubresisimo Gra, or between the Granadonian users and Ubresisimo Inc? Considering the following excerpt "The Tax authority assessed that Ubresisimo has a permanent establishment in Granadonia for the services rendered to the users of the app", does Ubresisimo Gra receive any amount from Ubresisimo Inc regarding the services rendered to users located in Granadonia?

See answer to question 6.

Ubresisimo Gra does not receive payments from the costumers located in Granadonia.

42. Does Ubresisimo Inc interfere in the background check process, taking part in acceptance or rejection of drivers? Which of the companies (Ubresisimo Inc. or Ubresisimo Gra) set criteria for acceptance or rejection of drivers?

The criteria to accept or reject a driver is set by Ubresisimo, and Ubresisimo Gra only carries out the background check in accordance with what has been previously set by Ubresisimo.

43. Do the drivers or consumers pay any sum to Ubresisimo Granadonia in respect of the driver's registration?

No.

44. Considering that Ubresisimo Gra's profits "arise exclusively from the services rendered to its parent company", has Ubresisimo Gra received any amount from Ubresisimo Inc. in 2019? If so, at what rate?

Ubresisimo pays Ubresisimo Gra for its services in compliance with the arm's length principle. In 2019, Ubresisimo Gra received 700.000 pessets for the services rendered to Ubresisimo.

45. Do Granadonia's and Patella's domestic legislation provide any concept of a "Total Return Swap Contract"?

No.

46. What does the economic rights and obligations transferred from Ubresisimo Inc. to XNH consist of, regarding its legal nature? Are they limited to the distribution of dividends from Ubresisimo Gra?

See answer to question number 20.

47. What is the tax treatment granted for dividends and interests paid by companies' resident in Granadonia, according to the Granadonian domestic legislation?

See answer to question number 11.

48. Considering that the agreed upon rate for the Total Swap Contract was LIBOR plus 2%, what is the basis for such charge?

Stick to the facts of the case.

49. If the domain name was registered by Bandz in March 2009, and the 10 year term ended in March 2019, how was the special tax rate of the Austral Republic applied? Since when does the domestic legislation of Austral Republic provide a special tax regime?

The domain name was registered in May 2018. See answer to question number 22.

The special tax regimen of the Austral Republic was stated in 2013.

50. Considering that, according to the case, Bandz Inc. was incorporated in February 2009, and Ubresisimo Gra Ltd. was created April 1st 2018, was Bandz an independent company before its incorporation by Ubresisimo Gra?

No. Bandz was incorporated on April 15th, 2018. See question number 22.

51. Which are the terms of the licensing agreement established between Ubresisimo and Bandz? Are the payments in respect of the licensed domain name divided by countries which have the right to use it within its territory?

See the answer to question number 8.

52. Considering that the case is pending before Granadonia's High Court, how does the Court jurisprudence deal with the relationship between the domestic CFC clause and the Double Taxation Treaties?

The High Court has yet to make a decision on the matter.

53. Who owns XNH Inc.?

See answer to question number 2.

54. How do Patella's and Granadonia's internal tax legislation qualify hedge funds? Are they deemed as persons for fiscal purposes? Are they considered to be taxpayers?

Please see question number 1.

55. Are there any other factors -apart from "*duration of the ride*"- considered to fix the fee the consumer pays for the rental of the cars? If so, please clarify which other factors are considered for said purpose? Does it include any charges related to the use of the app?

See answer to question number 6. The price does not include any charges related to the use of the app, such use is free.

56. What is the nature of the agreement between Ubresisimo Inc. and the drivers of the cars that are rented? Is it a labor contract? Who owns said cars? Who bears the default, crash and other risks of the operation? Does Patella's civil law allow the renting of goods that do not belong to the lessor?

See answer to question number 6. The cars are owned by the drivers.

Yes, Patella's civil law allows the renting of goods that do not belong to the lessor.

57. What are the income tax rates at Granadonia and Patella?

The income tax rate in Granadonia is 26%. Whereas the income tax rate in Patella is 25%.

58. Which were the terms of the license agreement between Ubresisimo Inc. and Bandz? Does Ubresisimo has the right to economically exploit the domain?

See answer to question number 8. Ubresisimo has the right to use the domain in any legal way. However, Ubresisimo cannot sell the domain because it is not its owner.

59. Do the Granadonia-Patella DTC or Granadonia's internal legislation contain a service permanent establishment clause or a digital permanent establishment clause?

Stick to the facts of the case.

60. Under the total return swap, who bears the risk of depreciation of the reference asset? Did Ubresisimo Inc. announced the reasons for entering into the total return swap with XNH? Did XNH and Ubresisimo Inc. had an economic relationship previous to the contract or have they entered into any other related agreements?

See answer to question number 20. Ubresisimo bears the risk of depreciation of the reference asset.

Ubresisimo did not announce the reasons for concluding the total return swap contract. Ubresisimo and XNH never had a relationship before concluding said contract. Likewise, this is the first agreement among both parties.

61. Did XHN paid any value as a consideration for obtaining the property of the reference asset in the total return swap? How long is the contract intended to last?

XNH did not pay any value as consideration for obtaining the underlying asset. See

answer to question number 20.

62. What does “the tax authority assesses that passive income is obtained by Ubresisimo and it is directly related to its permanent establishment in Granadonia” mean? What kind of connection exists between the income received by Bandz and Ubresisimo’s permanent establishment?

This is part of the exercise.

63. According to Granadonia’s Tax Authority, should Ubresisimo’s permanent establishment tax by the passive income attributable to Ubresisimo?

Stick to the facts of the case.

64. Does Granadonia’s domestic law include any definition of transportation contracts?

Yes. Article 1512 of the commercial code of Granadonia prescribes:

Transportation is a contract by means of which one of the parties agrees, in exchange for a price, to drive from one place to another, by a certain means and within an established period of time, persons or things and deliver such things to the receiver.

65. Is Granadonia’s Tax Authority claiming the existence of a service permanent establishment?

This is part of the exercise.