



Clarifications OITI Tax Moot 2024

1. Are Esmeralda Lazulio and Juan tax residents of Orchidonia (only)? Are Amatisto and Topazio tax residents of Goldonia (only)? These questions are important to a better understanding of who is affected by the tax reforms of Orchidonia.

Esmeralda, Lazulio and Juan are tax residents only in Orchidonia and Amatisto and Topazio are tax residents in Goldonia.

2. How many taxes are involved in the case? We noticed five different references Wealth Tax; Income Tax plus occasional tax; Inheritances and gifts tax; Diverted Taxable base tax; 1% Net worth. This question is relevant to better understand Orchidonia's tax reform and, more specifically, the specific taxes that will actually affect Esmeralda and her sons.

The taxes involved in the issues of the case are Wealth tax and inheritances and gift tax. Other taxes shouldn't be part of the pleadings.

3. Is the "20% diverted taxable base" mentioned in paragraph five a reference to the Malefic Diverted Tax (MDT)? Does the implementation of a 20% diverted taxable base represent the additional tax rate of 20% in the scope of the MDT? This question is crucial to better understand Orchidonia's Tax System and, more specifically, analyze the possibility of base erosion and profit shifting on the case.

Yes. The 20% diverted tax mentioned in the paragraph five is a reference to Malefic Diverted Tax (MDT).

4. Is Salvation Inc. opaque or transparent for tax purposes of Goldonia and Orchidonia? This question is needed to determine how Salvation Inc. should be treated for tax purposes in either country.

Is opaque for tax purposes in Goldonia. However, Ochidonia stablish that an legal entity is opque for tax purposes just in case that other countries recognize likewise.

5. When did the Orchidonia's tax reforms come into effect? In December 2022 or only in 2023? This question is necessary to determine the taxation that applies to Esmeralda's assets, as well as to the transactions carried out by her before she passed away.

Ochidonia's tax reforms come into effect in December 2022.

6. How much cash did Esmeralda receive from the sale of the bare title to the stock in Salvation Inc., 3 million total (750 thousand from ech son) or 750 thousand total, and how much was Esmeralda's tax basis in those shares? These questions are relevant for understanding the transactions undertaken.

Esmeralda received 750.000 from each son. Considering that the valuation of Salvations Inc. is 10 million LC the sale generated a loss.

7. Does Orchidonia Supreme Court's precedent apply to foreign trusts and to non-regulated trusts (foreign or domestic)? Those questions are important to get a clearer understanding of the case because the Supreme Court decision can directly affect the taxable event of the trust.

Yes. Orchidonia Supreme Court's precedent applies to foreign trust and to non regulated trusts when the beneficiaries are residents in Orchidonia.

8. After the incorporation of the legal entity in Goldonia and the formation of the trust, what happened to the 3 million LC in cash that belonged to Esmeralda after her death? The question is important to understand how the family's estate was divided after Esmeralda's death and, therefore, better determine the taxable event and its consequences.

Esmeralda spent her money in exotic and luxurious experiences.

9. Regarding pleading "C", does the expression "corporate structure" only refer to the formation of the legal entity in Goldonia or also the formation of the irrevocable non-regulated trust? This question is needed in order to better understand the pleadings.

The expression "corporate structure" refers to all the family's corporate structure.

10. The pleadings use the term "descendants" and "children" separately. Is there a difference between them? If so, who does the term descendants refer to? This question is needed in order to better understand the pleadings.

Descendants and childrens have the same meaning regarding to the case.

11. Do Orchidonia and Goldonia have a Double-Tax Convention in force? If so, when did such DTC enter into effect? Does it follow a particular model convention? To what extent? This is relevant to determine the set of rules applicable on cross-borders wealth management.

Goldonia and Orchidonia have a Double Tax Convention in force since 2019. The Convention follows the OCDE Model 2017. Consequently this clarification we incorporated a new legislation in the case.

12. Did Orchidonia and Goldonia sign an MLI? Or any bilateral measures to avoid double taxation, such as reciprocity agreements? These instruments are relevant for cross-borders relations.

Yes, but is not in force yet.

13. Which international organizations are Orchidonia and Goldonia part of? Are they members of the OECD and/or the UN? Are they part of the European Union or any other

international community, common market, customs union or economic bloc? This question is relevant to determine the framework of rules and principles applicable.

They are members of OECD and UN. But they are not of the European Union

14. Under the Constitutions of Orchidonia and Goldonia, what is the legal hierarchy between treaties and domestic legislation? Private law and private agreements are binding for the tax administration under the domestic law of these countries? The set of rules in the existing framework of a country may affect their application.

Domestic law and treaties have the same hierarchy, but the Supreme Court have stated that treaties will prevail on basis of its special character.

15. What is the legal definition of a trust under the domestic legislation of Orchidonia and Goldonia? Is there a difference of treatment of rights and liabilities for revocable or irrevocable trusts? How are trusts legally formed? Are there any specifications in the taxation for those entities? If so, are there any differences in taxation? Such provisions may affect the arrangements made by Esmeralda and her family.

The Supreme Court of Orchidonia defined a trust as a legal agreement whereby one person (called the settlor) transfers the ownership of assets to another person (called the trustee) for the management and benefit of a third party (called the beneficiary). Orchidonia's Supreme Court recognizes both revocable and irrevocable trusts and extracted the definitions for these kinds of trust from a comparative law study including the Goldonia's legislation. In a revocable trust, the settlor retains the right to revoke or modify the trust during their lifetime, whereas in an irrevocable trust, the settlor relinquishes this right and permanently transfers ownership of the assets to the trustee.

In Goldonia, the legal definition and treatment is the following:

- **Revocable Trust**

For tax purposes, a revocable trust is not considered a separate tax entity from the grantor. Income generated by the trust assets is reported on the grantor's tax return and taxed at the grantor's personal tax rates. Being an extension of the grantor, assets in a revocable trust are subject to gift and estate taxes when the grantor passes away.

- **Irrevocable Trust**

An irrevocable trust is treated as a separate tax entity from the grantor. Therefore, income generated by the trust assets is taxed at trust tax rates, which may be different and, in some cases, higher than the grantor's personal tax rates.

Assets transferred to an irrevocable trust may be subject to gift taxes at the time of transfer, depending on the value of the assets and applicable rules.

16. What is the definition of a corporate entity under the domestic legislation of Orchidonia and Goldonia? Are there differences for tax regimes or for measures to avoid

tax evasion? How is tax liability allocated? This is relevant to determine the circumstances in which Esmeralda's and her family's assets were organized.

Stick to the facts of the case. Both countries respect the separate entity approach and do not allow the disregarding of entities, except in cases of the application of the GAAR. Case law in both countries reveals that there is a formal base approach in relation with the attribution of income to a person.

17. What are the rules for application of gifts and inheritance tax under the domestic legislation of Orchidonia and Goldonia? It is important to determine the bearer of the tax liability, the due moment for tax, and the forms of wealth covered, such as properties, shares, economic rights, among other provisions.

Inheritance tax is levied at the time of death of the deceased and is payable by his heirs.

18. Are there important or binding administrative or judicial precedents on the new wealth tax? Or in gifts and inheritance tax? If that is the case, does the Supreme Court of Orchidonia take precedent into consideration on trial? Is the Court bound by its own previous decisions? Is the tax administration bound by precedents? What did the courts decide on this case before it reached the Supreme Court? On which grounds the courts rendered their decisions? The previous understanding may be relevant to determine the case law in Orchidonia. This question is important to analyze the relevance of case law in Esmeralda's situation.

There are no precedents on these taxes.

19. The case states that when Esmeralda sold the stock of Salvation Inc. she retained the associated economic rights. Through which form did she retain the economic rights related to a certain asset in Orchidonia and Goldonia? Does Orchidonian legislation foresee different treatment in regards to having the real property and the usufruct of a certain asset? This information is relevant to understand the activities of Esmeralda and her family.

Esmeralda retained the economic rights considering that it is a taxpayers' right.

20. The case states that many Orchidonians relinquished their residency in recent years. Can one assume this is the case for Esmeralda and her family? If so, when did they become a resident in another jurisdiction? Through which period Amatisto and Topazio reside in Goldonia? How does Orchidonian and Goldonian domestic legislation define fiscal residence? This information may have direct implications on the allocation of taxing rights.

The fact about the many Orchidonians relinquished their residency in recent years is a context about the country's situation, please note the facts in the case about the special situation for Amatisto y Topazio and the first clarification.

21. The case states that The Salvation Inc. was located in Goldonia. Which were the company's activities? Where were most of the activities located, including its clients and economic operations? Where was the effective place of management? This is important in order to assess the company's structure.

This is an issue of the case. In any case, please consider that The Salvation Inc has the asset of the family, the incomes provided of Orchidonia and the most important decisions are taken by Amatisto and Topazio who are residents in Goldonia.

22. The case indicates that by 2022, about 85% of Esmeralda's immovable property was located in Orchidonia, while 15% of it was located outside of her country. In the effort of internationalizing the Salvation Inc. this percentage of real estate assets that were invested in Orchidonia changed? In which other countries was the property located? Do these countries have legal or economic ties with Orchidonia or Goldonia? Is there a DTC among them? Or bilateral or multilateral measures to avoid double taxation and tax evasion? This is important to assess if Esmeralda had property in countries other than Goldonia and Orchidonia and the framework of rules applicable.

The percentage distribution of assets remains the same. The assets have not been replaced.

23. Does the Orchidonian domestic legislation foresee "piercing the corporate veil"? What are the criteria of application of the PPT under the domestic legislation? This may affect the analysis of Esmeralda and her family's wealth.

Yes. Please note number 16.

24. What was the Salvation Inc.'s value when its stocks were sold to Esmeraldas heirs? How much is it speculated to be worth in 2024? Was there taxation involved in transferring the capital out of Orchidonia? This is important to understand the factors preceding the dispute in question.

Considering that Esmeralda's wealth was valued at 10 million LC and the assets were contributed to Salvation INC the value of the partnership should be the same. Additionally, there is no substantial variation in the assets. Please note answer number 6.

25. The case states that Esmeralda passed away on April 2nd of 2023. How was the succession of her remaining net worth handled? Did Esmeralda's substantial spending right before her death significantly impact her wealth? Were these outlays noted by the tax authorities? This information might affect the estimation of her heirs net worth and could have implications in the tax audit.

The succession has not been carried out.

26. Esmeralda's motives to create The Salvation Inc. revolved around the fact that she wanted to protect her wealth from looming taxes and a possible expropriation. Could this expropriation occur at any moment? Did she have any legal protection to resort to, even if the government envisaged the population's well-being? This information could justify Esmeralda's actions.

The country's political situation generated a lot of uncertainty in the society, so it is not possible to determine such situation. However, in those countries expropriation is prohibited unless there is just cause and the owner is duly compensated.

27. The case indicates that Esmeralda's children did not maintain good relations. What were the disagreements between the sons who stayed close to their mother in Orchidonia and those who were frequently in Goldonia? Did the family enact any legal documents that allocated duties, powers and responsibilities in regard to its assets? Did this issue impact the succession of Esmeralda's assets? If so, the taxation for each descendant would have a particular aspect.

There is no evidence of family relationships beyond the facts in the case.

28. Among the operations carried out by Esmeralda and her family in 2023 and 2024, there was an absence declaration and payment of tax on Esmeralda's wealth and inheritance of her descendants and tax on donations. Did those attitudes generate any immediate consequences before the tax audit was carried out? If so, did it affect the company's total net worth? Are there any exemptions or deductions applicable under the new wealth tax and inheritance and gift tax reforms in Orchidonia? This question is important to analyze the losses generated by the non-recognition of taxes.

Please note number 6 and stick to the facts of the case.

29. Were the 3,000,000 LC effectively paid by Esmeralda's sons for the exchange of the bare title of shares in Salvation Inc.?

Stick to the facts of the case.

30. Where is the "artificial" arrangement located?

Stick to the facts of the case.

31. What is the value of incorporation for Salvation Inc.?

Considering that Esmeralda's wealth was valued at 10 million LC and the assets were contributed to Salvation INC the value of the partnership as a whole should be the same.

32. According to the MDT rule, which applies only to periodic taxes, does the MDT apply to taxes with an instantaneous taxable event?

No matter how it is caused and paid for.

33. Is the taxable event for the wealth tax instantaneous or periodic?

Stick to fact of the case.

34. Does the constitution of Orchidonia include any tax principles such as economic capacity, property, and non-retroactivity?

Yes. The Constitution includes all these principles.

35. Did Orchidonia's law include a General Anti-Avoidance Rule (GAAR) before the MDT?

Yes.

36. Does the diverted tax apply to residents or non-residents of Orchidonia?

This is part of the exercise.

37. Which countries are members of the OECD, and which OECD recommendations have these countries implemented? Additionally, how are these recommendations classified within their legal frameworks?

Stick of the facts of the case. Please note number 13.

38. Does the most-favored-nation treatment under the International Investment Agreements (IIAs) allow investors to receive tax exemptions?

Stick of the facts of the case.

39. Where s te professional in charge of controlling the trust located, and are they the sole decision-maker?

Stick of the facts of the case.

40. Are there wealth taxes in Goldonia?

Goldonia haven't wealth taxes in their jurisdiction.

41. What are (sic) the tax residency rules for Orchidonia?

POEM and Place of incorporation.

42. What is the tax residency rules for entities and individuals in Goldonia?

Please note number 1.

43. How does the imposition of the MDT override the autonomy to create structures for protecting financial risks?

There are not case law nor precedents.

44. Has the Supreme Court of Orchidonia analyzed the constitutionality of the PPT? Does the constitutional principle of certainty get infringed by the PPT clause when it stipulates that it is applicable when tax benefits are achieved "indirectly"?

No. There are not case law nor precedents.