



IBEROAMERICAN TAX MOOT COURT 2017
Case Competition

I. Entities and Individuals

- A. STYLE CO is a company incorporated in a country named Trumpland. STYLE CO is engaged in the sale of manufacturing machines for the clothing industry. STYLE CO is liable to tax on its worldwide income.
- B. Styles Capital Fund (hereinafter “SCF”) is an investment fund located in Trumpland which owns the rights over the brand “Luisa&Carpot”.
- C. Ms. Antonella Maniaci is a worldwide-recognized fashion designer who specializes in women’s clothing. She is a tax resident in Trumpland.
- D. FASHION HOLDING was incorporated in March 2011, in a country named Orangeland. The shareholders of FASHION HOLDING are, in equal proportions, STYLE CO., SCF and Ms. Maniaci.

FASHION HOLDING is tax resident in Orangeland.

- E. CLOTHING FUND is an investment fund located in Orangeland and constituted entirely by FASHION HOLDING in November 2011, and with the purpose to manage the investments in the Tropicana Continent. CLOTHING FUND is subject to income tax in Orangeland at a rate of 2%.
- F. WARECO is a company incorporated in Shoreland (located in the Tropicana Continent). The solely shareholder of WARECO is STYLE CO. WARECO is tax resident in Shoreland.
- G. COMCO is a company incorporated in Shoreland. The solely shareholder of COMCO is CLOTHING FUND. COMCO is tax resident in Shoreland.

II. ISSUES

In October 2010, STYLE CO, SCF and Ms. Maniaci decided to expand its business in the Tropicana Continent. Thus, in March 2011, they incorporated FASHION HOLDING as an investment vehicle. Additionally, FASHION HOLDING provides consultancy services related with the fashion business to the companies located in the Tropicana Continent.

Then, in November 2011, FASHION HOLDING constituted the investment fund CLOTHING FUND. After obtaining the funds required for such a huge investment, CLOTHING FUND incorporated COMCO in Shoreland.

- A. COMCO has been distributing dividends on an annual basis to CLOTHING FUND and not applying withholding as per Article 10 of the DTT between Shoreland and Orangeland.

However, on February 2016, the Gossip Newspaper published an article named “The hidden wealth of the world” in which described the investment structure of STYLE CO, SCF and Ms. Antonella in the Tropicant Continent.

The article published by the Gossip Newspaper described that CLOTHING FUND receives no other income than dividend payments. CLOTHING FUND transferred the profits to FASHION HOLDING on a quarterly basis. The article published by the Gossip Newspaper also mentioned that each time FASHION HOLDING perceived the profits, it immediately pays dividends to STYLE CO, SCF and Ms. Antonella.

The Gossip Newspaper expressly stated that the information included in the article was an anonymously source who provided them with confidential information obtained from the servers of two of the biggest Law Firms of Orangeland.

As expected, the article went viral around the world, especially in Shoreland. The Shoreland Tax Authority sent an exchange of information request to the Orangeland Tax Administration, requesting specific information regarding: (i) the dividend payments made by COMCO during 2015 and 2016 to CLOTHING FUND (ii) the owner(s) of CLOTHING FUND.

The Orangeland Tax Administration provided to the Shoreland Tax Authority the information that is publicly available regarding CLOTHING FUND and FASHION HOLDING. Neither CLOTHING FUND nor FASHION HOLDING had the opportunity to controvert the information provided to the Shoreland Tax Authority.

- B. In December 2016, FASHION HOLDING charged consultancy services to COMCO related with fashion market researches in Shoreland in order to strength its position in the local fashion market. COMCO paid \$10 million to FASHION HOLDING and did not withhold any amount.

Initially, WARECO acted as distributor of the clothing manufacturing machines in Shoreland. The machines were sold directly by STYLE CO to the local customers.

However, the business model was changed as of January, 2013, when WARECO started to sell manufacturing machines on behalf of STYLE CO in Shoreland. Previous High Tax Court decisions have concluded that WARECO was not a PE of STYLE CO in Shoreland.

On July 2016, and being aware of the signature of the Multilateral Agreement by Trumpland and Shoreland, the Group decided to change the business model; starting such date, WARECO has been providing to the local customers purchase support services for the acquisition of clothing manufacturing machines in Trumpland.

It is of public knowledge that the Group only changed the business model in Shoreland, and that continues engaging in business in other countries using the commissionaire model.

WARECO entered into several purchase agreements with STYLE CO on behalf of the local customers. WARECO acted as the Importer of Records on behalf of the local customers.

In the visits performed by the Shoreland Tax Authority to the locations of WARECO, it has been found that, on December 2016, WARECO sent to STYLE CO the information of the local customers (both the previous and the new clients). In this document, WARECO stated that such information would be provided on an annual basis.

Even though there is no documentary support, the Shoreland Tax Authority has knowledge that WARECO, in the negotiation with the local customers, has clearly stated that WARECO is only allowed to acquire clothing manufacturing machines in Trumpland from STYLE CO.

Price adjustments, approval of modifications to the agreements, orders, definition of negotiation positions, approval of warranty requests, among other relevant activities are negotiated between STYLE CO and WARECO on behalf of its local customers following the guidelines provided by the local customers.

STYLE CO, on an annual basis, pays to WARECO a market expansion bonus, which during 2016 was equivalent to 40% of the income perceived by STYLE CO on the sales of the clothing manufacturing machines to customers located in Shoreland.

Whenever a new customer tried to acquire the machinery directly from STYLE CO, it has been told to contact the General Manager of WARECO and then a purchase support services has been entered into and between the local customer and WARECO.

III. LEGAL AND CONVENTIONAL FRAMEWORK

A. Double Tax Treaties (hereafter “DTT”)

1. Between Orangeland and Shoreland

There has been a DTT in force since 2011 (2010 OECD Model Tax Convention).

Article 10 of the DTT reads as follows:

ARTICLE 10 DIVIDENDS

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may only be taxed in that other State.

2. The term “dividends” as used in this Article means income from shares, “jouissance” shares or “jouissance” rights, mining shares, founders’ shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

3. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident through a permanent establishment situated therein and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

Article 12 of the DTT reads as follows:

ARTICLE 12. ROYALTIES.

1. Royalties services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of the royalties the tax so charged shall not exceed 20 per cent of the gross amount of the royalties or fees for technical services.

3. The term “royalties” as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph film or films or tapes used for radio or television broadcasting, any

patent, trade mark, design or model, plan, secret formula or process or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience, and payments in consideration of the provision of any kind of technical or consultancy services.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right, property or contract in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 15, as the case may be, shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political sub-division, a local authority or a resident of that State. Where, however, the person paying their royalties or fees for the technical services, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

6. Where, by reason of special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of royalties paid exceeds, the amount that would have been paid in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

The Protocol of the DTT sets forth:

1. The term “resident of a Contracting State” includes any investment fund created under the regulation of that State

2. If after the signature of this Convention it is agreed with a third State to a tax rate on royalties lower than the one established in Article 12 of this Convention, then this rate taxation shall automatically apply to this

Convention and it shall have effect as from the date when the provisions of the Convention signed with this third State become effective.

2. Between Shoreland and Borisland

There has been a DTT in force since 2014 (2010 OECD Model Tax Convention). Accordingly, Article 12 of the DTT states that:

ARTICLE 12. ROYALTIES.

1. Royalties arising in a Contracting State and beneficially owned by a resident of the other Contracting State shall be taxable only in that other State.

2. The term “royalties” as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience.

3. The provisions of paragraph 1 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise through a permanent establishment situated therein and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

4. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

3. Between Trumpland and Shoreland

In November 2015, Trumpland and Shoreland signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base

Erosion and Profit Shifting (“ML Agreement”) issued by the OECD. Both Trumpland and Shoreland have included as a Covered Tax Agreement the DTT entered into and between them in force since 2011.

Trumpland and Shoreland has not made a reservation to Paragraph 1 of Article 12 of the ML Agreement and has duly notified each other with respect that provision.

The Legislative Body of Shoreland has not approved the ML Agreement yet.

B. Domestic Legislation

1. Shoreland:

The Shoreland’ Tax Code sets forth:

- *“A company incorporated under the laws of Shoreland shall disclose its beneficial owners to the Tax Authority. For this purposes, a beneficial owner is any individual, entity or company who controls or is benefited, directly or indirectly, the local company.*
- Dividend payments made to foreign shareholders are subject to a dividend tax at a rate of 15% (collected via withholding).

Dividend payments made to Shoreland tax residents are not subject to taxation.

- Payments in consideration of consultancy services provided from abroad to a Shoreland recipient are subject to withholding at a 25% rate.
- General anti-avoidance rule:

“It is deemed as abusive the implementation of any deceptive scheme, with the sole purpose of modifying or distorting the reality of the transaction, in order to evade the tax obligation that otherwise would be triggered.”

2. Orangeland:

The Orangeland’ Tax Code sets forth:



“For purposes of exchange of information, a beneficial owner is an individual or entity, resident in Orangeland, who has a direct or indirect participation in the entity.

IV. PLEADINGS

On January 1st, 2017, Shoreland Tax Administration carried out an audit regarding the issues above mentioned and claimed that:

- A. The Shoreland Tax Administration assessed COMCO arguing that it should have withheld a 15% over the dividend payment as the beneficial owners of the dividend payments are, based on “public information available”, STYLE CO, SCF and Ms. Antonella.
- B. The Shoreland Tax Administration considered that the payments made by COMCO to FASHION HOLDING should have been subject to withholding. Therefore, the Shoreland Tax Administration is requesting COMCO to pay the amount that was not withheld.
- C. The Shoreland Tax Administration considers that, during 2016, WARECO is a Permanent Establishment of STYLE CO in Shoreland.

V. CURRENT PROCEDURE

The case is now pending before Shoreland High Court. The Court in which you are filing the petition (and before which you will later plead orally) only assesses legal arguments. Assume that you are in a rule-of-law country, where rules as well as general principles of law may be invoked. Please note that the Court will not assess any procedural issue.
