

I. Entities and individuals

- A. Ubresisimo Inc. is a company duly incorporated under the laws of the Kingdom of Patella (a UN and OECD member), which has several subsidiary corporations around the globe. Ubresisimo Inc. is a tax resident of Patella.
- B. Ubresisimo Gra Ltd. is a company duly incorporated under the laws of the Republic of Granadonia (UN and OECD member). Ubresisimo Gra Ltd. is a fully owned subsidiary of Ubresisimo Inc. Ubresisimo Gra Ltd. is a tax resident of Granadonia.
- C. XNH Inc. is a private hedge fund duly incorporated under the laws of Granadonia. XNH Inc. is a tax resident of Granadonia.
- D. Bandz Inc. is a company duly incorporated under the laws of the Austral Republic (UN and OECD member), which is a fully owned subsidiary of Ubresisimo Gra Ltd. Bandz is a tax resident of the Austral Republic.

II. Issues

- A. Ubresisimo Inc. (hereinafter Ubresisimo) is a multinational corporation, which, according to its bylaws, rents cars with a driver for costumers to go from one place to another. It works throughout an application (hereinafter app) where every costumer sets its starting point and destination, and the driver picks the costumer up and drives him or her to the given destination. The costumers can only pay by means of a credit card that is previously registered in the app.

Some costumers say that Ubresisimo is just like any other cab company. Nevertheless, once the customers download the app they agree to the terms and conditions of the app. Likewise, they have to agree and accept a rental contract, which shows up on the app the first time a costumer uses Ubresisimo. According to this two documents, the costumer rents a car with a driver for a given period of time, and Ubresisimo charges the costumer taking into account the duration of the rental.

Any person may be a Ubresisimo driver, he or she only has to register on the app, open a savings account, and go through a background check ran by one if the company's related parties. If the background check does not show any red flags, the driver is registered in the app and he or she can start rendering the service throughout the app.

Payments made by the costumers are received by Ubresisimo in a bank account. The 28th of every month, the money is transferred to the drivers. Ubresisimo charges

a fee to each driver equivalent to 40% of the services rendered by the driver. Such fee is deducted from the amount transferred to the drivers.

All the servers needed by Ubresisimo in order for the app to work are located in Patella, as well as the headquarters and all the company's offices.

- B. Since Ubresisimo wanted to operate in Granadonia, on April 1st 2018, it set up a company in said country, which is Ubresisimo Gra Ltd. (hereinafter Ubresisimo Gra). Ubresisimo Gra only operates in Granadonia and supplies services to its parent company regarding advertising, brand protection, and driver's registration. Therefore, Ubresisimo Gra meets Ubresisimo's needs of advertising in Granadonia, runs the background check for the drivers of said country and register's or rejects them depending on the results of the background check.

In order to carry out its business, Ubresisimo Gra owns one floor of a building where all its employees work. Ubresisimo Gra does not pay or receive money from the drivers by any concept. The profits obtained by Ubresisimo Gra arise exclusively from the above-mentioned services rendered to its parent company.

All operations between Ubresisimo and Ubresisimo Gra meet the requirements of the arm's length principle.

On February 10th, 2019 during Ubresisimo Gra's annual shareholders meeting, its sole share holder approved the distribution of dividends for 5 million pessets, payable on April 10th, 2019. Nonetheless, on April 2nd, 2019, Ubresisimo transferred all the economic rights derived from Ubresisimo Gra's shares in favor of XNH Inc., (hereinafter XNH) a private hedge fund located in Granadonia, by virtue of a Total Return Swap contract, in which the reference asset was the aforementioned economic rights. In accordance with the contract, XNH would be the owner of the economic rights and its obligations under the contract are to pay the total return of the reference asset as of November 30th of every year, during the duration of the contract. On the other hand, Ubresisimo (the receiving party) committed to a previously set rate payment in favor of XNH. The agreed upon rate was LIBOR plus 2%.

Accordingly, on April 10th, 2019, Ubresisimo Gra's paid dividends to XNH equivalent to 5 million pessets. Such payment was not taxed in Granadonia. Furthermore, on November 30th, 2019, XNH paid Ubresisimo a total amount of 5 million pessets, which, according to the parties to the Return Swap contract, represent the total return on the reference asset for the year 2019. Such payment was not taxed in Granadonia.

All operations between Ubresisimo and XNH meet the requirements of the arm's length principle.

- C. Bandz Inc. (hereinafter Bandz) is a fully owned subsidiary of Ubresisimo Gra Ltd., and it is duly incorporated under the laws of the Austral Republic. Bandz has only one asset: the domain name Ubresisimo.com. Said domain name was registered by Bandz one month after its incorporation in February 2009 and it has been its sole owner since.

Bandz licensed the domain name in favor of Ubresisimo, which uses it in all the world. In exchange for the right to use said domain name, Ubresisimo pays Bandz an annual fee of Three million pessets. From that amount, 400.000 pessets correspond to the right to use the domain name within Granadonia.

All the operations between Ubresisimo and Bandz meet the requirements of the arm's length principle.

In 2019, Bandz obtained net profits for 2.8 million pessets, which were taxed in the Austral Republic at a rate of 6%. Such special tax rate is due to a special tax regime applicable in the Austral Republic, according to which the profits arising from the exploitation of intangible property are taxed at a special 6% income tax rate for a 10-year term. While the income tax's general rate in said country is 25%.

III. Legal and conventional framework

Double taxation conventions

- A. Between Patella and Granadonia there is a double taxation convention in force since 2018, which follows the 2017 OECD Model Convention. Article 23 of said convention follows article 23B of the 2017 OECD Model Convention

Article 29 of such convention reads as follows:

“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.”

- B. Between the Austral Republic and Granadonia there is a double taxation convention in force since 2016, which follows the 2011 UN Model Convention.

Domestic legislation

- A. 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 pursuant to article 51.
2. Foreign entities, only with respect of their income sourced in Granadonia, whether they receive such income directly or through a branch office or a permanent establishment located therein.

Article 201. Notwithstanding the provisions set forth in the double taxation conventions signed by Granadonia, permanent establishment means a fixed place of business located within the country, through which the economic activity of a foreign person or entity is wholly or partially carried on.

It includes, among others, branches of foreign companies, agencies, offices, factories, workshops, mines, quarries, oil and gas wells, or any other place of extraction of natural resources.

A foreign person or entity will also be deemed to have a permanent establishment in Granadonia if another person, other than an independent agent, acts on behalf of such foreign person or entity and, in doing so, habitually concludes or has the power to conclude contracts, which are binding for the foreign person or entity. The foreign person or entity will be deemed to have a permanent establishment in Granadonia regarding the activities that said person performs for the foreign person or entity, unless such activities are limited to those mentioned in subparagraph (B) of this article.

A foreign person or entity shall not have a permanent establishment in Granadonia if:

(A) Its activity within the national territory are carried out by a broker or other independent agent provided that such independent agent acts within the ordinary course of his business. However, when the agent performs all or almost all of his activities on behalf of the foreign person or entity, or other companies which are

closely related with each other, such agent will not be considered an independent agent for the purpose of this article.

(B) All the activities carried out within the territory are auxiliary or preparatory.

Article 404. The tax administration is entitled to reclassify one or several items of income when they are derived from one or several transactions or arrangements, whose main or one of the main purposes were to obtain a reduced taxation. Therefore, the tax authority is entitled to change the tax consequences of said transactions or arrangements and tax them in accordance with the law.

Article 405. Notwithstanding any provision of any convention in force, a benefit under a 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 the Convention.

Section CFC

Article 957. The term “controlled foreign corporation” means any non-resident corporation if it is a subsidiary of a resident in Granadonia or if more than 50 percent of the total combined voting power of all classes of stock of such corporation entitled to vote, or the total value of the stock of such corporation, is owned or is considered as owned by residents in Granadonia, on any day during the taxable year of such foreign corporation.

For purposes of this article, stock owned, directly or indirectly, by or for a foreign corporation, foreign partnership, permanent establishment, or foreign trust shall be considered as being owned proportionately by its shareholders, partners, or beneficiaries. Stock considered to be owned by a person by reason of the application of the preceding sentence shall, for purposes of applying such sentence, be treated as actually owned by such person.

Article 958. If a controlled foreign corporation is controlled by one or several Granadonian Shareholders, in the terms of articles 957 and 959, such shareholders shall comply with the controlled foreign corporation rules set forth in Section CFC of the Income Tax Act.

Article 959. If a foreign corporation is a controlled foreign corporation at any time during any taxable year, every person who is a Granadonian shareholder of such corporation and who owns (within the meaning of article 957) stock in such corporation on the last day, in such year, on which such corporation is a controlled foreign corporation shall include in his gross income, for his taxable year his pro rata share of the corporation's Passive Income for such year.

For purposes of this section, the term "Granadonian shareholder" means, with respect to any foreign corporation, a Granadonian tax payer (as defined in article 58) who owns or is considered as owing (within the meaning of article 957) 10 percent or more of the total combined voting power of all classes of stock entitled to vote of such foreign corporation, or 10 percent or more of the total value of shares of all classes of stock of such foreign corporation.

Article 960. For the purposes of this section, Passive Income means:

(...)

7. Income obtained as consideration for the use of or the right to use any domain name, copyright of literary, artistic or scientific work, any patent, trade mark, design or model, secret formula or process or for information concerning industrial, commercial or scientific experience.

Article 961. If there is included in the gross income of a Granadonian Shareholder any item of income under articles 959 and 960, such Granadonian Shareholder shall be deemed to have paid so much of such controlled foreign corporation's foreign income taxes as are properly attributable to such item of income.

IV. Pleadings

In may, 2020 Granadonia's tax authority carried out an audit regarding the above-mentioned issues and claim the following:

- A. The Tax authority assessed that Ubresisimo has a permanent establishment in Granadonia for the services rendered to the users of the app. Therefore, Ubresisimo is liable for taxation in Granadonia regarding the income derived from the rendering of services to users located in Granadonia.
- B. The Tax Administration applied articles 404 and 405 of the Income Tax Act, which allows income reclassification, and considered that the income received by Ubresisimo in accordance with the Total Return Swap contract constitutes a



dividend, hence, it is taxable in Granadonia at a 15% rate pursuant article 10 of the double taxation convention in force between Granadonia and Patella.

- C. The Tax Administration states that the income obtained by Bandz is a passive income taxable in Granadonia following Section CFC of the Income Tax Act. Accordingly, the tax authority asses that this passive income is obtained by Ubresisimo and it is directly related to its permanent establishment in Granadonia. Therefore, it is taxable therein.

V. Current procedure

The case is now pending before Granadonia's 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 issues.