



## Iberoamerican Tax Moot Court 2021 Case Competition

### I. Issues

Ivan Triples Abusshon, better known as elListus, is a young Iberian national who makes a living sharing videos of diverse content on the social network called YouTube. Until 2020, Ivan has always lived in Iberia. Since March 8, 2018, he has lived, with his girlfriend, in a villa located in the municipality of Luxoria, a luxury suburb, close to Matritonia, the capital of Iberia. Ivan bought the mansion in cash for an amount of 1,500,000 Iberian dollars.

Tired of paying Personal Income Tax in Iberia, at the maximum marginal rate of 50 percent, he contacted the firm Wedeliver Paradise (non-fiscal) SL —experts in planning the wealth and tax situation of wealthy individuals—. They advised him to immediately transfer his tax residence to the Principality of Montanonia. Montanonia is a tiny country located between Iberia and Macrononia that, until a few years ago, was considered by Iberia as a tax haven. In 2012 Montanonia introduced, for the first time in its history, a personal income tax in its legal system. Montanonia's Income Tax levies personal income and business profits and professional income at a progressive tax rate ranging from 0% for income up to 24,000 Iberian dollars and 10% for income over 40,000 Iberian dollars, while the so-called “investment income” —which in very general terms includes capital income and capital gains— is taxed at a tax rate of 0% for income below 3,000 Iberian dollars and 10% for the greater ones. Montanonia has always used the same legal currency as Iberia. In 2017, and because of the changes made in the tax regulations of Montanonia, Iberia and Montanonia signed a Double Taxation Convention (DTC) that follows the OECD Model in its 2017 version.

On December 14, 2020, while playing Melda, on his YouTube channel, ElListus, commented that, on Christmas Day, he was moving to Montanonia. His motives were clear: his mother and sister, living to this day in Soleaica (another city in Iberia), would move their residence to Vikingonia in 2021, where the family was originally from. His friends from Matritonia had drifted apart for a long time and many of them were already living in Montanonia. Obviously, the tax factor helped, although, of course, it had not been crucial in making the decision.

Fulfilling his promise, elListus and his girlfriend Tirina Deasia, after dining with their families, undertook the road trip to the town of Escalas-Engordando in Montanonia where *EIAdelantado77*, a good *Youtuber* friend of Ivan has a mansion which he no longer uses, and that he has made available to elListus and his girlfriend until they decide where they will live in Montanonia. At the end of 2021, Ivan ended up acquiring another mansion in Montanonia for 1,800,000 dollars. Ivan did not want to get rid of his house in Luxoria, but based on the advice of his advisor in Wedeliver Paradise, he has made it available to his friend and *Youtuber Tontomalvado 66* who transferred his tax residence to the Principality of Liechtenstein two years ago. During 2021 *Tontomalvado 66* has been four times to Iberia (a total of 28 days), always staying at

the mansion of his friend. On September 1<sup>st</sup>, eListus sold the property to his friend *Tontomalvado 66* for \$ 1,800,000 Iberian dollars.

During 2021, EListus was in Matritonia presenting two promising new video games that had been developed by friends of his from the *start-up Gameslowbudg SL*. The promotions were held between March 11<sup>th</sup> and 15<sup>th</sup>, and July 9<sup>th</sup> and 16<sup>th</sup>. EListus always arrived to the capital the day before in the morning, returning the day after in the morning to Montanonia. During his two visits, and although he had the key to his home in Luxoria, he preferred to stay in a hotel because he knew that *Tontomalvado 66* and his partner, who were not having a good time, were in the house and he did not want to disturb them. As the game's programmers are friends, EListus “only” charged *Gameslowbudg SL* 20,000 Iberian dollars for participating in the presentations. However, knowing about his presence in Matritonia, many media wanted to interview him. For this reason, on March 12<sup>th</sup>, during primetime, EListus attended a televised debate on “The Straight TV” in which he answered more than thirty questions that essentially revolved around the change of his tax residence. On July 13<sup>th</sup>, he attended the show “Millionaires around the world” program on “Friends TV” in which, along with other successful professionals, he told how a *YouTuber* lives in Montanonia. He received 50,000 Iberian dollars for each appearance.

His girlfriend Tirina Deasia is an *influencer*. During the summer months of 2021 (June to September) —which Tirina spent in different hotels with Spa in Iberia— she uploaded photos and videos to her Instagram account. In 80 percent of these videos and photographs, she appeared with Ivan. The first photo was from June 2<sup>nd</sup> and the last video from September 28<sup>th</sup>. In both, Ivan appeared in the second row. Given her enormous success, an editor has asked Tirina to “write her story”. On January 8<sup>th</sup>, 2022, “I am Tirina” is published, it can be read on page 121: *“I met Mathilda (eListus's mother) on Christmas 2021. Ivan and I went to spend Christmas in Soleaica, at my lifelong apartment. I assumed that she had gone to live in Oscurópolis (Capital of Vikingonia) in the middle of the year, but no! She stayed in Soleaica in houses here and there. The woman showed up at my house on December 10<sup>th</sup> ... and she didn't leave until Three Kings Day! I will never invite a Vikingonian to my house again for a few days”*.

Ivan is fed up with commenting on videogames on his *YouTube* channel; he is no longer amused, and he is very tired of earning a living “locked in a room”. Very influenced by Tirina, he has decided to jump into other activities. In April 2021 and knowing that eListus was planning to spend his summer holidays in Iberia, Noentiendo, the Japanese video game giant, contacted him. The company intends to open one of its famous Game Centers in the Iberian city of Marfea and is interested in Ivan promoting the center. The center is intended to open on August 15<sup>th</sup>. Noentiendo proposes the following to Ivan: it will pay him and Tirina two nights of accommodation (days 14<sup>th</sup> to 15<sup>th</sup> and 15<sup>th</sup> to 16<sup>th</sup> of August) at the very famous Hotel Villalapierna, very close to the city of Marfea. The cost for Noentiendo adds up to 1,800 dollars. Ivan will attend on the 14<sup>th</sup> to a private photo session at the Game Center, and later with Tirina to the opening session on the 15<sup>th</sup>, when photos will also be taken. In the afternoon of

the 15<sup>th</sup>, Ivan will meet with the people in charge of the digital advertising at Noentiendo and they will choose 10 photographs from the two sessions in which there will always be an element that identifies the Game Center and the Noentiendo brand. Ivan will upload two photographs of his choice from the sessions to his Instagram account, although he will have to choose one from each photo session. A text is also agreed to accompany the two photographs. Ivan receives a payment of 80,000 Iberian dollars for uploading the photographs, something he does on August 16<sup>th</sup> from his home in Montanonia.

In economic terms, 2021 has been a good year for EListus. In addition to the aforementioned income and capital gains, he obtained the following revenue: 1) 1,460,000 euros for online advertising on *YouTube* through *Google AdSense*. 2) 1,100,000 euros for affiliate marketing generated by the commissions paid to EListus for purchases made by visitors to his *YouTube* channel using the links that appear on it. Of that amount, only 370,000 euros correspond to payments made by advertisers resident in Iberia. The rest corresponds to payments made by advertisers residing in the United States and different Latin American countries.

## II. Legal and conventional framework

### A. Double tax conventions

There is a DTC in force between Iberia and Montanonia, which follows the OECD Model in its 2017 version.

### B. Domestic legislation of Iberia

Regarding the tax residence of individuals, Iberia's National Tax Code prescribes:

**Article 15.** *It will be deemed that a taxpayer has his/her habitual residence in Iberian territory when any of the following circumstances occurs:*

a) *That the taxpayer stays more than 183 days, during the calendar year in Iberian territory. To determine this period, sporadic absences will be counted, unless the taxpayer proves his tax residence in another country. In the case of countries or territories considered as tax havens, the Tax Administration may require proof of permanence therein for 183 days in the calendar year.*

b) *That the main core or the base of the taxpayer's activities or economic interests are located in Iberia, directly or indirectly.*

*In any case, individuals of Iberian nationality who prove their tax residence abroad will maintain their status as Iberian residents for tax purposes, unless they prove that they have severed all substantial ties with Iberia. This rule will be applied in the tax period in which the change of residence takes place and during the three following tax periods."*

The most relevant source rules in Iberian National Tax Code are the following:

**“Article 34.** *The following are considered income obtained in Iberian territory:*

*a) Income from economic activities or exploitations carried out through a permanent establishment located in Iberian territory. It will be understood that an individual or entity operates through a permanent establishment in Iberian territory when by any title it has at its disposal, continuously or regularly, facilities or workplaces of any kind, in which it carries out all or part of its activity, or acts in it through an agent authorized to contract, in the name and on behalf of the taxpayer, and who regularly exercises those powers.*

*b) Income from economic activities or exploitations carried out without a permanent establishment located in Iberia, if another paragraph of this article is not applicable, in the following cases:*

*1. When the economic activities are carried out in Iberian territory.*

*2. In the case of provision of services, if such services are used in Iberian territory, in particular those referred to carrying out studies, projects, technical assistance or management support. Services will be deemed to be used in Iberia if they serve economic activities carried out in Iberian territory or refer to assets located therein.*

*3. Income derived, directly or indirectly, from the personal performance in Iberian territory of artists and athletes, or from any other activity related to that performance, even when it is received by a person or entity other than the artist or athlete.*

*c) Work income when they derive, directly or indirectly, from a personal activity carried out in Iberian territory.*

*d) Capital gains when they come, directly or indirectly, from real estate located in Iberian territory or from rights relating thereto”.*

### **C. Domestic legislation of Montanonia**

Montanonia copied the National Tax Code from Iberia and, therefore, its tax residence regulation is identical, except for the last paragraph of Article 15, which the Montanonia legislator decided not to adopt.

### **III. Pleadings**

In May, 2022 Iberia’s Tax Administration conducted a tax audit to Ivan. As a result, and in relation to the above-mentioned issues, the Tax Administration issued a tax



settlement that states that Ivan was a tax resident in Iberia during 2021 and, therefore, he must pay the Iberian Personal Income Tax in 2021 on his worldwide income.

Ivan challenged the decision and the Regional Court of Matritonia agreed with him, stating that, according to the DTC between Iberia and Montanonia, Ivan could not be considered a tax resident in Iberia. However, the Court ruled that all the income obtained by Ivan (except that corresponding to the free transfer of the home by *EI Adelantado 77*) could be subject to tax in Iberia pursuing the internal Iberian Law and the DTC between Montanonia and Iberia.

The Tax Administration and Ivan appealed the decision to the Supreme Court of Iberia. The tax authorities reaffirm that Ivan is a resident of Iberia in accordance with Iberian domestic law and the DTC and add that, in any case, according to article 29 (9) of the DTC, the benefits from the treaty would not be applicable to Ivan. Ivan appeals confirming his resident status in Montanonia and indicating that only the income corresponding to the presentation of *Gameslowbudg* games can be taxed in Iberia.

#### **IV. Current procedure**

The case is now pending before the Supreme Court of Iberia, which can rule on any aspect of fact or law, whether it has been raised before during the procedure or not. 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.