



Iberoamerican Tax Moot Court 2022 Case Competition

I. Entities and individuals

- A. James Gilmore, a professional diver resident of Sombreronia.
- B. Chunnel Inc. company duly incorporated under the laws of the Grey Kingdom.
- C. Straight LLC, formed under the laws of the Atlantic States.

II. Issues

- A. James Gilmore is a tax resident of Sombreronia who lives between Santafe (the capital of Sombreronia), Miami, and Paris. James is a renown professional diver whose expertise is underwater welding. Due to his abilities as a diver, in November 2020, James was offered a five-month job in the Gray Kingdom in order to serve as a diver in the Gray Kingdom Sea to repair the construction of the Geastar, an underwater train. When he received the offer, James wanted to turn it down, as he had not visited the Grey Kingdom for over two years, and he disliked the country's weather. Nevertheless, after discussing the matter with several colleagues, he accepted the job because it would positively impact his reputation, which could boost his career as a diver. Therefore, he signed a contract with Chunnel Inc., a company resident in the Gray Kingdom that was in charge of the underwater repairs required by the Geastar. According to said agreement, James was entitled to a monthly salary of 20,000 Goldeneuros from December 1st, 2020, to April 30th, 2021, and Chunnel Inc. had to provide him with lodging in the Gray Kingdom for five months. During that time, James had to work at Gray Kingdom Sea for six hours a day from Monday to Saturday, starting at 9:00 am every working day. As soon as he finished the job, on May 1st, James left the Gray Kingdom, and the labor agreement ended smoothly. According to - among other provisions- Article 7 of the double taxation convention in force between Sombreronia and the Grey Kingdom, Chunnel Inc. made the agreed-upon payments without withholding of any kind.
- B. James is the sole owner of the brand Gilmore Diver Academy, which is used by several academies worldwide that train people on scuba diving and underwater welding. Since 2006, eight Gilmore Diver Academies have opened in different countries with excellent results. Although James does not own any of the academies, he trains every diver that will act as a trainer. In exchange for the

right to use the brand, each academy pays James an annual fee of 70,000 Goldeneuros plus 5% of the gross sales made by the academy during the year before in which the payment is due. The first academy was opened by Chunnel Inc. in the Gray Kingdom. This academy was founded in March 2006 and has had over 5000 students every year.

In June 2021, James realized that even though the academy located in the Gray Kingdom was the biggest one in terms of students, it was not the one that paid him the most for using his brand. In fact, from 2015 to 2021, such academy only paid him a little over 2.5 million Goldeneuros, which was the same amount paid by the academy located in Santafe, which is the second smallest academy vis-a-vis students. Due to this situation, James decided to hire an accounting firm to go over the official books of Chunnel Inc. However, the company denied access to its books, claiming that it also had other business activities, different from the Gilmore Diver Academy, in which James had nothing to do. James took the matter to the courts of the Gray Kingdom, and, in November 2021, a judge granted James access to Chunnel Inc. books. After auditing the books, James learned that, by means of fraudulent schemes, from 2015 to 2021, Chunnel Inc. had kept from him earnings derived from the academy in the amount of 50 million Golderneuros. In the light of these events, in November 2021, Chunnel Inc. offered James a settlement agreement that stated that the company would pay him 2.5 million Goldeneuros for the use of the brand Gilmore Diver Academy from 2015 to 2021. James signed the agreement, and Chunnel Inc. paid the agreed-upon amount on December 20th, 2021, without withholding of any kind, in accordance, among others, with Article 12 of the double taxation convention in force between Sombrotonia and the Grey Kingdom.

- C. Aside from its main activities, Chunnel Inc. is the sole member of Straight, LLC, a limited liability company formed under the laws of the Atlantic States and a tax resident therein. Straight managed to develop a chip that is able to consolidate all bank cards into a single smart card. This smart card is linked to the user's phone throughout an app and enables the customer to purchase anything and choose the bank card used to make the payment. In 2021, by selling its smart card, Straight made over 10 million Goldeneuros in gross income and reported net benefits of 2 million. Nonetheless, Straight did not distribute dividends that year.

In the 2021 income tax return filed by Chunnel Inc. in the Gray Kingdom, the company registered the income obtained by Straight LLC. Likewise, Chunnel Inc. credited from its income tax the tax paid in the Atlantic States regarding Straight's operations therein.

III. Legal and conventional framework

Double taxation conventions

- A. There is a double taxation convention in force between Sombreronia and the Gray Kingdom, which follows the 2017 OECD Model Convention. Article 23 of said convention follows Article 23B of the 2017 OECD Model Convention.

Article 21 of said treaty states:

“1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Convention and arising in the other Contracting State may also be taxed in that other State”.

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. There is no double taxation convention in force between the Atlantic States and the Grey Kingdom.

Domestic legislation

A. The Gray Kingdom Income Tax Act sets forth:

Article 215.

1. This article applies if:

- (a) a person performs the duties of employment as a diver or diving supervisor in the Gray Kingdom, and
- (b) the duties consist wholly or mainly of seabed diving activities.

2. The performance of the mentioned duties of employment is treated for income tax purposes as the carrying on of an independent activity in the Gray Kingdom.

3. For the purposes of this section the following are seabed diving activities:

- (a) taking part as a diver in diving operations concerned with underwater infrastructure or the exploration or exploitation of the seabed, its subsoil, and their natural resources, and
- (b) acting as a diving supervisor in relation to any such diving operations.

Article 382. Notwithstanding the provisions of any applicable tax treaty, a payment made by a resident to a non-resident may be deductible only if such payment is subject to withholding tax.

Article 644. Subject to the provisions of this Act, where a resident derives income in a territory outside the Grey Kingdom, income tax effectively paid by that resident in the other territory may be credited against the Grey Kingdom income tax. Such credit shall not exceed the amount of tax that would have been triggered in the Grey Kingdom for the same income.

IV. Pleadings

In May 2022 the Grey Kingdom tax authority conducted a tax audit regarding Chunnel Inc. 2021 income tax. As a result, and in relation to the above-mentioned issues, the Tax Administration issued a tax settlement that states:

A. Chunnel Inc. should have withheld James Gilmore non-resident income tax in relation to the amounts paid in consideration for the services he rendered to the company as a diver. Given that Chunnel Inc. did not withhold any amount, such payment is not deductible, pursuing Article 382 of the Grey Kingdom Income Tax Act. The Tax Administration argues that even if, for income tax purposes, a diver



is considered self-employed, such domestic fiction is not applicable with respect to the double tax convention between Sombrotonia and the Grey Kingdom. Therefore, the applicable provision is Article 15 of said treaty.

- B. Chunnel Inc. should have withheld James Gilmore non-resident income tax over the amounts paid in compliance with the settlement agreement executed between Chunnel Inc. and James Gilmore, following Article 21 of the double taxation convention in force between Sombrotonia and the Grey Kingdom. Given that Chunnel Inc. did not withhold any amount, such payment is not deductible, pursuant to Article 382 of the Grey Kingdom Income Tax Act.
- C. The Tax Administration rejected the tax credit registered by Chunnel Inc. regarding the taxes paid in the Atlantic States because the income that triggered such taxes was not obtained by Chunnel Inc. Therefore, the requirements stated in Article 644 of the Grey Kingdom Income Tax Act are not met.

Chunnel Inc. challenged the decision, and the Regional Court of the Grey Kingdom agreed. The court ruled that, according to the tax treaty between the Grey Kingdom and Sombrotonia, the payments made to James Gilmore for his services as a diver constitute business profits following article 7 of such convention and Article 215 of the Income Tax Act. However, the Court ruled that the payment made regarding the settlement agreement between Chunnel Inc. and James Gilmore should have been subject to withholding tax; hence, the court denied the deduction of such payment. Furthermore, the court stated that the tax paid in the Atlantic States might not be credited from the income tax levied in the Grey Kingdom by virtue of Article 644 of the Income Tax Act.

The Tax Administration and Chunnel Inc. appealed the decision to the Supreme Court of the Grey Kingdom. The tax authority reaffirmed its position. Chunnel Inc. added that the tax administration's position regarding the tax credit was inconsistent, because although it denied the tax credit, it did not question the fact that Chunnel Inc. registered in its tax return the income obtained by Straight LLC.

V. Current procedure

The case is now pending before the Supreme Court of the Grey Kingdom, which can rule on any aspect of fact or law, whether it has been raised before during the procedure. 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 and general principles of law may be invoked. Please note that the Court will not assess any procedural issue.