



Iberoamerican Tax Moot Court 2024

Case Competition

I. Issues

Esmeralda is a 65-year-old landowner born and raised in Orchidonia. Throughout her life, Esmeralda has amassed wealth valued around 10 million Liberty Coins (LC), primarily through real estate investments both in Orchidonia and internationally. By 2022, about 15% of her immovable property was located outside of her native Orchidonia. Despite opportunities to travel, she preferred staying close to her local assets, friends, and family, which is why she rarely left her homeland.

Esmeralda was a mother to four sons: Amatisto, Topazio, Lazulio and Juan. Amatisto and Topazio had spent most of their lives in Goldonia, while Lazulio and Juan stayed by Esmeralda's side most of the time, leaving Orchidonia only on special occasions.

In the twilight years of Esmeralda's life, the world she knew underwent profound changes. Since 2021, a massive international movement has fervently advocated for the implementation of wealth taxes. Led by a coalition of diverse organizations and political groups, and drawing inspiration from the research of renowned economists, the movement promoted such taxes as a means to support Sustainable Development Goals (SDGs). Their proposal's appeal was so compelling that it influenced numerous national elections around the world.

Notably, in June 2022, this wave of change swept through Orchidonia, propelling the Disenchantment Party to an unprecedented electoral victory. The party, known for its support for wealth redistribution, secured the presidency for the first time in Orchidonia's history under president-elect Robyn Goodfellow. During his campaign, President Goodfellow boldly declared that, if necessary, his government would not hesitate to expropriate assets from the wealthy to redistribute them among the less fortunate. This promise crystalized that same year through the enactment of several tax reforms that came into effect in December 2022. The reforms included: (i) the introduction of a wealth tax for individuals; (ii) a substantial increase in the inheritances and gifts tax's rate (from 10% to 40%). Income tax law in Orchidonia has a complementary tax known as occasional tax that includes as taxable events inheritances and gifts; (iii) and the implementation of a 20% diverted taxable base for wealth, income, inheritance and gift tax. Plus, from 2023 to 2030, all Orchidonian residents with a net worth exceeding 3 million LC are to be subject to a 1% tax on their net worth—a measure not mirrored in Goldonia, where the newly elected President, Liber T. Freemarket, vowed not to endorse any wealth tax during his four-year term. This stark difference in tax policy led to a migration of capital, as documented by official statistics, which showed that investments from Orchidonian

residents into Goldonia surged by 80% in 2023 and 70% in 2024. Media reports highlighted that after President Robyn Goodfellow's election and the introduction of the tax bill to Congress, many affluent individuals began reorganizing their assets. These maneuvers, aimed at protecting their wealth from potential expropriation, included relinquishing their residency in Orchidonia and devising strategies to safeguard their capital.

Amidst this climate of uncertainty and aggressive fiscal policies, Esmeralda's life took a dramatic turn. In June 2022, shortly after the Disenchantment Party's victory, she was diagnosed with terminal cancer, with only six months left to live. The devastating news and the ominous threat of substantial wealth erosion due to the new tax measures compelled Esmeralda to take decisive action to safeguard her family's financial future. On October 1st, 2022, she incorporated a legal entity in Goldonia, to which she contributed all of her assets. She named the company "The Salvation Inc.," because not only did it safeguard her wealth from looming taxes and possible expropriation, but it also aimed to minimize future litigation among her sons, who were notoriously discordant.

Esmeralda appointed Amatisto and Topazio as directors and board members, leveraging their expertise in wealth management. Following their strategic plan to internationalize and diversify The Salvation Inc., Esmeralda then sold the bare title to her stock in The Salvation Inc. to her four sons for 750,000 LC, in December 2022, while retaining the economic rights associated with the stock. This operation was permitted under Orchidonia's and Goldonia's private law and was paid in full before 2022 expired. This strategic move ensured that Esmeralda maintained comprehensive economic and political rights as a shareholder throughout her remaining life. By the end of 2022, Esmeralda had 3 million LC in cash, and her sons' held shares in The Salvation Inc. valued at 750,000 LC.

In March 2023, due to the Esmeralda fast Cancer progression the whole family decided to transfer their rights to an irrevocable non-regulated Trust in Goldonia, entailing the elimination of the distinction between the bare ownership and usufruct. The trust included a clause that specified a minimum annual payment to each family member. A professional trustee was appointed to manage the trust assets. This included investment decisions, property management, and distribution of trust income. By placing their assets in an irrevocable trust, the family attempted that these assets were legally protected from creditors, lawsuits, and other financial risks. Finally, the trust deed contained a 'dynasty clause' that attempted to ensure that any future-born family members would automatically become beneficiaries of the trust. The Supreme Court of Orchidonia has consistently ruled that neither settlors nor beneficiaries have rights in irrevocable trusts for tax purposes and they will receive taxable income from the trust in the conditions defined in that arrangement. Esmeralda spent her final days in Orchidonia indulging in exotic and luxurious experiences and seeking experimental treatments for her cancer. She passed away in Orchidonia on April 2nd, 2024, just over a year after her terminal diagnosis.

II. Legal and conventional framework

Double taxation conventions

- A. There is a tax treaty in force between Orchidonia and Goldonia, which follows the 2017 OECD Model Convention.

Article 13 of such treaty provides:

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.
2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that other State.
3. Gains that an enterprise of a Contracting State that operates ships or aircraft in international traffic derives from the alienation of such ships or aircraft, or of movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that State.
4. Gains derived by a resident of a Contracting State from the alienation of shares or comparable interests, such as interests in a partnership or trust, may be taxed in the other Contracting State if, at any time during the 365 days preceding the alienation, these shares or comparable interests derived more than 50 per cent of their value directly or indirectly from immovable property, as defined in Article 6, situated in that other State.
5. Gains from the alienation of any property, other than that referred to in paragraphs 1, 2, 3 and 4, shall be taxable only in the Contracting State of which the alienator is a resident.

Article 22 of said convention states:

1. Capital represented by immovable property referred to in Article 6, owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other State.
2. Capital represented by movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State may be taxed in that other State.

3. Capital of an enterprise of a Contracting State that operates ships or aircraft in international traffic represented by such ships or aircraft, and by movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that State.
4. All other elements of capital of a resident of a Contracting State shall be taxable only in that State.

Other treaties

There is a Bilateral Investment Treaty between Goldonia and Orchidonia that follows the EU Model Clauses for negotiation or re-negotiation of Member States' Bilateral Investment Agreements with third countries, 2023.

Domestic legislation

A. Orchidonia's Tax Code sets forth:
Section 527 – Wealth tax

1. A tax called the wealth tax is hereby created.
2. The following are subject to the tax:
 - 2.1. Individuals who are tax residents of Orchidonia.
 - 2.2. Non-resident individuals with respect to the real estate assets located in Orchidonia.
3. Taxable Event: persons mentioned above with a net worth greater than 3 million LC as of the first (1st) of April of 2023 2024, 2025, 2026, 2027, 2028, 2029 and 2030 shall be subject to a tax equal to 1% of their net worth.

B. Orchidonia's Tax Code sets forth:

Section 666 – Malefic Diverted Tax (MDT)

1. The MDT applies to all arrangements that result in the artificial diversion of the taxable base of income or wealth from ORCHIDONIA.
2. The taxable event occurs when ORCHIDONIA's tax base is artificially diverted from the taxing jurisdiction.

The MDT liability arises in the taxable period in which ORCHIDONIA's taxable base would arise absent the artificial arrangement.

3. The determination of an artificial diversion of taxable base will be based on the Principal Purpose Test (PPT) as defined in section 888.
4. An additional tax rate of 20% will be applied to the amount of taxes artificially reduced under the PPT.
5. The MDT will apply in addition to the taxes artificially reduced and any administrative fines.
6. Entities must report any arrangements that could potentially fall within the scope of the MDT to the tax authorities.
7. This rule is effective from January 1st, 2023, irrespective of whether the particular arrangements were concluded or entered into before or after this date.

C. Orchidonia's Tax Code sets forth:

Section 888 - Principal Purpose Test (PPT):

A tax benefit shall not be granted 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 arrangement or transaction that resulted directly or indirectly in that benefit, unless 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 tax law.

Note: concerning this paragraph, the Government stated during the Congress discussion of the bill: "The PPT should be applied in line with the OECD's guidance, which requires a holistic approach to assess the aims and outcomes of the arrangement, considering all relevant facts and circumstances."

III. Pleadings

In 2024, the tax authority of Ochidonia conducted a tax audit regarding the various operations carried out by Esmeralda and her family in 2023 and 2024, due to the absence of filing and payment of Esmeralda's wealth tax and her descendents' inheritance and gifts tax. As a result, and in relation to the above-mentioned disputes, the Tax Administration issued a tax settlement that states:

- A. All of Esmeralda's descendents are subject to the new tax rate on inheritance and gift tax according to Orchidonia's domestic legislation.
- B. Esmeralda's children owe wealth tax for the years 2023 and 2024.



- C. All of Esmeralda’s descendents are subject to the MDT according to Orchidonia’s domestic legislation due to the creation of a corporate structure that allowed them to acquire all their mother’s assets avoiding inheritance and gift taxes, and the wealth tax.

IV. Current procedure

The case is now pending before the Supreme Court of Orchidonia, 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.