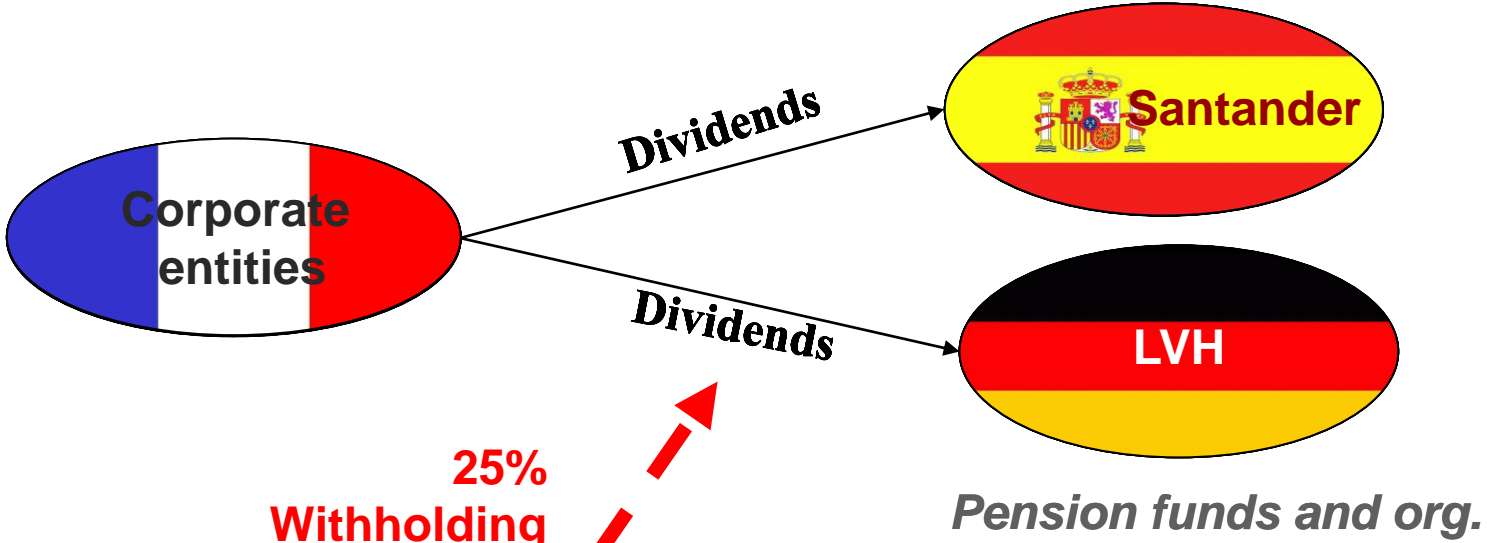


Liability vs tax-exemption: *interpreting residence provisions in Tax Treaties*

- CE, 9th November 2015, *Santander Pensiones SA EGFP*, n° 371132
- CE, 9th November 2015, *min. vs Landesärztekammer Hessen Versorgungswerk (LVH)*, n° 370054
- CE, 20th May 2016, *min. vs Sté Easyvista*, n° 389994

Facts and proceedings of the Santander and LVH Cases



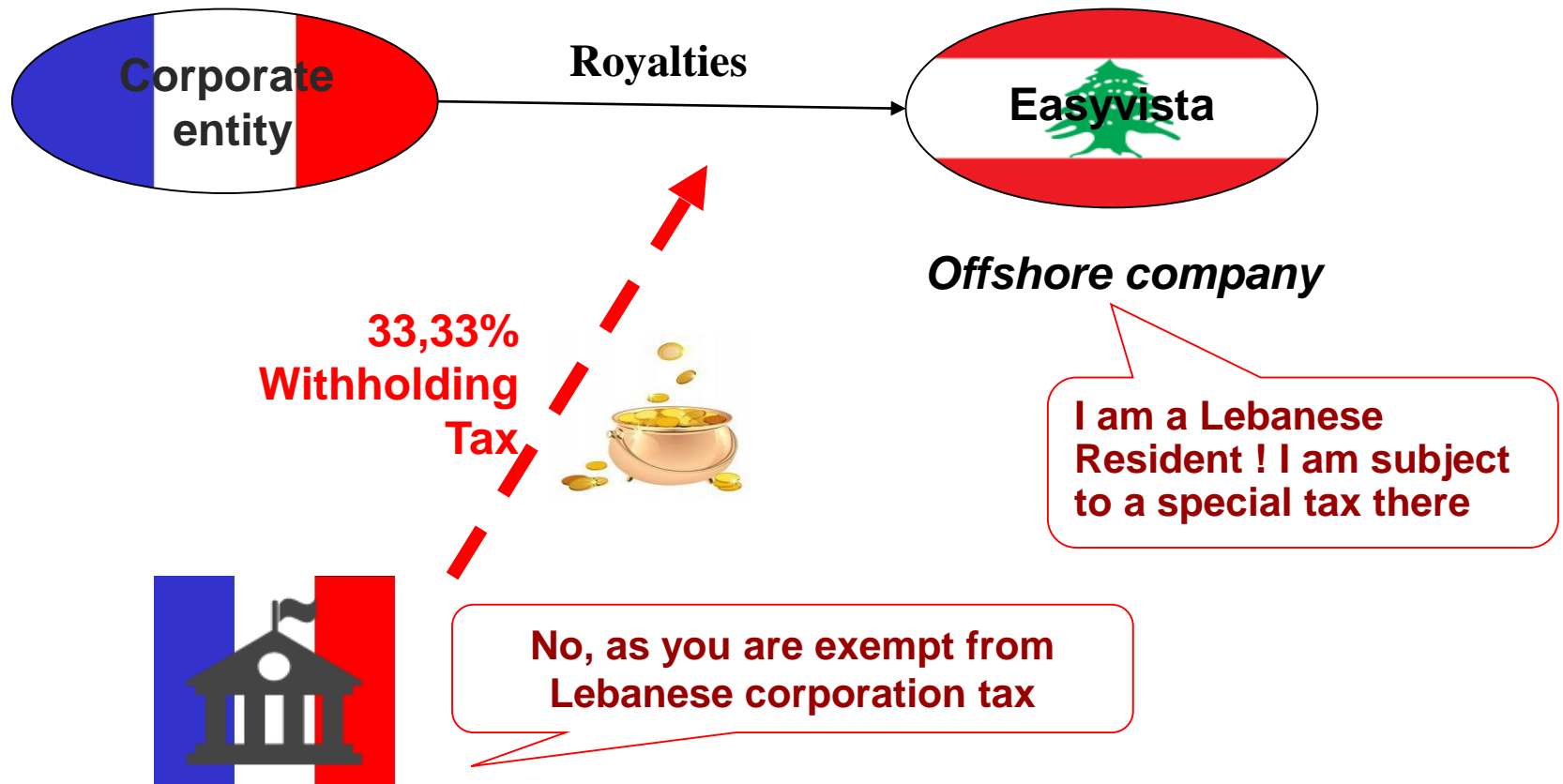
25%
Withholding
Tax



No, as you are tax-exempt there...

But we are Spanish and German residents! 😱

Facts and proceedings of the Easyvista Case



Issue

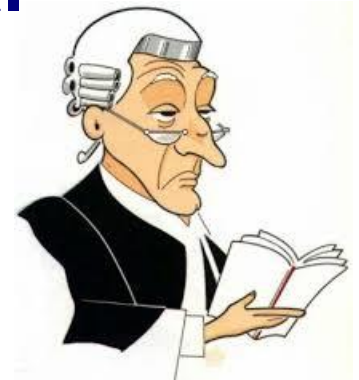
“ For the purposes of this Convention, the term “**resident** of a Contracting State” means any person who, under the laws of that State, is **liable to tax** therein by reason of his domicile, residence, place of management or any other criterion of a similar nature (...).”

Issue

➔ Can a **tax-exempt** entity be considered as a **tax resident** for Treaty purposes ?

Treaties Interpretation principles

- **Vienna** Convention of 23rd May 1969 on the Law of Treaties : **not ratified** by France
- Priority given by the Judge to the **literal** interpretation method
=> Plain meaning + context
- Other subsidiary interpretation tools
=> **Object and purposes** of the Treaty, intention of the Contracting Parties, ...



The reasoning of the Conseil d'Etat (I)

- “Liable to tax” = ?
- Principle : interpretation “*in accordance with the **ordinary meaning** to be given to the terms of the treaty in their context and in the light of its **object and purpose.**”*”
- Object of the Treaty : **avoiding double taxation**

The reasoning of the Conseil d'Etat (II)

- Consequence: persons who are **tax-exempt** because of their **activity** or status are **not resident** for tax treaty purposes !

- 0 % corporate tax exemption

- The issue of companies subject to a lump-sum tax



Questions and criticisms raised by these Case-Laws (I)

- **Confusion** of object and purposes?



- Intermediate approach which coincides with **none of the meanings** ordinarily given to the words « assujetti à »

Questions and criticisms raised by these Case-Laws (II)

- **Under which conditions** may a tax exempt entity be deprived of tax treaty benefits?
 - **Loss-making** companies?
 - Persons paying no tax in an income tax **scale** system?
 - **Temporarily** tax-exempt companies?
 - Exporting companies
 - Innovative firms
 - New firms settled in urban free zones...



*Thank you for your
attention!*