Cash pooling under scrutiny

The Supreme Court redefines arm's length remuneration in cash pooling arrangements

Tax Alert

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Supreme Court Judgment 985/2025 of 15 July 2025 (appeal no. 4729/2023), on cash pooling

On 15 July this year, the Supreme Court passed a judgment (985/2025) that has redefined arm's length remuneration in cash pooling arrangements. In its ruling, the Court held that deposits and withdrawals should be subject to symmetrical interest rates and that the credit rating applicable to loan operations was that of the group as a whole and not the borrowing entity. It thus rejected the cassation appeal lodged against the National Court judgment of 23 October 2023.

15 July 2025 marked the issue of a Supreme Court judgment that will have major ramifications for multinational groups with cash pooling arrangements in place, and further increase the importance of the functional analysis when it comes to determining arm's length remuneration in intra-group financing transactions.

In the case at hand, the group had applied the arm's length principle to determine a long-term (five-year) interest rate for fund withdrawals, which was based on the credit rating of the recipient, and a lower interest rate for fund deposits.

In a tax audit of the group's corporate income tax for 2014 and 2015, the State Tax Agency conducted an exhaustive functional analysis in which it concluded that:

a. The managing entity neither decided which entities received the funds contributed by others, nor had the authority to reject contributions of funds by the contributing entities;

b. The assets, i.e. the funds, belonged to the contributing entities, with no transfer of ownership to the managing entity, which, moreover, had no personnel; and

c. The insolvency risk of the borrowers, were they to fail to repay the amounts received, was assumed by the entities contributing the relevant funds, not the entity that managed the cash pooling arrangement, which had neither control over the risk nor the financial capacity to assume the consequences of their potential insolvency.

On the basis of this functional analysis, the tax authorities ruled that the entity managing the cash pooling arrangement performed a purely administrative or management role and that, as such, it should not be remunerated for the difference in the interest rates applicable to deposits and withdrawals of funds.

They thus held, in view of the reciprocal nature of the system, that the **remuneration** for the two transactions **should be symmetrical, short-term** and linked to the **credit rating of the group**, rather than that of the individual borrower.

The above assessment decision was appealed before the Central Economic-Administrative Tribunal ("CEAT"), which upheld the Spanish tax authorities' assessment. This position was likewise confirmed by the National Court ("NC") on 23 October 2023, which rejected the appeal lodged against the CEAT decision.

With this judgment, the Supreme Court confirms the dynamic interpretation of the OECD Transfer Pricing Guidelines, applying Chapter X on financial transactions. Moreover, while acknowledging the need to analyse the specific facts and circumstances of each cash pooling system in view of their variety, it draws two key conclusions:

a. the interest rate on the amounts contributed and received by participating entities must be symmetrical; and

b. the credit rating to be applied to loan transactions is that of the group as a whole and not that of the borrowing entity.

This judgment thus confirms the approach taken by the tax authorities in their transfer pricing adjustments with respect to cash pooling arrangements and will doubtless lead multinational groups to reconsider their transfer pricing policies to date.

This will be a challenge for groups that have opted for asymmetrical interest rates in their cash pooling arrangements. But is this the end of the road, or are other alternatives available?

It is worth noting that the position of the Spanish tax authorities does not necessarily reflect international consensus, as the use of asymmetrical interest rates is still an accepted practice in many countries. Taxpayers opting to continue with their existing policies may wish to consider the mutual agreement procedure as a means of defending their approach and seeking a solution that is aligned with global standards.

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