



# Spain–U.S. Implementing Binding Arbitration on Tax Treaty Matters

## Certainty in International Tax Disputes

Tax Alert



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On 2 February, the U.S. Internal Revenue Service published the arrangement reached between the Spanish and U.S. Competent Authorities for the implementation of the arbitration process provided for in paragraphs 5 and 6 of Article 26 of the Convention between the Kingdom of Spain and the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, and its Protocol, signed in Madrid on February 22, 1990, as amended by the Protocol and its Memorandum of Understanding signed in Madrid on January 14, 2013 (hereinafter, collectively the “Convention”).

With the signing of the arrangement by the U.S. and Spanish Competent Authorities (on 20 November and 12 December 2025, respectively), arbitration is effectively implemented in the context of the Mutual Agreement Procedures (hereinafter, “MAP”) initiated between the two countries. This ensures that, within a reasonable time frame following the start of an arbitration proceeding (generally, 300 days), the taxpayer receives a solution that eliminates taxation not in accordance with the Convention, including double taxation.

The arrangement neither expands nor restricts a taxpayer’s right to seek arbitration since the entry into force in 2019 of the 2013 Protocol. Article 26 of the Convention itself excludes from arbitration:

- non-taxpayer specific cases;
- cases where a decision with respect to such case has been rendered by a court or administrative tribunal of either State;
- cases regarding conflicts of residency regarding non-individuals;
- cases of elimination of double taxation in cases not provided for in the Convention; or
- any other cases for which both competent authorities have decided that the case is not suitable for resolution through arbitration.

The novelty of the arrangement between the Competent Authorities lies in **how arbitration must be applied**, thus enabling its operability.

Specifically, the arrangement establishes important details on the process, such as (1) the rules regarding the composition of the panel, (2) the method to resolve the arbitration, (3) the role of the taxpayer, and (4) the date of effects of the arbitration provision.

## Composition of the Panel

As regards the composition of the panel, the arbitration panel will be composed of three arbitrators: one appointed by each Competent Authority and a Chair appointed by the two of them, selected from a list of candidates pre-agreed by the Competent Authorities.

The arbitrators must have significant experience in international tax matters, be independent, and maintain such independence for a reasonable period of time. However, the arrangement does not define how the reasonable period for maintaining such independence should be measured. The appointment of employees — current or within the past year — of the tax administrations, the Treasury Department, or the Ministry of Finance of either State is excluded, as is any other person related to the matter under dispute. In addition, the Chair may not be a resident, citizen, or national of either of the States concerned.

## Method of arbitration

Regarding decision-making, the arrangement confirms the application of the “**Baseball Clause**” (also known as “Last Best Offer”), so that the arbitrators, by majority, must choose between the positions proposed by the Competent Authorities to resolve the case, with no possibility of establishing an intermediate or alternative position.

## Role of the Taxpayer

Although arbitration forms part of the MAP, with the limitations this implies for the taxpayer, the arrangement grants the Taxpayer a certain role beyond the mere initiation of the procedure. The Taxpayer may not provide new information that was not previously furnished to the Competent Authorities, but may submit its position, not to exceed 30 pages plus annexes, to the arbitration panel.

Another decisive moment for the taxpayer is the acceptance or rejection of the Arbitration Panel Determination. Once notified, the Concerned Person will generally have 45 days to accept it, and must withdraw any appeals already initiated. If this is not done, or if acceptance is not timely communicated, the decision will be deemed rejected, the case will be closed, and neither a MAP nor arbitration on the same matter could be requested again.

## Date of effects of the arbitration provision

Now that its mode of application is settled, one of the most relevant issues, is **when the arbitration provision is operative**.

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The arrangement is clear: it will not apply to MAPs initiated before the entry into force of the 2013 Protocol (27 November 2019), since at that time the right to resort to arbitration was not provided for in the Convention.

Conversely, those persons who filed their MAP request after that date may resort to arbitration, provided that the conditions of the Convention are met and two years have elapsed without an agreement between the Competent Authorities. However, if the MAP request was submitted before 12 December 2025, the Concerned Persons must wait an additional two years from that date to request arbitration.

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