AUGUSTAABOGADOS

SPANISH SUPREME COURT RULING ON TRANSFER PRICING IN CASH POOLING STRUCTURES.
JUDGMENT 985/2025 OF 15 JULY 2025 (REC. 4729/2023)

On 15 July 2025, the Spanish Supreme Court issued Judgment 985/2025, which is highly relevant for multinational groups operating centralized treasury systems ("**cash pooling**"). The judgment ends a long-standing dispute with the Spanish tax authorities, confirming earlier decisions of the Spanish Central Tax Tribunal (administrative tax court of first instance, *TEAC*) and the Spanish National Audience (*Audiencia Nacional*). It now establishes binding case law in Spain on the transfer pricing treatment of cash pooling arrangements.

1.1. Case Background

The dispute involved a Spanish subsidiary of a multinational group (Bunge) that participated in a "*zero-balancing*" cash pooling system managed by its Dutch group company (Bunge Finance BV). Under this arrangement, the Spanish entity's daily cash surpluses were swept to the central account, while its financing needs were covered from the same pool. The Spanish tax authorities challenged two key aspects:

- The company treated outflows as "deposits" and inflows as "loans", applying different interest rates (since the Spanish subsidiary was remunerated at a lower rate when contributing funds than the higher rate it paid when borrowing).
- The Dutch cash pooling company kept the difference between the interest received and the interest paid as consideration for its management services.
- The comparability analysis used the subsidiary's individual credit rating and long-term benchmarks, rather than the group's consolidated credit standing and short-term conditions.

According to the Spanish tax authorities, these asymmetries failed to meet the **arm's length principle** ("*principio de plena competencia*"), which requires that transactions between related group companies be valued as if they had been carried out by independent parties under comparable market conditions. In this case, the tax authority considered that independent lenders and borrowers would not have accepted such a spread.

The tax authority also rejected the use of the Spanish subsidiary's individual credit rating and long-term benchmarks in the comparability analysis, holding instead that the relevant reference should have been the **group's consolidated credit standing** and short-term financing terms. Finally, it concluded that the pool leader merely performed administrative coordination tasks, without assuming risks, and therefore could not justify retaining a financial margin.

1.2. The Supreme Court's position

The Supreme Court agreed with the tax authority and held that:

1. **Interest rates must be symmetrical** for funds provided and funds received within the pool. Differentials that shift profit away from Spain in favour of the pool leader are not at arm's length.
2. **Group credit rating must prevail** over the subsidiary's individual rating, since the system relies on collective group risk and funding capacity.
3. In the case at hand, **the pool leader did not perform genuine financial functions nor assume significant risks**. Its functions were limited to coordination and record-keeping tasks, without assuming risks. As a result, its remuneration should be restricted to a modest cost-plus mark-up reflecting low value-added administrative services, rather than any financial margin as if it were a credit institution.

1.3. Consequences for Spanish Subsidiaries Engaged in Cash Pooling

This ruling is of particular importance for Spanish companies that participate in multinational cash pooling structures. The Supreme Court made clear that such structures can be closely scrutinized, and several common practices may now trigger tax adjustments:

- **Interest symmetry**: If the interest charged on funds borrowed by the Spanish subsidiary exceeds the return it receives on funds contributed to the pool, the Spanish tax authorities may recharacterize this as a profit-shifting mechanism and adjust the results, reallocating taxable profits to Spain. To mitigate this risk, groups should apply symmetrical interest terms or be ready to substantiate any divergence with robust market evidence.
- **Credit rating methodology**: Relying on the subsidiary's standalone rating is no longer defensible. Transfer pricing analyses must use the group's consolidated creditworthiness as the benchmark. Failure to do so exposes Spanish subsidiaries to adjustments and penalties.
- **Remuneration of the pool leader**: If the entity operating the pool retains a financial spread (as if it were a bank), the Spanish tax authorities are likely to challenge it. Pool leaders should instead be compensated only for administrative and coordination functions, generally through a cost-plus approach.

Although the Court underlined that its decision is fact-specific, the reasoning will resonate across most group cash pooling arrangements, given the structural similarities. For multinational groups with Spanish participants, this judgment effectively sets new compliance expectations.

1.4. Recommended Actions for Multinational Groups:

- **Review existing cash pooling agreements** to confirm that interest terms are symmetrical and consistent with market practice.
- **Update transfer pricing documentation** to reflect the group rating, not subsidiary ratings, when identifying comparables.

- **Revisit pool leader remuneration policies**, limiting them to a cost-based fee and avoiding significant financial spreads.

1.5. Conclusion

Judgment 985/2025 represents a turning point in Spanish case law on intragroup financing. Spanish subsidiaries involved in cash pooling should take proactive steps to align their policies with this doctrine, in order to minimize the risk of significant corporate tax adjustments and associated penalties.