Tax News

A before and after in the taxation of *cash pooling*

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Let's talk

Alexis Insausti
Partner of Transfer Pricing at
PwC Tax & Legal
alexis.insausti@pwc.com

Mireya Martínez López
Transfer Pricing Tax Specialist at
PwC Tax & Legal
mireya.martinez.lopez@pwc.com

Background

The Spanish Supreme Court's ruling of 15th July 2025 constitutes a milestone in the taxation of centralised cash pooling systems, an essential tool for the efficient management of liquidity in multinational groups. Under this model, subsidiaries periodically (usually daily) transfer their bank balances to a leading entity, which centralizes and redistributes financial resources according to the needs and surpluses of each participant. For multinational groups, cash pooling generates a series of operational advantages, including: it maximises efficiency in the use of cash, it facilitates internal self-financing, it reduces dependence on external financing and it provides subsidiaries with flexibility to cover working capital needs or make surpluses profitable in an agile and coordinated way.

The case analysed by the Spanish Supreme Court arises in relation to the regularization conducted by the Spanish Tax Agency on a Spanish taxpayer who participated in a cash pooling system managed by a leading entity based in the Netherlands.

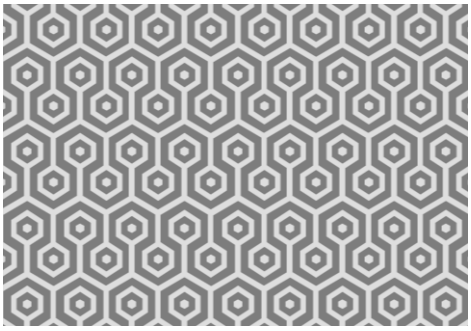
The system worked in a bidirectional way: subsidiaries could both contribute their cash surpluses to the pool and obtain financing to cover specific liquidity needs. The centralising entity channelled the funds between various subsidiaries and, only in the event of insufficient internal resources, resorted to external financing, obtained on terms based on the overall credit quality of the group.

The Spanish Tax Administration challenged two key aspects of the transfer pricing policy applied to the cash pooling:

(i) The asymmetry between the interest rates applied to the credit and debit balances of subsidiaries; and

(ii) The use of the standalone credit rating of each participating entity as a reference for determining the arm's length interest rate.

Both the Spanish Central Economic-Administrative Court and the Spanish National Court confirmed the regularization, supporting the Spanish Tax Agency's approach.



Now what? Challenges and opportunities for multinational groups

The ruling, far from closing the debate, opens new challenges for multinational groups and tax advisors, who will try to avoid standard approximations or "one size fits all". The Spanish High Court recognizes that its doctrine is based "on the specific circumstances of the present appeal", which requires a precise analysis of what those circumstances are and why they are decisive for the decision adopted:

(i) Nature and operation of the cash pooling system analyzed

In the case of the taxpayer, the cash pooling system is physical (zero balancing), with daily sweeping of balances to a central account managed by an entity resident in the Netherlands. The subsidiaries, including the Spanish taxpayer, can be creditors or debtors depending on their daily cash needs, and the centralising entity acts as a mere administrative manager, without assuming credit risks nor performing functions typical of a financial institution. The allocation of funds is carried out automatically and objectively, with the lead entity neither determining the specific subsidiaries to receive resources nor possessing the authority to reject contributions.

(ii) Functional Analysis: Functions, Assets, and Risks

The Spanish Supreme Court, following the functional analysis of the Tax Agency and the National Assembly, stresses that the leading entity does not assume significant risks nor provide relevant added value.

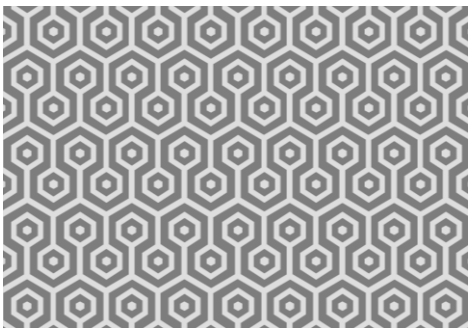
Their role is limited to the management and administration of the system, with no control over the allocation of funds or exposure to default risks. The risks and benefits of the operations fall on the participating entities, which are the ones who generate the surpluses and assume the consequences of their transfer or use.

(iii) Inability to identify borrower and lender individually

Another key circumstance is the practical limitation of identifying, in each transaction, who is the lender and who is the borrower, given the collective and reciprocal nature of the system. Contributions and withdrawals of funds are made on an aggregate and daily basis, which reinforces the mutualist rationale and the need to treat the participants as a whole, rather than as subjects of individualized bilateral transactions.

(iv) Consequences for symmetry and rating

In this context, the Spanish Supreme Court concludes that the symmetry in interest rates and the use of the group's rating are appropriate, because they reflect the economic reality of the system analysed: a short-term liquidity management mechanism, of a mutualist nature, in which the risks and benefits are shared between the participants and the centralising entity does not assume functions nor risks typical of a financial institution that support the asymmetry of interest rates.



(v) Limitation of the doctrine: not applicable to any cash pooling

The judgment expressly warns that its doctrine cannot be extrapolated to any cash pooling system but depends on the facts and circumstances of each case. If, otherwise, the centralising entity assumes significant risks, provides added value or there is a clear identification of the debtor and credit positions, the analysis could be different.

Practical implications and recommendations

The Spanish Supreme Court's ruling (STS 3721/2025) lays clear foundations but does not offer a single recipe. The key will be in the functional analysis, with a special focus on the functional and risk profile of the cash pooling lead entity, the documentation available and the capacity of the groups to adapt their policies to the economic reality and the new jurisprudential doctrine. The challenge, and the opportunity, lies in anticipating and building a solid technical position, capable of withstanding the scrutiny of the Administration and the courts. It is essential to review the existing cash pooling systems, identify the functions and risks assumed by each entity, and thoroughly document any element that may justify differentiated treatment, both in terms of interest rate symmetry and in reference to the applicable credit rating.

In short, the judgment inaugurates a new interpretative framework but requires multinational groups to make an additional effort in terms of analysis and documentation. Flexibility and customization of transfer pricing policies will be essential to minimize tax risks and take advantage of the opportunities offered by well-structured and defended centralized treasury management.

In addition, the Spanish Supreme Court's ruling comes in an economic environment in which we have left behind negative interest rates observed a few years ago and that is characterised by a greater volatility of the price of money in the market. This context increases the materiality of the financial income/expenses derived from these liquidity management mechanisms and, therefore, the appetite of tax agencies in analysing these structures. Therefore, it is in the interest of multinational groups to be proactive, because the challenge, and the opportunity, lies in anticipating and building a solid technical position, capable of withstanding the scrutiny of the Administration and the courts.