

# Supreme Court Prevents Initiating MAP if Tax Authorities Have Applied Spanish GAAR

20 June 2023

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The Spanish Supreme Court has clarified whether it is appropriate to initiate a mutual agreement procedure (MAP) in matters of direct taxation where the tax authorities identified conflict in the application of the tax rules.

(a) Facts. The tax authorities notified a Spanish company, a holding parent company of a Spanish tax consolidation group, that certain intra-group transactions met the circumstances of article 15 of the General Tax Law (conflict in the application of the law). This article sets forth a general anti-abuse rule (GAAR) under which the Spanish tax authorities can challenge an artificial or abusive transaction in which no material event or effect other than the tax advantage is achieved. The tax authorities found that there was a conflict in the application of the law and disallowed the deduction of financial expenses incurred in those transactions.

The taxpayer appealed that decision claiming that the tax authorities should have activated the legal mechanisms foreseen to avoid double taxation, as they reasonably assumed that the financial income was taxed in the country of the non-resident lender (the Netherlands and Luxembourg).

(b) Issue. The Supreme Court analysed whether, in the context of a risk of international double taxation, a tax adjustment based on the declaration of a conflict in the application of the rule (the Spanish GAAR) can determine the inadmissibility of the request for a mutual agreement procedure under Spanish domestic legislation, interpreted in light of the applicable tax treaties and the [European Union Arbitration Convention \(90/436\)](#).

(c) Decision. The Supreme Court ruled that a tax adjustment based on the Spanish GAAR can determine the inadmissibility of the request for a MAP without prejudice to the corresponding tax treaties if the national law establishes a case of fraud or low taxation in Spain. According to the Court, this conclusion could be inferred from the principle of economic capacity in article 31 of the Spanish Constitution.

Decision STS 2320/2023 - ECLI:ES:TS:2023:2320 of 22 May 2023, published on 9 June 2023, is available [here](#) (as a PDF and in Spanish only).

