

## Transfer Pricing and Centralized Treasury Management:

### How a Spanish Supreme Court case ruling applies in the UAE

The Spanish Supreme Court ruling (STS 3721/2025) addresses the complexities of transfer pricing in the context of centralized treasury management (cash pooling) within a multinational enterprise (MNE). This ruling, involving Bunge Ibérica, S.A., provides valuable insights applicable to other jurisdictions, including the UAE, as the UAE increasingly focuses on transfer pricing regulations.

Delving into technical specifics, the case hinged on the appropriateness of Bunge Ibérica's comparability analysis for intra-group financing. The Spanish tax authorities, supported by an ONFI (Oficina Nacional de Fiscalidad Internacional) report, contested Bunge Ibérica's use of its individual credit rating to benchmark arm's length interest rates, arguing that the group credit rating should have been applied due to the mutualized risk within the cash pool. Additionally, the ONFI report highlighted an "asymmetry in treatment," questioning why Bunge Finance BV, the central treasury entity, applied higher interest rates to loans than it offered on deposits, essentially capturing a disproportionate share of the cash pool's benefits despite performing limited functions beyond administration and management.

The core issue in the Bunge Ibérica case revolves around the tax authorities' challenge to the company's transfer pricing methodology for intra-group financing. The Spanish tax authorities argued that Bunge Ibérica should have used the credit rating of the entire Bunge group, rather than its individual credit rating, when determining the arm's length interest rates for cash pooling transactions. They also questioned the asymmetry in interest rates between deposits and loans within the cash pool, suggesting that the benefits of the centralized treasury function should be shared more equitably among participating entities.

The Spanish Supreme Court sided with the tax authorities, establishing several key principles. The first has to do with group credit rating. Namely, for cash pooling arrangements, the credit rating of the entire MNE group should be considered when determining arm's length interest rates, reflecting the mutualized risk within the group. Next, the court established that interest rates on deposits and loans within a cash pool should be symmetrical, ensuring that the benefits of the centralized treasury function are distributed fairly among participating entities. Finally, because of this ruling it becomes important that the facts presented and the way a cash-pooling is set-up, should dictate the methodology used to determine the arm's length remuneration of the operation.

The UAE has been actively developing its transfer pricing regulations to align with international standards, particularly those outlined by the OECD. This ruling offers several important considerations for MNEs operating in the UAE. As in all arguments about the transfer pricing, the substance over form argument is apparent here. It essentially means that the actual economic activity and the allocation of risks and responsibilities within an MNE group are more important than the contractual arrangements. The Spanish court's focus on the limited functionality of Bunge Finance BV highlights the importance of demonstrating genuine value creation by the central treasury function to justify any asymmetrical pricing.

The ruling also warns of increased scrutiny of intra-group financing. Intra-group financing, including cash pooling, is a common target for tax authorities worldwide, and increasingly so in the UAE. Following on to this, the ruling emphasizes using the group credit rating for cash pooling transactions.

The below table outlines how the UAE TP Guide aligns with the findings of the case:

Facet of Cash Pool TP	Spanish ruling	UAE TP Guide
Conforms to ALP	✓	✓
Follows FAR	✓	✓
Cash pool leader as routine	should not have applied higher interest rates	✓
Complexity includes other FAR*	✓	✓
Interest rates should be applicable to debit/credit positions	emphasizes symmetry in interest rates	✓
synergy calculated after remuneration of cash pool leader	not addressed in detail	✓
Appropriate TP method should be used	issue here	✓

\*includes risk management, interest optimization and external banking relationships

Moreover, the Spanish ruling underscores the need for MNEs to carefully document and justify their transfer pricing policies for these transactions, demonstrating that the terms are consistent with the arm's length principle. That said, the fundamental aspect of transfer pricing that brings MNEs comfort is compliance with documentation requirements. The UAE's transfer pricing regulations, as per Ministerial Decision No. 97 of 2023, mandate detailed documentation, including a master file and a local file. The Spanish ruling demonstrates the type of information that tax authorities may scrutinize, such as the functional analysis of the central treasury, the allocation of risks, and the comparability analysis used to determine arm's length interest rates. Given the increased scrutiny of transfer pricing globally and the UAE's commitment to aligning with international standards, MNEs operating in the UAE should review intra-group financing, enhance documentation, conduct functional analysis for documentation and consider the group credit rating. Moreover, it goes without saying that seeking expert advice is at the crux of a successful transfer pricing policy.

The Spanish Supreme Court ruling in the Bunge Ibérica case provides valuable insights into the complexities of transfer pricing for centralized treasury management within MNEs. This ruling is relevant to MNEs operating in the UAE, as the UAE's transfer pricing regulations increasingly align with international standards. By understanding the key principles outlined in this ruling and taking proactive steps to ensure compliance, MNEs can mitigate the risk of potential disputes with the UAE tax authorities and optimize their tax positions. It is important to adapt those principles to the circumstances of each case, as was emphasized by the Spanish Supreme Court. The facts presented and the way a cash-pooling is set-up, should dictate the methodology used to determine the arm's length remuneration of the set-up.

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