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Resource Number: **5448/2018**

Resolution No.: **308/2020**

Process: **Contentious-Administrative Cassation Appeal (LO 7/2015)**

Speaker: **FRANCISCO JOSE NAVARRO SANCHIS**

Resolution Type: **Judgment**

Case resolutions: **SAN 531/2018,**
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SUPERIOR COURT

Contentious-Administrative Chamber Second

Section

Judgment no. 308/2020

Judgment date: 03/03/2020 Type of procedure:

R. CASACION Procedure number: 5448/2018

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Lawyer for the Administration of Justice: Ilma. Mrs. Gloria Sancho Mayo Transcribed by: Note:

R. CASACIÓN no .: 5448/2018

Speaker: Excmo. Mr. Francisco José Navarro Sanchís

Lawyer for the Administration of Justice: Ilma. Mrs. Gloria Sancho Mayo

SUPREME COURT

Contentious-Administrative Chamber Second

Section

Judgment no. 308/2020

Excmo. Messrs. And Excma. Mrs.

Mr. Nicolás Maurandi Guillén, President

Mr. Ángel Aguallo Avilés

Mr. José Antonio Montero Fernández

Mr. Francisco José Navarro Sanchís

Mr. Jesús Cudero Blas

Mr. Rafael Toledano Cantero

Mr. Isaac Merino Jara

In Madrid, on March 3, 2020.

This Chamber has seen, constituted in its Second Section by the Hon. Messrs. Magistrates who are indicated in the margin, appeal no. **5448/2018,** filed by the attorney María Cruz Reig Gastón, on behalf of and representing the mercantile company **STRYKER IBERIA, SL,** against the judgment of the Second Section of the Contentious-Administrative Chamber of the National Court, of February 9, 2018, pronounced in appeal nº 335/2015 (ES: AN: 2018: 531) regarding the refund of undue income of Corporation Tax. The State Attorney has appeared as a appealed party, in the representation that by the Ministry of Law holds the **GENERAL STATE ADMINISTRATION.**

The Excmo. Mr. Francisco José Navarro Sanchís.

FACTUAL BACKGROUND

FIRST.- **Resolution appealed in cassation and facts of the litigation.**

one. The purpose of this appeal is the aforementioned ruling of the National Court of February 9, 2018, which dismissed the appeal made by STRYKER IBERICA, SL (STRYKER, hereinafter), against the resolution of February 5, 2015, by the one that the Central Economic-Administrative Court -TEAC- rejected the claim formulated by it, regarding the refund of undue income from the Corporation Tax for the years 2005 to 2008, for a total amount of 40,593,382.89 euros.

two. The facts on which the litigation has dealt, based on those stated in the lawsuit, are the following:

to) *Corporate tax for 2006 and 2007.* The appellant filed self-assessments for corporation tax in 2006 and 2007, including a double tax exemption, based on article 22 of the Consolidated Text of the Corporation Tax Law -TRLIS-, for amounts of

€ 25,750,110.12 in 2006 and € 25,733,670.18 in 2007, as a result of obtaining such income through a permanent establishment located in Switzerland.

On April 12, 2010, a non-conformity act was issued for the indicated tax periods and concepts, proposing the practice of two settlements in which adjustments were made compared to what was declared by the taxpayer. By means of an agreement issued on June 30, 2010, notified on 2 2010, the proposal set forth in the minutes is confirmed, as it is understood that the taxpayer is not entitled to the exemption of article 22 of the TRLIS.

Filed and rejected claim before the Regional Economic-Administrative Court of Madrid -TEAR-, appeal was filed before the TEAC, in relation to the Corporation Tax, 2006 and 2007.

b) *Corporation Tax 2005.* The appellant formulated self-assessment of the tax and exercise mentioned, including an exemption for double taxation, based on article 22 of the TRLIS, for the amount of
€ 25,808,056.13, for the same reasons stated above.

c) *Corporation Tax 2008.* The appellant presented self-assessment for said fiscal year and concept, including an exemption for double taxation recognized in article 22 of the TRLIS, for an amount of € 26,591,183.71. Faced with the consequent liquidation, a claim was filed before the TEAR of Madrid and, dissatisfied with it, an appeal before the TEAC, requesting the annulment of the resolution of the challenged TEAR and the liquidation practiced by the Corporation Tax of the 2008 exercise, regarding of the non-admission of the double tax exemption.

3. The Contentious-Administrative Chamber of the National Court handed down a judgment of February 9, 2018, contested here, which dismissed the appeal against the contested resolution of TEAC. The sentence reasons the following, in synthesis (FJ 3º and 4º):

"[...] ***THIRD :*** The appellant begins her legal exposition analyzing the evidentiary aspect (article 105 of Law 58/2003) and the evidentiary value of foreign documents. But if we carefully examine both the contested Resolution and the answer to the application, it turns out that the question does not focus on the evidence provided, but rather that, even when evaluating the documents, the concurrence of the necessary requirements to consider that there is permanent establishment.

Indeed, the obstacle that we find to accept the existence of a permanent establishment in Switzerland is not even the lack of existence of a fixed place of business (although the contract for the transfer of space in offices and contracted personnel is dated December 18, 2009), nor the lack of personnel (although all the activity of the branch is carried out by the Director of the same), but the activity that the plaintiff herself claims is carried out in the branch.

In the lawsuit itself, it is stated that the branch's activity is strictly financial and consists in making loans to group entities (developing the management activities that this requires), which, as expressly stated in the lawsuit, They are [...]:

However, the granting of subsidiary loans, even if the appellant claims that the activity is optimized, must be classified as accessory.

We share the appreciations contained in the Settlement Agreement, in that the mere collection of interest and, where appropriate, the renewal of the principal of a loan at maturity without any disbursement or need to carry out any kind of negotiation, cannot be considered as a substantial and essential and signi fi cant financial activity for the company as a whole but merely an auxiliary activity. There is no economic or commercial activity in Switzerland in relation to the loan that was assigned to him against STRYKER SPINE SAS. It has only been justified that the branch is a mere holder of said loan. At this point, it is worth highlighting the provisions of the Comments on the Model Convention to avoid Double Taxation of the OECD (in the 2005 update and according to the "linguistic homogenization"

- Existence of a fixed place of business (Point 5.1 of the Comments to section 5.1 of the MCDI).

"... As stated in paragraphs 18 and 20 below, a single place of business will generally be considered to exist if, depending on the nature of the activities, a particular location within which to These activities are a coherent geographical and commercial unit, with respect to the business in question. "

- Geographical and commercial coherence (Point 5.3 of the Comments on section 5.1 of the MCDI).

"In contrast, when there is no commercial coherence, the fact that the activities are carried out within a defined geographical area does not imply that said area should be considered as a unique place of business ...".

- Carrying out activities on a regular basis (Point 7 of the Comments to section 5.1 of the MCDI):

"For a place of business to constitute a permanent establishment, the company that uses it must carry out its activities, in whole or in part, through it. As indicated in paragraph 3 above, the activities do not need to have productive in nature. Furthermore, they do not have to be permanent in the sense that operations are uninterrupted, although they must be carried out on a regular basis. "

- Carrying out a merely preparatory or auxiliary activity (Points 23 and 24 of the Comments to section 5.4 of the MCDI)

In some cases, said place of business can effectively contribute to the productivity of the company, but the services it provides are so unrelated to obtaining profit that it would be difficult to determine the part of the profits attributable to it. As an example, fixed places of business used only to advertise, supply information, carry out scientific research or assist in the execution of a patent contract or assignment of know-how (theoretical-practical knowledge -know-how- , if these activities are preparatory or auxiliary.

24. It is often difficult to distinguish between activities that are preparatory or auxiliary and those that are not. The decisive criterion is to determine whether the activities of the fixed place of business constitute in themselves an essential and significant part of the activities of the company as a whole. Each case should be studied separately. A fixed place of business whose general purpose is identical to that of the company as a whole does not carry out a preparatory or auxiliary activity ... "

- Regarding article 7, paragraph 2, of the Convention (attribution to the permanent establishment of the benefits that it would obtain as if it were a different and separate company that carried out the same or similar activities), paragraph 15.2 of the Comments to the OECD Model Convention provides the following:

"Loans may be transferred, for control and financial reasons, from one branch to headquarters or to another branch within the same bank. Such transfers should not be recognized fiscally when it cannot reasonably be considered to have been made for valid or between independent companies - for example, if they occur only for tax reasons to maximize the tax deductions applicable to the bank - in such cases the transfers would not have occurred between absolutely independent companies and, consequently, would not have affected the amount of the profits that such an independent company would have obtained by dealing under normal market conditions with the company of which it is a permanent establishment. "

Article 22 of Royal Decree 4/2004 determines, in section 3, that an entity operates through a permanent establishment abroad when, by any title, it has facilities outside of Spanish territory, continuously or habitually, places of work in which you carry out all or part of your activity. In particular, permanent establishments shall be understood to be those referred to in paragraph a) of section 1 of article 13 of the consolidated text of the Non-Resident Income Tax Law, approved by Royal Legislative Decree 5/2004, of 5 of March.

From the fixed place of business in Switzerland, whose existence is confirmed by the appellant, and in relation to the credit that STRYKER IBERIA SL maintains against STRYKER SPINE SAS, no economic or commercial activity of the company is carried out, since the only thing that is does is record the collection of interest. The mere collection of interest and, where appropriate, the renewal of the principal of the loan at maturity without any disbursement or negotiation of any kind, cannot be considered as a substantial, essential and significant financial activity for the company as a whole , but a merely auxiliary activity.

From this perspective it is irrelevant that the Branch has signed a framework loan contract, signed by the Branch Director -Mr. Alvaro -, with the group's Irish entity, Stryker IFSC Ltd., of indefinite duration, or that the Swiss Branch is part of the "cash-pooling" agreement between the aforementioned Irish entity (cash pool manager) and Bank of America (cash pooling administrator), since June 2004, since what is essential is, as we said, that it does not carry out a business or economic activity essential to its parent company.

On the other hand, the fact that the Swiss branch carries out an activity that is not internal in nature because it is not addressed to the parent company but to the group's European subsidiaries, does not make such activity essential. Nor does the Company's total annual revenue volume convert it.

In summary, we are not facing a documentary evidence assessment problem, but rather the qualification of a certain activity as an auxiliary, for the reasons stated, based on the facts stated by the plaintiff herself.

FOURTH : Lastly, the plaintiff affirms that there has been an effective double taxation, since the benefits of the branch in Switzerland have been taxed, thus violating the provisions of the Swiss Spanish Convention. In such case, Article 23 of the Convention provides:

"1. When a resident of a Contracting State considers that the measures taken by one or both Contracting States imply or may imply for him a tax that is not in accordance with the present Convention, independently of the remedies provided by the national legislation of the States, may submit their case to the competent Authority of the Contracting State of which they are a resident.

2. This Competent Authority, if the claim seems well-founded and if it is itself not in a position to adopt a satisfactory solution, will do its best to resolve the issue by means of a friendly agreement with the Competent Authority of the other Contracting State, in order to avoid taxation that does not comply with this Agreement.

3. The competent Authorities of the Contracting States will do their best to resolve the difficulties through an amicable agreement or to dispel the doubts raised by the interpretation or application of this Agreement. They may also agree to try to avoid double taxation in cases not provided for therein.

4. The competent Authorities of the Contracting States may communicate directly with each other in order to reach the agreements referred to in the preceding paragraphs. When it is considered that these agreements can be facilitated through personal contacts, the exchange of points of view may be carried out within a Commission made up of representatives of the competent Authorities of both Contracting States. "

It is not possible for the Spanish authorities to proceed with the bilateral adjustment with respect to what was decided by foreign tax authorities, but neither is it possible for a deduction for double taxation to be admitted when the requirements for this are not met.

It is not a matter of the existence of any fraud or artificial construction, but, as we have been explaining, the branch does not meet the requirements that, for tax purposes, are necessary to understand that we are dealing with a permanent establishment. From the foregoing, the appeal is dismissed. "

SECOND.- **Preparation and admission of the appeal.**

one. On July 9, 2018, the attorney María Cruz Reig Gastón, on behalf of STRYKER, presented a brief preparing the appeal against the aforementioned sentence.

two. After justifying the concurrence of the regulated requirements of term, legitimation and recourse of the judgment, identifies as violated norms article 23 of the CDI Spain-Switzerland, placed in relation to articles 5 (in particular, sections 3.e) and 4 of the aforementioned precept) and 7 of such Agreement, as well as articles 96 and 94 of the Spanish Constitution, in relation to article 24 of the same norm; and Articles 31 to 33 of the Vienna Convention on the Law of Treaties of May 23, 1969, to which Spain adhered on May 2, 1972.

3. The Trial Chamber, by order of July 20, 2018, agreed to have the appeal filed by the State Attorney against the sentence handed down by the Trial Chamber prepared.

THIRD.- **Filing and admission of the appeal.**

one. The admission section of this Third Chamber of the Supreme Court admitted the appeal in a ruling of November 28, 2018, in which it appreciates the concurrence of the objective appeal for the formation of jurisprudence, stated in these literal terms:

"[...] Determine the limits of the so-called" dynamic "interpretation of international conventions to avoid double taxation in terms of income and assets signed by the Kingdom of Spain based on the OECD Model Convention, as is the Agreement to avoid double taxation on income and wealth taxes between the Spanish State and the Swiss Confederation of April 26, 1966, when it is found that, long after the controversial events occurred and regarding of the interpreted precepts, the signatory States, the Kingdom of Spain and the Swiss Confederation, considered it necessary to modify the wording of the article 5.4 and incorporate article 5.3 a new letter f), which until then differed from the correlative provisions of the later Model OECD Convention [articles 5.5 and 5.4.f)], making them coincide, and it is unnecessary to modify the wording of letter e) of the article 5.3, even though it also differed from that of the correlative precept of the later OECD Model Convention [article 5.4.e)] ".

two. The aforementioned prosecutor, on behalf of the appellant STRYKER, filed an appeal in writing of January 21, 2019, which observes the legal requirements, in which the following are cited as violated legal norms: Article 5, sections 3.e) and 4 of the double taxation agreement -CDI-, signed between Spain and Switzerland, in relation to its articles 23 and 7.

FOURTH.- **Opposition to the appeal.**

The State Attorney, summoned as a appealed party in this appeal, formulated an opposition brief on March 23, 2019, in which a request from the Chamber issued a judgment rejecting the appeal, thereby confirming the judgment appealed .

FIFTH.- **Public hearing and deliberation.**

By virtue of the faculty conferred on it by article 92.6 LJCA, it was not deemed necessary to hold a public hearing, the deliberation, voting and ruling being fixed for February 4, 2020, the date on which it was deliberately deliberated and voted, with the result that is now expressed.

FUNDAMENTALS OF LAW

FIRST.- **Purpose of this appeal.**

The purpose of this appeal is to examine the contested judgment, in order to determine the limits of what is known as *dynamic performance* of the international conventions to avoid double taxation on income and assets signed by the Kingdom of Spain, based on the Model OECD Convention, such as the Agreement concluded with the Swiss Confederation on April 26, 1966. In this matter, what happened is that, many years after the controversial events and the regularized debt occurred, from the period 2005 to 2008, in relation to the interpreted precepts, the signatory States, the Kingdom of Spain and the Swiss Confederation, considered it necessary modify the wording of the original article 5.4 and incorporate into article 5.3 a new letter f), which until then differed from the correlatives of the later OECD Model Convention [articles 5.5 and 5.4.f)], making them coincide, and unnecessary to modify the wording of letter e) of article 5.3,although it also differed from that of the correlative of the later OECD Model Convention [article 5.4.e)].

This leads us to specify the key points of the problem raised here for the decision of the appeal and the formation of jurisprudential doctrine in this matter: a) what is the *dynamic performance* of the Conventions and if it is an expression that can find equivalents in our legal tradition; b) if the models of the OECD convention or its comments, by their origin, are legal norms that the courts of justice must take into account to interpret the norms agreed in the Conventions, in accordance with the provisions of articles 94 and 96 of our CE; c) if such comments, guidelines or interpretative models can take precedence over hermeneutical rules, either those agreed between the signing states or in other conventions and treaties, or those proper to their respective internal regulations, and by virtue of what source of legitimation; d) if it is possible to use that *dynamic performance* to interpret an article of the Agreement based on the content of a later one, not in force at the time of applying to the income taxed here; and e) if it is possible for Spain to interpret unilaterally, based on that rule, the concept of permanent establishment, in order to deny its concurrence, in an antagonistic way that has led Switzerland to confirm its existence and tax income according to such qualification .

SECOND.- **Examination of the dispute.**

Strictly speaking, we are not in the presence, in this case, of the projection of that concept of *dynamic performance* of the Conventions, but in the face of a simpler legal problem, starting from the basis, already repeatedly stated by this Supreme Court, that the courts must abide by their system of sources in the resolution of disputes and appeals. This concept of *dynamic performance* it has a well-defined object, the conventions, and rules provided by the convention itself, as well as other international treaties and conventions and the interpretative rules accepted by the signatory states - such as the Vienna Convention on the Law of the Treaties, adopted on May 23, 1969-, either by own agreement, or by reference; It has a reasonable sense and purpose, that of adapting the exegesis of the conventional precepts, especially those that are in force for a very long time, to the legal, social or technological realities that could not be foreseen at the time of their agreement. To adequately resolve the present matter, we must record the following reflections:

1) On some occasions, this Supreme Court has made use of the concept, even without naming it as such or defining it. The most characteristic is the judgment of June 11, 2008 (appeal No. 7710/2002), which interprets the Spanish-Dutch agreement based on the OECD comments, although insofar as they refer to the application of standards of internal law -in that case, article 70.Uno.e) of Royal Decree 1841/1991, in relation to no. 1 of art. 17 of the Agreement to avoid double taxation signed between Spain and the Netherlands - for the resolution of the case. Therefore, the appeal was decided through the application of a state regulation that gave interpretative meaning to the precept of the aforementioned Convention. The same happens in the judgment of this Chamber and Section of February 9, 2016 (appeal no. 3429/2014), *dynamic performance* of the conventions, but rests their interpretation, again, in provisions of domestic law and in the jurisprudence on a different Convention than the one that governed the matter.

2) On the other hand, this Chamber has repeatedly said that the rules, models or comments that normally inspire the drafting of agreements are not normative sources that condition or link our criteria, nor can they be invoked as violated in cassation. Thus, the STS of February 21, 2017 (appeal No. 2970/2015) states the following:

"2º) the OECD Guidelines are used, to which the OECD Model Convention Comments refer in accordance with the provisions of the Article 3 of the LIS (art. 3 TRLIS) in accordance with the provisions of this law shall be understood without prejudice to the provisions of international treaties and conventions that have become part of the domestic law, in accordance with the article 96 of the Spanish Constitution . However, this reference to Article 3 -in relation to the spatial scope of the TRLIS- becomes concrete again in the normative provisions that according to the Constitution they have been integrated into our internal legislation (international treaties and conventions), without the OECD guidelines having such a normative nature, which this Chamber has already declared are not sources of Law or, as such, invoked in cassation (thus, the judgment of October 19, 2016, issued in appeal No. 2558/2015) ".

The latter cited indicates the following (regarding the repealed appeal, but fully applicable to the one currently in force):

"The infraction that is invoked in cassation, therefore, must fall on the rules of the legal system, that is, on the formal sources that comprise it and that the Article 1.1 of the Civil Code , by establishing that "... the sources of the Spanish legal order are the law, custom and general principles of law. " *Within the material concept of law that the aforementioned precept expresses, it is possible to include the different manifestations, hierarchically ordered, of the normative power (Constitution, International Treaties, organic law, ordinary law, regulations, etc.), but it is not possible to substantiate a casational reason in the infringement of the aforementioned OECD guidelines, given the absence of regulatory value, that is, as a binding legal source for the Courts of Justice that can be preached from them, and that this Supreme Court has already declared (thus, the Judgment of July 18, 2012, delivered in appeal No. 3779/2009), in which such guidelines are considered as mere recommendations to the States and, in another place of said judgment, assigns an interpretative value to them.*

Such function, that of interpreting legal norms, is what derives, moreover, from the role assigned to them by the Explanation of Reasons of Law 36/2006, of November 29, on measures ... [...] ".

3) In addition to the foregoing, the infringement committed by the Trial Chamber is not only appreciable in the fact of applying the interpretative guideline provided by a comment to the agreement models, by itself - which is not admissible without the support of a direct justification in the sources of the legal system, including treaties and conventions - but, mainly, because the effect produced is to leave without effect the agreed concept of permanent establishment of article 5.3 of the Spanish-Helvetian agreement to replace it with a later one , not in force in the regularized period, which leads to the notable expansion of the concept.

In other words, the interpretive operation carried out by the Trial Chamber results in an unfavorable retroactive application to the inspected company that: a) involves a unilateral notion of the concept of *permanent establishment,* oblivious to that re fl ected in the applicable norm itself and to which the fiscal authority of the country in which the returns were obtained could take into consideration; b) in fact, there is ineluctable, and not disputed, evidence that Switzerland taxed such returns, based on the consideration that they had been obtained by a permanent establishment; c) in fact, it seems useless that there is an international agreement that lacks conciliation instruments or agreement for the resolution of controversies or qualification or concept problems -or which are not addressed-, since the administrative act appealed at the instance is a unilateral decision of the Spanish tax authority that does not know the agreed or agreed nature of the agreement -is the source of its binding nature and its due incorporation into our internal law (arts. 94 and 96 CE) - and the judgment that supports it is not properly submitted, for this reason, to our system of sources; d) with this, a double taxation is also consumed, since the same income is subject to double taxation, contrary to the clear meaning and purpose of double taxation agreements. The affirmation to the contrary of the sentence cannot be accepted, especially when it denies the examination and evaluation of the documents that prove it.

Finally, the judicial application of the guiding norm or interpretative guideline contradicts the meaning and purpose of the conventional norm that must be applied. *ratione temporis* to the case debated (art. 5.3.e) of the Convention):

"1. For the purposes of this Agreement, the term" permanent establishment "means a fixed place of business in which a company carries out all or part of its activity [...]. [...] 3. The term" permanent establishment "does not include: ...

e) the maintenance of a fixed place of business for the sole purpose of advertising, supplying information, carrying out scientific research or carrying out other similar activities that are preparatory or auxiliary, provided that these activities are carried out for the company itself ".

The contested judgment reinterprets such a precept in view of the subsequent version derived from the 2005 Model Agreement - article 5.4.e):

"4. Notwithstanding the previous provisions of this Article, it is considered that the expression" permanent establishment "does not include:

e) the maintenance of a fixed place of business with the sole purpose of carrying out for the company any other activity of an auxiliary or preparatory nature ".

Obviously, the will to modify the transcribed precept -and not only clarify or clarify- the preceding precept, which should be applied only to the events subsequent to its entry into force, because the norms do not have retroactive effect unless in them provided otherwise, which here has not happened. In other words, apart from the fact that the comments to the model are not direct normative sources, in the terms we have alluded to, the concrete result that is now reached is that of extending the exclusion of the concept of permanent establishment to cases that are not those described in the original article 5.3.e), which only ruled out certain activities and those similar to them, not any others that were auxiliary or preparatory.

***THIRD.-* Jurisprudential doctrine that answers the questions debated.**

In reality, the appeal does not require, to be resolved, to provide a definition about the dynamic interpretation of the agreements, which is not at stake here.

It can be clarified that in no case: a) such an interpretation could be projected retroactively on a case governed by the previous rule; b) such interpretation could be based exclusively on comments, models or interpretative guidelines that have not been explicitly assumed by the signatory states in their agreements, for the purposes of articles 94 and 96 EC, without prejudice to the fact that the established criteria may serve as a guideline to the courts when the comment or recommendation may coincide with that resulting from interpreting the agreement itself or others, or the other sources of the law;

***FOURTH.-* Application of the jurisprudential doctrine that we have established to the specific case at hand.**

By their very nature, the foregoing considerations lead us to the need to marry and annul the judgment of instance, for being based on an erroneous interpretation of the legal system and, resolving instead the debate at the instance, to consider the contentious-administrative appeal , annulling the procedurally appealed liquidation and review agreements, with recognition of the exemption requested under Article 23 of the agreement repeatedly cited and unduly denied.

***FIFTH.-* By virtue of the provisions of article 93.4 LJCA, since no bad faith or recklessness in the conduct of any of the parties is observed,** there is no declaration of condemnation of the payment of the costs caused in this appeal. Regarding those generated in the instance, each party will pay its own and the common ones in half.

FAILURE

For all the above, on behalf of the King and by the authority conferred on him by the Constitution, this Chamber has decided:

1st) Set the interpretive criteria established in the third legal basis.

2nd) Have the appeal filed by the attorney María Cruz Reig Gastón, on behalf of the commercial entity **STRYKER IBERICA, SL,** against the sentence of Section 2 of the Administrative Litigation Chamber of the National Court of February 9, 2018 in appeal 335/2015, a judgment that is married and annulled.

3rd) Estimate contentious-administrative appeal nº 335/2015 and, by virtue of it, annul the administrative acts of liquidation and administrative review challenged in the instance, acknowledging to the appellant the exemption claimed and not granted, with all the effects inherent in said declaration.

4th) Not to impose the procedural costs, nor those of this appeal, nor those caused in the instance. Notify this resolution to the parties and insert it in the legislative collection. It is so agreed and signed. Nicolás Maurandi Guillén

Ángel Aguallo Avilés José Antonio Montero Fernández Francisco

José Navarro Sanchís Jesús Cudero Blas Rafael Toledano Cantero

Isaac Merino Jara

PUBLICATION.- Read and published was the previous sentence by the **Reporting Magistrate, Hon. Mr. Don. Francisco José Navarro Sanchís,** the Public Hearing Chamber being constituted, of which I certify.