



Neutral Citation Number: [2025] EWHC 3057 (Admin)

Case No: AC-2024-LON-004228

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19/11/2025

Before :

THE HONOURABLE MR JUSTICE SAINI

Between :

JORDI CARULLA FONT

Claimant

- and -

**THE COMMISSIONERS FOR HIS MAJESTY'S
REVENUE AND CUSTOMS**

Defendants

James Rivett KC and Joshua Stevens (instructed by Deloitte LLP) for the Claimant
Ben Elliottt and Calypso Blaj (instructed by HMRC Legal Services) for the Defendants

Hearing date: 5 November 2025 with additional written submissions 12 November 2025

JUDGMENT

This judgment was handed down remotely at 2pm on Wednesday 19 November 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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THE HONOURABLE MR JUSTICE SAINI

Mr Justice Saini :

This judgment is in 8 main parts as follows:

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I. Overview

1. This is a case about double taxation agreements. These are international treaties which establish rules between states to ensure the same income is not taxed twice. For Jordi Carulla Font (“the Claimant”), this case is said to raise the question whether he is liable to pay about €18,500,000.00 of tax in Spain. It is argued on his behalf that an unlawful decision was made by the Defendants, the Commissioners for His Majesty’s Revenue and Customs (“HMRC”), concerning his tax residence in certain years for the purposes of the UK-Spain Double Taxation Agreement (“the DTA”). The particular target of the claim is a decision (“the Decision”) in HMRC’s letter to the Claimant’s tax advisers, Deloitte LLP (“Deloitte”), dated 27 September 2024 (“the Letter”).
2. The DTA is an international treaty between the UK and Spain in the broadly common model form of many double taxation agreements and, in the way I describe below, is part of UK law. It is said on behalf of the Claimant that the Decision wrongly “conceded permanently” to the Spanish Competent Authority (“the SCA”) that during the tax years 2009/2010 – 2015/2016, the Claimant was resident, for the purposes of this treaty, in Spain. It is said on his behalf that the “practical effect” of the Decision will be to wrongly render him liable to substantial taxes in Spain. For the purposes of this judgment, I will refer to the period 2006/2007 – 2020/2021 as the “Relevant UK Tax Years”, and the period 2006/2007 – 2015/2016 is referred to as the “Early UK Tax Years”.
3. By a Claim Form issued on 21 December 2024, the Claimant seeks permission to apply for judicial review of the Decision. The Claimant says that the Decision contained errors of law in relation to HMRC’s consideration of his so-called “treaty residence” under the DTA. He complains in particular about HMRC’s conclusions in the Letter in relation to his centre of vital interests (“COVI”), his habitual abode, and further argues that the Decision breached his legitimate expectations because HMRC changed their consistently held previous views in relation to his COVI and habitual residence.
4. Aside from arguing there is no arguable case on the merits to justify granting permission, HMRC advance a number of threshold legal objections to the claim including the point that there was no decision amenable to judicial review, that the Claimant has an alternative remedy, that the challenge is out of time, and that the dispute is “non-justiciable” in a particular respect. HMRC invite the Court to refuse permission on all or some of these grounds.

5. Pursuant to directions given by Sheldon J by an Order dated 7 May 2025, a number of preliminary issues were identified for resolution as part of the permission application. One of these issues (relating to service of the Claim Form) has fallen away and I say nothing further about it.
6. As re-ordered by me, the final set of four preliminary issues is as follows:

Issue One: is the claim out of time?

Issue Two: is the Decision amenable to judicial review?

Issue Three: does the Claimant have an alternative remedy?

Issue Four: is review of the Decision beyond the jurisdiction of the High Court on justiciability grounds?
7. Sheldon J's Order did not expressly provide for the hearing to consider whether permission to apply for judicial review should be granted on the merits, and Counsel were not agreed as to whether this issue was to be considered before me. After my pre-reading, I indicated that the parties should also address this matter at the hearing (given we had a full day set aside). For the avoidance of doubt, I should make clear that I will address the preliminary issues on a final basis as opposed to considering them against a mere arguability test. In relation to the permission application on the merits, I will apply the conventional arguability standard: see [82] below.
8. I am grateful for the excellent, concise and well-structured oral and written submissions from James Rivett KC and Joshua Stevens for the Claimant, and from Ben Elliott and Calypso Blaj for HMRC. I have provided hyperlinks in the text below to the main legal instruments in order to keep recitation and quotation of lengthy provisions to a minimum.

II. Legal Framework

9. The DTA is a treaty between the UK and Spain. Counsel are agreed that the incorporation of double taxation relief into domestic law is a longstanding feature of the UK taxation regime and the Tax Code. It is also common ground that the DTA is part of the laws of the United Kingdom through being given domestic effect by Article 2 of The Double Taxation Relief and International Tax Enforcement (Spain) Order 2013 ("the 2003 Order"). The 2003 Order was made under Part 2 of the Taxation (International and Other Provisions) Act 2010 ("TIOPA 2010").
10. So far as relevant the provisions of Article 2 of the 2013 Order provided as follows:

"Double taxation and international tax enforcement arrangements to have effect

 2. It is declared that—
 - (a) the arrangements specified in the Convention and Protocol set out in the Schedule to this Order have been made with the Government of the Kingdom of Spain;

(b) the arrangements have been made with a view to affording relief from double taxation in relation to capital gains tax, corporation tax and income tax and taxes of a similar character imposed by the laws of the Kingdom of Spain and for the purposes of assisting international tax enforcement; and

it is expedient that those arrangements should have effect.”

11. The provisions of Part 2 TIOPA 2010 applied from 1 April 2010 but took effect for periods commencing 6 April 2010 for income and capital gains tax purposes (see section 506 TIOPA 2010). So far as concerns the material time periods for the case before me, for the year 6 April 2009 – 5 April 2010 equivalent provisions to those now contained within Part 2 TIOPA 2010 and to the same material effect were incorporated into the provisions of Part XVIII of the Income and Capital Taxes Act 1988. In each of the Relevant UK Tax Years, the effect of the DTA was to allocate the taxing rights which apply to particular categories of income and chargeable gains to one or other of the contracting states by reference to the category of income or gains in question, and the residence status of the individual for the purposes of the DTA. That status is determined under a series of so-called “tie-breaker” tests under the DTA itself and not by reference to the residence status of the individual as a matter of the domestic law of the state. I will set out the tie-breaker tests below.
12. The function of the residence tie-breaker provisions contained within a similar double taxation agreement (UK/Mauritius) were helpfully explained in the judgment of Patten LJ in Commissioners for Her Majesty’s Revenue and Customs v Smallwood and Anor [2010] EWCA Civ 778. Patten LJ observed at [28] (with my underlined emphasis):

“It is important, in my view, to identify what Articles 4 and 13 are designed to achieve in the context of the DTA because, as the judge recognised, this largely colours the interpretation of the provisions themselves. But for the Treaty, residents of the UK and Mauritius or companies operating in both territories would be exposed to the risk of taxation on their income and gains under the laws of each Contracting State. The 1977 Model Convention adopted in the DTA eliminates the possibility of double taxation by what the commentary describes as two categories of rules. The first allocates the right to tax by reference to the situs or source of the taxable income or gain or the place where the person in receipt of the profit is treated as resident for tax purposes. The second category of rules (represented by Article 24) comes into play when the first set of rules leaves both Contracting States as eligible to tax the same gain and operates by allowing tax payable in one Contracting State to be credited against the taxpayers’ liabilities in the other.”
13. The provisions of the DTA are given effect in relation to the taxpayer concerned by sections 2 and 6 of TIOPA 2010 as a form of relief against what would otherwise be

the relevant tax liability under UK law. But the DTA is not concerned to alter the basis of taxation adopted in each of the Contracting States as such, or to dictate to each Contracting State how it should tax particular forms of receipts. As I state above its purpose is to set out rules for resolving issues of double taxation which arise from the tax treatment adopted by each country's domestic legislation by reference to a series of tests agreed by the Contracting States under the DTA. The criteria adopted in these tests are not necessarily related to the test of liability under the relevant national laws.

14. I turn in more detail to the DTA. It is an international agreement dated 14 March 2013 between the UK and Spain, which took effect in respect of UK income tax and capital gains tax for years of assessment beginning on or after 6 April 2015. Prior to the negotiation of the DTA the position was governed by the terms of the 1976 UK-Spain Double Taxation Convention. For ease of reference I will refer only to the terms of the DTA but note that the 2013 arrangements amended the position that was in place before that date. For present purposes the substantive rights of the Claimant were the same before and after the introduction of the DTA and Counsel agreed no point arises in this regard.
15. In common with double taxation agreements in general, the DTA provides among other matters relief from double taxation to income tax and capital gains tax to individuals who are residents of one or both of the contracting states pursuant to their respective domestic criteria for the establishment of residence in part by allocating the right to tax particular categories of income and capital gains to one state only. The identification of the contracting state to which the taxing right is allocated depends upon the residence status of the person established pursuant to the so-called "tie-breaker" rules imposed by the DTA for that purpose.
16. So far as relevant the provisions of Article 4 of the DTA provide as follows:

"Article 4 – RESIDENT

1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management, place of incorporation or any other criterion of a similar nature, and also includes that State and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income or capital gains from sources in that State or capital situated therein. The term "resident of a Contracting State" includes a pension scheme established in that State.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows: -

a) he shall be deemed to be a resident only of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident only of the State with which his personal

and economic relations are closer (center of vital interest-[COVI]);

b) if the State in which he has his [COVI] cannot be determined, or if he does not have a permanent home available to him in either State, he shall be deemed to be a resident only of the State in which he has an habitual abode;

c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident only of the State of which he is a national;

d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.”

17. For the purposes of the DTA, the term “competent authority” is defined to mean in Spain, the Minister of Economy and Finance or his authorised representative (here, the SCA) and in the UK the Commissioners of HM Revenue and Customs or their authorised representative (see Article 3(1)(i) of the DTA). The terms of Article 4 of the DTA are based substantially upon the terms of Article 4 of the OECD Model Tax Convention On Income and on Capital (“the OECD Convention”). It is common ground that I can have regard to the OECD Commentary on this Convention (“the Commentary”) in interpreting the DTA: see also Fowler v HMRC [2020] UKSC; [2020] 1WLR 2227 at [18].
18. I will return to the facts in more detail below but it may assist to provide some basic facts at this early stage for context in explaining how the DTA operated in the Claimant’s case. The Claimant is regarded to have been resident in both Spain and the UK at all material times but the issue which arises under Article 4 is that which has been called “treaty residence” - that depends on the application of the descending series of tie-breaker tests. Until June 2024 HMRC were consistent in stating that in each of the Relevant UK Tax Years the effect of Article 4(2)(a) of the DTA (the COVI test - the first tie-breaker) was such as to identify that the Claimant was treaty resident in the UK.
19. There was then a radical change. So far as presently relevant HMRC’s revised and current view as expressed in the Letter is that: (i) for the Early UK Tax Years, the tie-breakers in Articles 4(2)(a)-4(c) of the DTA do not resolve the issue of treaty residence, so one must apply Article 4(2)(d) of the DTA Treaty because the Claimant has at all times been only a national of Spain; and (ii) for the periods 2016/2017 onwards the provisions of Article 4(2)(b) of the DTA resolve the treaty residence position because the Claimant had an habitual abode only in the UK during those tax years.

The mutual assistance procedure (MAP): Article 25

20. Article 25 of the DTA is at the centre of this claim. It sets out the procedure to be adopted to resolve as between the state parties any action of either (or both) of the

contracting states which a taxpayer considers will lead to taxation not in accordance with the provisions of the DTA.

21. So far as relevant the provisions of Article 25 of the DTA provides as follows:

“Article 25 – MUTUAL AGREEMENT PROCEDURE

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits or other procedural limitations in the domestic law of the Contracting States, except such limitations as apply to claims made in pursuance of such an agreement.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

4. The competent authorities of the Contracting States may communicate with each other directly, including by means of face to face meetings, for the purpose of reaching an agreement in the sense of the preceding paragraphs.

5. Where,

a) Under paragraph 1, a person has presented a case to the competent authority of a Contracting State on the basis that the actions of one or both of the Contracting States have resulted for that person in taxation not in accordance with the provisions of this Convention, and

b) The competent authorities are unable to reach an agreement to resolve that case pursuant to paragraph 2 within

two years from the presentation of the case to the competent authority of the other Contracting State,

any unresolved issues arising from the case shall be submitted to arbitration if the person so requests.

These unresolved issues shall not, however, be submitted to arbitration if any person directly affected by the case is still entitled, under the domestic law of either State, to have courts or administrative tribunals of that State decide these issues or if a decision on these issues has already been rendered by such a court or administrative tribunal or if the case has been presented to either competent authority under the European convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises, signed on 23rd July 1990. Unless a person directly affected by the case does not accept the mutual agreement that implements the arbitration decision, that decision shall be binding on both Contracting States and shall be implemented notwithstanding any time limits in the domestic laws of these States. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this paragraph.”

(I will refer to this last paragraph relating to “unresolved issues” as “the Tailpiece”: see further [59] below)

22. Given the nature of the arguments made by Counsel, it may be helpful for me to summarise (and break down into stages) my understanding of the way in which the Article 25 MAP process is intended to work:
- (1) **Stage 1** is the presentation by the taxpayer of an objection/complaint to the competent authority of the country where the taxpayer is resident (here, the Claimant chose the UK acting by HMRC as the recipient authority) that a state (here, Spain) is taking action not in accordance with the provisions of the DTA.
 - (2) **Stage 2** is the decision by the recipient of the objection that the objection is “justified”. As to the meaning of “justified”, my own reading of that term in the context of Article 25 as a whole was not that HMRC as the competent authority had to decide at this early stage that the objection was soundly made and correct but, rather, that the objection raised a sufficiently arguable case that it required HMRC to engage in a dialogue with its counterpart (here, the SCA) with a view to resolving the issue as to whether taxation compliant with the DTA was being achieved. In my judgment, “justified” cannot mean HMRC has reached a final conclusion that the taxpayer is correct because this would defeat the principal purpose of the MAP which is a discussion and that necessarily means that HMRC and the SCA must remain open to changing views following dialogue. This appears also to broadly accord with the observations in the Commentary at [31.1] where it is said: “The determination whether the objection “appears...to be justified” requires the competent authority to which the case was presented to make a preliminary

assessment of the taxpayer's objection in order to determine whether the taxation in both Contracting States is consistent with the terms of the Convention." (Emphasis supplied)

- (3) **Stage 3** is a process of discussion and consultation between HMRC and the SCA with the aim of seeking "mutual agreement". I reject Mr Rivett KC's submission that HMRC was in this process under some form of obligation to "advocate" on behalf of the taxpayer in the discussion. Both competent authorities must necessarily keep an open mind to make this process effective. They are not required to advance a taxpayer's desired position - they are required to discuss matters with a view to reaching an agreement if possible.
- (4) **Stage 4** is either an agreement being reached between HMRC and the SCA or a situation of a failure to reach agreement. If there is no agreement, the matter may go to arbitration at the taxpayer's election (to resolve unresolved issues between the states) after 2 years of the date the complaint was first presented (in Stage 1). However, it is important to underline that the taxpayer is not bound by an agreement if one is reached, nor is he bound by the award in any arbitration. At all times he retains his ability to rely on the DTA before domestic courts. It is in the taxpayer's sole power to make such elections. The right to arbitration is subject to the Tailpiece.
23. On the facts before me, this case has so far only reached Stage 3. Discussions between HMRC and the SCA are continuing and (pending the decision in this claim) HMRC are yet to put their latest position as set out in the Letter to the SCA. There are a number of possible outcomes if and when that occurs: (i) continuing discussions; (ii) complete agreement by the SCA to the Decision; (iii) partial agreement on different tax years; and (iv) a number of permutations where the SCA takes a different view on the outcome of the earlier tie-breaker tests (Articles 4(2)(a)-(c)) before one gets to the nationality "decider" under Article 4(2)(d). On any view, matters are some way removed from Stage 4.

III. The Facts

24. For the purposes of the preliminary issues before me, the material facts fall within a small compass and are not in dispute. I will first summarise the broad chronology of events as they appear on the main documents and then from [33] below, I will set out in a bit more detail the evidence (which comes from the witness statements on the Claimant's side). For present purposes, there being no contrary statements from HMRC, I proceed on the basis that the Claimant's evidence is accurate and indeed no challenge was made in this regard by Mr Elliott.

Broad chronology

25. As I have outlined above, the Claimant was resident for tax purposes in both England and Spain under their respective domestic laws for the UK tax years of 2006/2007 to 2020/2021 (inclusive). In those circumstances, the Claimant's treaty residence was to be determined by Article 4(2) of the DTA using the three sequential "tie-breaker" tests, failing which "the competent authorities of the Contracting States shall settle the question by mutual agreement" (Article 4(2)(d) of the DTA). The Claimant made three separate requests that HMRC in its capacity as the UKCA enter into the MAP with the

SCA under Article 25 of the DTA in order resolve the Claimant's residence under Article 4(2) of the DTA: on 15 March 2016, in respect of UK tax years 2006/07 to 2012/13 ('MAP1'); (2) on 31 March 2021, in respect of UK tax years 2013/14 to 2017/18 ('MAP2'); and on 24 October 2022, in respect of the UK tax years 2018/19 to 2020/21 ('MAP3'). In each case the request was accepted by HMRC and they commenced the MAP with the SCA (I pause to note there is a dispute which I do not need to resolve as to the precise years covered by MAP1).

26. In November 2020, the Claimant requested that the MAP1 process be submitted to arbitration pursuant to Article 25(5) of the DTA and the Spain-UK Memorandum of Understanding on Article 25 Mutual Agreement Procedure (the "MoU"). In June 2023, the Claimant requested that the MAP2 process be submitted to arbitration. In each case, the question of the Claimant's COVI under the tie-breaker test in Article 4(2)(a) of the DTA was a central issue.
27. David Price ("Mr Price") and Kelly Grisdale ("Ms Grisdale") are officers of HMRC acting as the UKCA. Ms Grisdale was a new HMRC officer on the scene in 2024. In early 2024, Ms Grisdale informed Deloitte that she was "*reviewing [the Claimant's] treaty residence for all years under MAP in light of the inflexible stance taken by the Spanish competent authority*". This review was the beginning of the process which led to a reversal of HMRC's position as I describe in more detail below.
28. Mr Rivett KC submitted that at all material times prior to 21 June 2024 HMRC had consistently represented to the Claimant that in their view he was resident during the Relevant UK Tax Years in the UK for the purposes of the DTA. Mr Elliott says that this was only a "provisional view" but he rightly did not take issue with Mr Rivett KC's submission as to what HMRC have previously represented. The currently uncontradicted evidence demonstrates that this was HMRC's position.
29. Provisional or not, there was a major reversal to come. On 21 June 2024, Ms Grisdale emailed Deloitte stating that she had come to the conclusion that the Claimant was in fact treaty resident in Spain for all of the UK years from 2009/10 to 2010/2020. I will call this "the June Email" and will consider its terms in more detail below when addressing Issue One (Mr Elliott says that the grounds for bringing this claim first arose in the June Email).
30. There were then further discussions between HMRC and Deloitte. Following such further discussions, on 27 September 2024, HMRC sent the Letter. It is a lengthy document and it is prefaced by the statement: "You should note that this is not a MAP conclusion as there has been no agreement between the Spanish and UK competent authorities". The Letter sets out in some detail, in relation to the issue of COVI the facts concerning the Claimant's "personal and economic" relations with the UK or Spain (with particular consideration under headings described as "family", "social", "political" and "cultural", "assets" and references to corporate interests). Given that the Letter contains details of the personal and private life of the Claimant, I will not cite more from it in this judgment than is necessary for the purposes of addressing the submissions. For present purposes, the Summary at the end of the Letter is sufficient to explain the new conclusions of HMRC following its consideration of the facts:

"After considering all the information above in its entirety, I have concluded that [the Claimant] had a Permanent Home in

both the UK and Spain and his Centre of Vital Interests are inconclusive to either the UK or Spain. During the UK tax years 2009/10 – 2015/16 [the Claimant] should be Spanish treaty resident based on the nationality test, and for 2016/17 to 2020/21, he is UK treaty resident based on his habitual abode. I appreciate that this may not be the outcome you were expecting. However, I believe this is the correct outcome once applying the tiebreaker test and to move the case to conclusion under MAP. I shall now send my position to Spain for their consideration. Once a MAP decision has been decided by the Competent Authorities it will be up to [the Claimant] to decide if he accepts the MAP outcome. There is no appeal to a MAP decision and the only alternative for [the Claimant] would be to pursue the legal route in Spain.”

31. I understand that HMRC have not yet sent these conclusions to the SCA, and accordingly the SCA has not commented on or considered whether it agrees with HMRC’s revised position. So no agreement has yet been reached as to how the “tie-breaker” tests will be applied on the facts of the Claimant’s case.
32. Following pre-action correspondence, on 21 December 2024, the Claimant’s legal representatives filed his claim for judicial review of the Decision with the Court by CE-File. Some of this correspondence is relevant to Issue One. As I have said, there was also originally an issue as to valid service of the claim (that is, whether it had been served within the 7 day period required by CPR r 54.7) but it has been resolved. On 21 February 2025, HMRC filed their Acknowledgment of Service and on 7 May 2025 Sheldon J made the order directing preliminary issues as I have described above.

Evidence in more detail

33. In terms of evidence, the Claimant has submitted a witness statement describing in some detail the circumstances surrounding his relocation some years ago to the UK, and emphasising the significance of his family ties, lifestyle, and assets in both the UK and Spain. The Claimant explains that until June 2024, HMRC had consistently supported his position that he is treaty resident in the UK for the Relevant UK Tax Years despite multiple officers taking charge of his affairs. He understandably says that he finds it humiliating that despite this consistent position, and without any new information or change to his own position that HMRC has performed what he calls a “180-degree” turn in the Letter without any explanation or application of the relevant tests established in the DTA. I have great sympathy with the position the Claimant finds himself in.
34. Mr Stokes, a Tax Partner at Deloitte, has provided a detailed witness statement describing Deloitte’s interactions with HMRC on the various MAPs. He explains that it was only some 8 years after the commencement of the MAP1 and as part of the Claimant’s ongoing MAP cases, that HMRC stated in the Letter their intention to communicate to the SCA that during the UK tax years 2009/10-2015/16, the Claimant should be regarded as treaty resident in Spain and during the UK tax years 2016/17-2020/21, he should be regarded as treaty resident in the UK. Mr Stokes explains that

the Letter “rescinds” HMRC’s previous position that the Claimant was resident in the UK for the purposes of the relevant UK-Spain DTA during each of the Relevant UK Tax Years in question. His evidence is that the June Email communicated what he calls a “significant and shocking change” in HMRC’s position by now determining the Claimant was considered a Spanish resident for all years, finding COVI and habitual abode inconclusive, and moving to the nationality tie-breaker. He says that this directly contradicted years of HMRC’s own actions and statements which led Deloitte and the Claimant to believe HMRC “unequivocally” considered the Claimant to be a UK resident in respect of the Relevant UK Tax Years. This is a position which he says they have now “abruptly and unfairly reversed” in their latest correspondence. Mr Stokes refers to numerous meetings, calls, and correspondence, in which HMRC’s Officers consistently provided assurances, both explicit and implicit, that reinforced their acceptance of the Claimant’s UK residence.

35. In this regard, Mr Stokes refers to the fact that the Claimant filed his UK tax returns as a UK resident, paid on the remittance basis of taxation and Deloitte engaged with HMRC in respect of enquiries into his personal tax returns. In addition, Mr Stokes describes how the Claimant has made advance payments of Spanish tax (and interest) in respect of the Relevant UK Tax Years of €23,024,536.74 in order to avoid criminal prosecution in Spain. The Claimant immediately appealed those payments on the grounds that he does not consider that he is Spanish tax resident. Of this amount, €18,488,793.01 relates to Spanish tax (and interest) in respect of the years 2009/10 to 2015/16, which are the UK tax years in which the Letter confirms the Claimant should be treaty resident in Spain. €4,525,813.67 relates to Spanish tax (and interest) paid in respect of the UK tax years 2016/17 to 2020/21, which are the years in which the Letter confirms the Claimant should be treaty resident in the UK.
36. Sarah Horton (“Ms Horton”) also of Deloitte provides evidence to the same effect as Mr Stokes, explaining her involvement in the ongoing MAPs and how until June 2024 HMRC held out to the Claimant that he should be regarded as treaty resident in the UK for the purposes of the DTA for all Relevant UK Tax Years. Her evidence is however more relevant at this stage to Issue One (whether the claim is out of time) and I will need to set it out in a bit more detail. She says that immediately upon the June Email she contacted Joan Hortalà i Vallvé, the Claimant’s Spanish tax lawyer, and expressed her concern at the conclusions reached by HMRC. She informed him of an upcoming call with Ms Grisdale and Mr Price of HMRC and sought to arrange a discussion with the Spanish team beforehand. At that point, Deloitte took the decision to obtain further clarity from HMRC before communicating the position to the Claimant. This is because they knew how shocked and confused he would be, as a result of what she says was an inexplicable change in position.
37. On 25 June 2024, the Deloitte team (Ms Horton and Mr Stokes) had a call with Mr Price and Ms Grisdale to understand HMRC’s new position. HMRC acknowledged the Claimant’s COVI was weighted towards the UK but deemed it inconclusive. She says their view was that the MAP process required agreement on each tie-breaker sequentially, before arbitration was possible. The Deloitte team challenged this, arguing it would unfairly restrict arbitration to dual-nationals, contrary to its intended purpose. Consequently, Mr Price agreed to seek clarification from the OECD regarding both the tie-breaker interpretation and the scope for arbitration. There were then further exchanges in relation to the interpretation of Article 4(2) and the position of the OECD

on certain matters. I will not set those out but what is significant is that in advance of an intended meeting with Deloitte and in an email of 19 August 2024, Ms Grisdale said to Ms Horton: “I want to speak to David [Price] again and send you a breakdown of how I arrived at my decision prior to us our [sic] meeting.” That same day, Mr Stokes spoke directly with Ms Grisdale and then emailed Ms Horton to relay the substance of their conversation, which was that HMRC had not yet communicated a final decision, as they were “reviewing previous points” based on Mr Price’s feedback from the OECD. Ms Grisdale also said to Mr Stokes that she had “changed her position” (though she had not yet discussed this with Mr Price). Mr Stokes thought that her potential new analysis would be that earlier years might be inconclusive on COVI (leading to habitual abode, then nationality as the tie-breaker), but for later years, she would conclude that the Claimant was UK resident. Mr Stokes expressed his disagreement with this potential conclusion but acknowledged it was subject to Mr Price’s review.

38. As a result of the correspondence and discussions with Ms Grisdale, Ms Horton says it was clear to her that a final decision had not been made by HMRC. On 22 August 2024, she replied to Mr Stokes, acknowledging the “good news” that a final decision had not yet been communicated. Based on the evidence before me, I consider Ms Horton was justified in taking this view of events. There is no evidence from Ms Grisdale to counter Mr Stokes’ and Ms Horton’s understanding that HMRC had yet to reach a final decision despite the June Email.

Spanish law evidence

39. Finally, the Claimant also relies on a statement from his Spanish tax lawyer, Joan Hortalà i Vallvé (the individual referred to by Ms Horton in my summary above). Joan Hortalà i Vallvé has advised the Claimant for some 15 years and his evidence includes both factual matters (concerning the Claimant’s position) and effectively expert evidence on Spanish tax law and appellate processes. There is no issue that he is a highly experienced tax lawyer, from both the practical and academic law perspectives. It does seem to me that admission of Spanish law “expert” evidence from a suitable person should have been subject to an application under CPR Part 35. But no such objection was taken by HMRC and indeed it relied upon parts of this evidence in its submissions. I will take it into account as an accurate summary of the Spanish law position.
40. Joan Hortalà i Vallvé explains that under Spanish Personal Income Tax Law an individual is characterised as “Spanish tax resident” if either one of the following criteria are met: (i) the individual spends in Spain, including sporadic absences, more than 183 days in a calendar year; or (ii) the individual has in Spain the “... main source of his or her professional activities or economic interests, directly or indirectly”. Since approximately 2016, the Spanish tax authorities have concluded that the Claimant meets the second of these criteria, because ultimately his cost of living is funded by returns derived from a family business headquartered in Spain.
41. Joan Hortalà i Vallvé describes the various processes and appeals in Spain in relation to the Claimant’s tax affairs and how one of two mutually exclusive administrative review processes (not regarded as independent of the tax authorities) must be exhausted before matters can be taken to the courts of justice (that is, the National Court followed by a form of “cassation” appeal to the Supreme Court) which operate as independent and impartial judicial bodies. A taxpayer must pay (or provide a bank guarantee against)

assessed taxes pending appeals and Joan Hortalà i Vallvé describes how the Claimant has paid substantial amounts for such alleged liabilities between 2006 and 2023, while he exhausts the appeal process.

42. As to the operation of the DTA (which he refers to as “the DT”) and the MAP under it, Joan Hortalà i Vallvé helpfully summarises the position in Spain as follows:

“The DT provides Mr Carulla Font with the ability to request arbitration proceedings in the event that no agreement has been reached between the UK Competent Authority (“UK CA”) and the SCA within the two years following the initiation of the MAP (as outlined in Article 25.5 DTT). However, this arbitration proceeding is subject to the condition that neither of the judicial or administrative bodies of the Contracting States has previously ruled on the matter. In principle, as I have already stated in paragraph 43 above, the initiation of a MAP should result in domestic procedures with the same object and purpose being suspended. However, despite this, in the case of Mr Carulla Font, the TEAR of Catalonia [the Regional Economic-Administrative Tribunal] issued a resolution regarding his tax residency, and this development was used by Spain to oppose the processing of the arbitral procedure. Even if Mr Carulla Font could access the arbitration process, the communication of the Decision by the Defendants to the SCA would likely undermine the process (and any other legal remedy in Spain available to Mr Carulla Font, if it exists) as neither an arbiter nor judge is likely to contradict the position of the UK CA and the SCA asserting Mr Carulla Font as treaty resident in Spain, regardless of whether or not that position is correct.”

IV. Issue One: is the claim out of time?

43. The 3-month time limit for bringing a claim for judicial review under CPR 54.5(1)(b) runs from the date upon which the grounds for making a claim first arose. See: The Administrative Court Guide (2025) at [6.4]. Mr Elliott argues that (assuming a judicially reviewable decision was made) the material decision was communicated by Ms Grisdale on 21 June 2024 in the June Email in which, in relation to COVI, HMRC stated:

“Centre of Vital Interests (COVI)

Having considered all the information that has been provided to me, I agree that [the Claimant] is resident in the UK and fulfils our domestic criteria. I have also considered what COVI he has in Spain. When considering all the facts, it is clear that [the Claimant] has a lot of personal, economic, political and social connections in both the UK and Spain. Although I consider COVI to be stronger in the UK, I do not consider it to be a conclusive factor to determine residence in either the UK or

Spain. Therefore, it is necessary to move onto the next test of the tie-breaker in Article 4(2) of the UK/Spain [DTA].”

44. The June Email also stated that the Claimant had an “habitual abode” in both the UK and Spain, and his residence for the purpose of the DTA was therefore determined by his Spanish nationality. It concluded that the Claimant was resident in Spain during each of the Early UK Tax Years and stated that this was HMRC’s conclusion in order to bring the MAP to an end noting: “I know this may be disappointing to you, but I believe it is the appropriate conclusion under the tie-breaker test to bring [the Claimant’s] Map cases to conclusion.”
45. Mr Elliott submitted that Deloitte understood that HMRC had reached a conclusion as to the Claimant’s residence for the purposes of the DTA. He relied on their internal email of 27 June 2024: “I explained the development on the MAP that Kelly [Grisdale] and David [Price] have concluded Jordi is Spanish tax resident...”. He relied also on Mr Stokes’s witness statement (which I have referred to above) to the effect that this was a “significant and shocking change in the Defendants’ position”. Mr Elliott cited case law concerning situations where a decision is communicated and then supplemented with more detailed reasoning, in support of his submission that the time limit for judicial review runs from the date of the original decision. In particular, he relied on R (Crompton) v Police and Crime Commissioner for South Yorkshire [2018] 1 WLR 131 where the PCC’s decision (to suspend the chief constable) was initially communicated by email in April 2016 and was then supplemented by fuller reasoning in July 2016. The Court (Sharp LJ and Garnham J) held that the claim should have been brought against the original decision (communicated in the email) which contained the substance of the PCC’s reasons. Mr Elliott says that the ‘decision’ that the Claimant purports to challenge, namely HMRC’s conclusion concerning his residence under the DTA in the Early UK Tax Years, had been made and communicated to him on 21 June 2024 in the June Email. The three-month time limit for challenging that conclusion expired on 21 September 2024. The claim was not however filed with the Court until 21 December 2024, and so was substantially out of time.
46. Mr Rivett KC relied on 3 main points in response. First, he said that the conclusion communicated by the June Email was different from that communicated in the Letter. That is factually correct: the June Email stated Ms Grisdale’s view that the Claimant was treaty resident in Spain for *all* of the UK years from 2009/10 to 2010/2020 but in the Letter, by contrast, HMRC concluded that the Claimant was treaty resident in Spain during the UK tax years 2009/10 to 2015/16 and treaty resident in the UK during the UK tax years 2016/17 to 2020/21. Accordingly, as the conclusions of the June Email and the Letter were different, he argued one cannot say that they should be treated as the same ‘decision’ for judicial review purposes. Second, Mr Rivett KC argued that it was evident from the dealings of the Claimant’s representatives with HMRC between 21 June 2024 and 27 September 2024 that the June Email was not a “final” decision. Third, even if the claim was filed out of time, Mr Rivett KC says that there is a good reason to extend time. He applied in his skeleton for an extension arguing this would be just for a number of reasons: the impression created by HMRC that the June Email was not the communication of a final decision, the prospects of success on the claim on the merits, the importance of the underlying issues regarding judicial oversight of HMRC’s conduct of MAP cases, and the absence of detriment to good administration.

47. In my judgment, this claim is not out of time and even if it were, I would have granted an extension. My reasons are as follows. On the uncontradicted evidence of Ms Horton, I am satisfied that the June Email did not represent a final or concluded view of HMRC. While the June Email is expressed in terms of “conclusions” the subsequent dealings between Deloitte and HMRC, which she describes and which are not challenged, satisfy me that matters were not in fact final, and a challenge would have been premature. Indeed, it was not until the Letter itself that any intention to communicate the new HMRC view to the SCA (such communication being a major point of complaint for the Claimant) was indicated by HMRC. It is also relevant that there was a fundamental change in position between the June Email and the Letter in relation to UK tax years 2016/17 to 2020/21. I appreciate that the Claimant does not complain about that aspect, but the two decisions were plainly not the same.
48. In terms of an extension of time, were it necessary, I consider the conduct of HMRC in engaging with Deloitte with a potential to change their view would make it unjust not to provide an extension. There is no prejudice to good administration. I note also that no timing point was taken in the response of HMRC dated 21 November 2024 to the Letter Before Claim of 18 November 2025 sent by the Claimant’s lawyers. Indeed, HMRC itself appeared to consider in its response that the 3-month period for issuing the claim expired on 27 December 2024 (not suggesting an earlier decision had been made) and seems to have indicated no timing points would be taken if the claim was in fact issued after that date because a response from HMRC would take some time to prepare.
49. In all these circumstances, it would in my judgment be unjust as a matter of discretion not to grant an extension if in fact time had expired (contrary to my primary view).

V. Issue Two: is the Decision amenable to judicial review?

50. This was HMRC’s primary objection to permission being granted. Mr Elliott, in an attractively simple submission, argued that the Decision does not have legal consequences for the Claimant. He said that the conclusions expressed in the Letter were merely a “step” in the ongoing MAP and there will be no legal consequences for the Claimant unless and until HMRC and the SCA reach an agreement, and the Claimant chooses to accept that agreement (or, in the alternative, he can freely choose to reject the agreement). In addition, Mr Elliott underlined the Claimant can withdraw from the MAP process at any time and rely on his legal rights in each state.
51. Mr Rivett KC submits that the Decision will inevitably deprive the Claimant of his substantive legal rights as a taxpayer under the DTA which he argued sound in domestic law. In answering Mr Elliott’s submission that the Decision was merely a “step” in the MAP process, Mr Rivett KC relied strongly upon observations made by Fordham J in R (Police Superintendents’ Association) v Police Remuneration Review Body [2024] 1 WLR 166 (“the Police Superintendents’ case”). He argued that a decision that “leads to” the determination of a person’s treaty residence under the MAP procedure (a legal consequence with substantial fiscal consequences) is amenable to judicial review. I will return to the Police Superintendents’ case below.
52. Mr Rivett KC further submitted that an inability to challenge the Letter would deprive the Claimant of his substantive legal rights under the DTA because (in the absence of agreement between HMRC and the SCA under MAP) the case will move to arbitration

and so, he argued, he has a “right” to arbitration. That is said to be valuable because arbitration provides a mechanism for the Claimant to impartially have resolved his treaty residence for the years at issue in a manner which is binding on HMRC and SCA. Mr Rivett KC forcefully submitted that the inevitable effect of the Decision, if it is allowed to stand and is communicated to the SCA, will be that the Claimant will be deprived of this right to arbitration (including in respect of the MAPs already within arbitration). I will call this “the arbitration point” below.

53. In each of these ways, Mr Rivett KC argued the Decision clearly has “substantial legal consequences” for the Claimant so as to satisfy the amenability test for judicial review. These submissions were persuasively presented by Mr Rivett KC but I do not accept them. Given the importance placed by Mr Rivett KC on the Police Superintendents’ case, I should first explain why I do not consider it assists the Claimant in relation to Issue Two.
54. When considering the issue of “amenability” to judicial review, it is appropriate to recognise that the cases generally fall into one of two broad categories which is defined by the particular “amenability” issue before the court. At a high level of generality the two types of amenability issue which arise can be summarised as follows:
 - (1) The first category concerns the issue whether the defendant is carrying out a “public function” or its actions involve a sufficient “public element” to make them amenable to judicial review. That usually involves the court considering the source of the power of the decision-maker. See De Smith’s Judicial Review of Administrative Action (9th Edition, 2024) at [3-031]. A recent example of this category is Sashi Shashikanth, R (on the application of) v NHS Litigation Authority [2024] EWCA Civ 1477, per Lewis LJ at [43]-[45]. The issue in that appeal concerned the question of whether a decision of an adjudicator appointed by the Secretary of State to determine a dispute arising out of a contract governing the provision of primary medical services was amenable to judicial review. Given that the source of the Secretary of State’s power was statutory and the dispute resolution process was statutory, Lewis LJ held that was of itself sufficient to make the decision of the Secretary of State, or the adjudicator appointed to carry out his statutory functions, amenable to judicial review. In my judgment, the Police Superintendents’ case is also a case falling within this category. The court had to consider the “public function” issue and indeed this was the very heading adopted by Fordham J at [32] in the introduction to the paragraphs of his judgment relied upon by Mr Rivett KC. In summary, the relevant defendant was the Police Remuneration Review Body (“the PRRB”) and the first decision under challenge was the “recommendation” it made in a report submitted to the Home Secretary for a flat-rate pay increase of £1,900 to all police officers (at [2] and [5]). That recommendation was made pursuant to a specific statutory function under section 64B of the Police Act 1996, and that was the final function of the PRRB (once the report was submitted, any decision fell to be made by the Home Secretary). The first significant point to underline is that Fordham J considered the issue of whether there was a decision amenable to judicial review against an arguability threshold rather than as a preliminary issue for determination (at [33]). He held that it was “arguable” that it was not possible to “isolate the “recommendation” function from the statutory “consider and report” function” and he explained “[t]hese are surely inextricably linked, and part and parcel of the same statutory function” (my

emphasis supplied). It was in that context, namely in the exercise of a statutory function that was the final step that the relevant public body would take in the process, that Fordham J observed: “The function of giving advice and making a recommendation can in principle be a public function amenable to judicial review...” (emphasis supplied). In short, the Police Superintendents’ case was not concerned with whether a “step” in a process would be amenable to judicial review but the issue whether that was a public function within a very different statutory context. Further, insofar as the case was concerned with any wider issue (such as whether a recommendation was reviewable), Fordham J was not deciding the matter finally (unlike my task in relation to Issue Two), but only to a level of arguability.

- (2) The second category of amenability case is where the issue is whether what I would call the “nature and form” of the decision under challenge means it is not amenable to judicial review. In this category fall cases where the challenge might be said to be premature or a merely a preparatory step. So, it is well established that the High Court will not entertain anticipatory claims for judicial review in respect of events that have not yet occurred: R (Gill) v Cabinet Office [2019] EWHC 3407 (Admin) per Lang J at [88]. See also the description in De Smith’s at [3-029] of so-called “chains of decisions” along the way to making final decisions. The amenability bar in these cases are examples of the wider underlying principle to the effect that judicial review is generally concerned with administrative action which has substantive legal consequences for the claimant. That means action that affects a citizen in material way. This general principle was explained by Carnwath LJ at [32] in Shrewsbury and Atcham BC v Communities and Local Government [2008] EWCA Civ 148; [2008] 3 All E.R. 548:

“Judicial review, generally, is concerned with actions or other events which have, or will have, substantive legal consequences: for example, by conferring new legal rights or powers, or by restricting existing legal rights or interests. Typically there is a process of initiation, consultation, and review, culminating in the formal action or event (“the substantive event”) which creates the new legal right or restriction.”

55. In my judgment, the Claimant’s case fails under Issue Two because, although a public function was plainly being exercised by HMRC, the nature and form of the Decision mean it is not amenable to judicial review. On the undisputed facts, the MAP has only reached what I have called Stage 3 in my summary above. I consider that the Letter merely sets out the UK’s current view to enable further communication with the SCA as part of the joint endeavour to reach a mutual agreement on the treaty residence of the Claimant. It is simply an intermediate step in the MAP process that will be subject to negotiation with the SCA, who will share their own position with HMRC in return. In short, it does not determine the Claimant’s treaty residence. If later there is an agreed position on treaty residence between HMRC and the SCA, no decision on even that issue can bind him (see McCabe at [64 below]). I accept Mr Elliott’s description of the Letter as a form of courtesy communication sent to Deloitte in order to keep them informed of HMRC’s current view and position in the MAP discussions with the SCA. Contrary to the assertion in the Claimant’s Statement of Facts and Grounds (SFG), it

cannot be assumed that points will be “conceded” to Spain, since by its nature MAP is a process of negotiation which cannot have a guaranteed outcome at the outset.

56. The Letter conferred no new legal rights or powers (nor did it restrict any legal rights). Even looking at matters more broadly and beyond strict legal rights, it did not affect the Claimant’s position in any meaningful way. It may be that if: (a) the SCA’s position in the next round of the MAP is compatible with HMRC’s view in the Letter, and (b) HMRC and the SCA reach an agreement on that basis, and (c) the Claimant accepts that agreement, then that would be a decision that could affect the Claimant’s position – but the present correspondence has no such consequences and it is not inevitable that it will result in an act which has negative consequences. It is common ground that it always remains in his power to withdraw from, or to reject the outcome of, the MAP process.
57. Although it does not arise for decision, I doubt whether even if an agreement were reached between HMRC and the SCA on the Claimant’s treaty residence, HMRC’s actions in contributing to that result (by some form of alleged wrongful concession) would be amenable to judicial review. Such action would not have determined the Claimant’s rights or obligations.
58. For completeness, I should record that I do not accept Mr Rivett KC’s argument that the Letter is a decision because it refers to expressing a “conclusion” on the part of HMRC. This ignores the first paragraph of the Letter which expressly states that it is not a conclusion for the purposes of MAP.
59. I return to the arbitration point which was the focus of Mr Rivett KC’s oral submissions. The simple answer to this point is if arbitration is available at all in the Claimant’s case (as to which see [60] below in relation to the Tailpiece to Article 25) he is not deprived of any access to arbitration unless and until HMRC and the SCA reach agreement. That has not yet happened and may not happen (with a range of permutations of agreement or not as to how the specific tie-breakers work for the various tax years).
60. At the hearing, I queried with Counsel whether, given the terms of the Tailpiece to Article 25, the Claimant in fact had any right to arbitration (assuming HMRC revert to a position that the Claimant was treaty resident in the UK but the SCA do not agree). I asked Counsel to address this issue in written submissions and they helpfully provided me with an agreed position as follows: (1) for the period 1 January 2006 – 31 December 2012, there is presently a relevant judgment of a Spanish court (under appeal) which unless set aside excludes the right to arbitration; and (2) for the later period (i.e. 1 January 2013 onwards), if and to the extent that he can and does waive his rights to domestic remedies in Spain, the Claimant would be entitled to have the issue arbitrated for that period. I will not set out the more detailed explanation of how this agreed position has been arrived at. I mention this point only as a matter of completeness. I underline that this is the position of the parties to this claim and not the SCA which has played no part in this case.
61. I decide Issue Two in favour of HMRC.

VI. Issue Three: does the Claimant have an alternative remedy?

62. This is HMRC’s secondary objection as an alternative to its arguments on Issue Two. It does not strictly arise given my decision above but I will address it briefly. As I set

out below, although framed as a separate objection, it appears to me in substance to be based on the same basic point which arises under Issue Two: the fact that the Decision itself, and indeed any future agreement between HMRC and the SCA as to the Claimant's treaty residence (if made), will have no legal effect unless and until the Claimant, at his sole election, decides to accept them.

63. As explained in *Fordham, Judicial Review Handbook* (7th Edition) at [36.3.1] it is well-established in public law that the existence of an “alternative remedy” is a “discretionary bar” to the grant of permission. See also *The Administrative Court Guide* (2025) at [6.3.3.1] and *In re McAleenon* [2024] UKSC 31; [2024] 3 WLR 803 (SC) at [50], per Lord Sales and Lord Stephens JJSC. In *R (Glencore Energy UK Ltd) v Revenue and Customs Comrs* [2017] 4 WLR 213, Sales LJ observed at [55] that “...judicial review in the High Court is ordinarily a remedy of last resort, to ensure that the rule of law is respected where no other procedure is suitable to achieve that objective”. The question of the suitability of an alternative remedy falls to be assessed by reference to the nature and type of decision challenged and the relief sought against the defendant. In deciding this issue, the court must focus on the substance of the dispute as opposed to the way a claimant has chosen to characterise a complaint as a matter of form.
64. Mr Rivett KC and Mr Stevens describe the decision under challenge in their skeleton argument as HMRC's “decision to concede treaty residence to Spain for the UK tax years 2009/10 to 2015/16”. In the prayer to the Claim Form, the first form of relief the Claimant seeks is a “declaration from the Court that the Claimant was UK resident for the purposes of Article 4 of the DTA in each of the Relevant UK Tax Years”. The Claimant further seeks mandatory orders against HMRC seeking in effect to require them to put this position to the SCA under Article 25 of the DTA with, no doubt, the aim of either getting the SCA to agree or, if they do not agree with HMRC, having the matter arbitrated (assuming this is possible). The ultimate aim is plainly to avoid a situation where the Claimant suffers taxation in Spain under Spain tax laws. That is the substance of the complaint.
65. I return to the point that it is not in dispute as a matter of law that if (which is yet to occur) HMRC and the SCA reach agreement in accordance with the MAP on the basis that the Claimant is treaty resident in Spain, that decision would not be binding unless the Claimant agreed to it. That follows from the text of Article 25 and is also confirmed in HMRC's *Statement of Practice 1* (2018) and in *McCabe v HMRC* [2020] UKUT 0266 (TCC); [2020] STC 2148 (“McCabe”) per Fancourt J at [44]:

“Mr McCabe's objection that the FTT focussed impermissibly on the ‘process’ of the MAP in assessing relevance in fact highlights the central fallacy in his argument. Mr Hickey's skeleton argument refers to ‘admissions’ which must have or might have been made by HMRC during the MAP, and which Mr McCabe seeks to identify through the disclosure. The fallacy on which this is based is that something said by HMRC in the MAP could bind it in the substantive appeal. Not only could it not bind HMRC, it carries no weight in the process of determining the relevant issues in the appeal. Just as Mr McCabe is not bound by the MAP, either as to its outcome or reasoning, neither is HMRC bound by the process or negotiations which led

to that outcome. In the appeal, each party will doubtless vigorously argue each point in issue, and nothing in the MAP process hinders them from doing so. In reaching a conclusion on those arguments, the FTT should place no weight on HMRC's interpretation of what was said during the process, or what HMRC decided to challenge or not challenge, and what compromises have been reached. The 'process' of the MAP was rightly mentioned by the FTT because it goes to the lack of probative value of the documents sought. The MAP is not part of the appeal to the FTT; it was a collaborative process between the competent authorities of two jurisdictions, the outcome of which Mr McCabe has exercised his right not to accept."

66. Accordingly, the Claimant has in fact more than an alternative remedy: he has a self-help remedy to prevent HMRC's so-called "concession" (if it is made and results in an agreement between HMRC and the SCA) becoming binding upon him. That is, he can simply reject any agreement incorporating that concession, which is in my judgment effectively a form of unilateral power to render any agreement between HMRC and the SCA wholly ineffective and irrelevant. He does not need the High Court's intervention to prevent unfair double taxation he says will follow HMRC's alleged unlawful conduct in conceding his treaty residence.
67. I accept Mr Elliott's submission that this is sufficient to establish that the Claimant has a form of remedy within the scheme of the DTA such that the Court should exercise its discretion to refuse permission to bring a claim for judicial review of the alleged concession.
68. I was not persuaded by Mr Rivett KC's argument that because his client seeks to challenge the Decision of HMRC and show that to be unlawful on particular public law grounds, there is no remedy elsewhere for raising these *particular* errors by HMRC. Mr Rivett KC said his client is entitled to vindication of his domestic law rights to proper application by HMRC of Article 25 of the DTA and proper prosecution on his behalf of the MAP. This submission ignores the fact that he has no need of this remedy because nothing that binds him has been done by HMRC. Judicial review is a remedy of last resort reserved for those cases where the negative effect of a decision cannot be cured elsewhere or by some other means.
69. Had it been necessary, I would have decided Issue Three in HMRC's favour.

Further reasons for refusing permission

70. There are further reasons why I consider it would be wrong in principle for the High Court to exercise its supervisory jurisdiction on the facts before me. These reasons concern the inappropriateness of the High Court becoming involved in a dispute which is in substance about the actions of a foreign taxing authority in relation to a foreign tax, and where a foreign court exists to resolve these matters.
71. I begin by considering the situation that would arise if the position was reversed. Let us assume that HMRC's concessions in the MAP led to agreement with the SCA that the

taxpayer was treaty resident in the UK and that resulted in additional UK tax liabilities for certain years which the taxpayer argued was contrary to the DTA. Under well-established principles, the taxpayer would be required to challenge those liabilities by way of a statutory tax appeal as opposed to judicial review of the UK's MAP conduct with Spain which were said to have led to such liabilities. Our courts do not permit judicial review in those circumstances. It strikes me as rather odd that on the actual facts before me, the High Court would entertain a judicial review of a concession by HMRC which it is said may contribute in some way to additional Spanish tax liabilities under Spanish tax laws. If the Claimant considers that he will suffer adverse tax treatment in Spain through incorrect application of the DTA, then that will be as a direct result of the position of the SCA and the application of Spanish tax law. The Claimant can, as his Spanish lawyer states, make use of independent and impartial courts and appellate tribunals to address that.

72. I have not overlooked the fact that Joan Hortalà i Vallvé, states a MAP resolution is not legally binding but “can carry significant weight” in influencing a Spanish appeal (albeit it is not explained why the view of tax authorities carries such weight). I note that under UK law it is recognised that the outcome of MAP, if rejected by the taxpayer, has no weight – McCabe at [46]. But if there are less favourable aspects of the Spanish courts' approach to MAP resolutions between competent authorities that is simply a feature of the remedial regime in Spain. The Claimant can also prevent any MAP resolution from ever being made by withdrawing from the MAP process if he fears the weight Spanish courts will give to a resolution.
73. It is significant that the Claimant has successfully established his UK treaty residence before the Spanish courts for earlier years. I have no reason to doubt that the Spanish courts will do anything other than faithfully apply the DTA to the facts and indeed the contrary is not suggested by his lawyer. In my judgment, it is not for our Courts to intervene where the real dispute lies between a taxpayer and a foreign tax authority in relation to foreign tax which he wishes to argue may be improperly levied.
74. I would add that the Claimant's approach has the rather unattractive result that, in any case in which HMRC reach an agreement through a MAP that results in higher foreign tax, the High Court may be called upon to rule on issues which have no UK legal consequences and affect only foreign tax liabilities. This is not the appropriate function of the Administrative Court. Disputes where the substance concerns application of foreign tax law should be left to the Courts of the relevant jurisdiction. That is where, if the point arises, the Claimant should litigate his treaty residence for the Relevant UK Tax Years.

VII. Issue Four: justiciability

75. This is a further alternative argument for HMRC but if it is sound it should amount to the principal basis for refusing permission. It raises issues which are novel and which I do not need to decide finally because permission falls to be refused for other reasons. Given that the point was the subject of detailed written and oral arguments, and in the event this matter goes further, I will give some provisional reasons why I was not persuaded by HMRC's arguments that jurisdiction should be declined on a justiciability basis.

76. I start by noting that the scope of HMRC's objection in relation to this preliminary issue has not always been clear. This is not a case where the Claimant seeks to enforce an unincorporated treaty or to get the court to interpret such a treaty in the absence of what is now known as a "domestic foothold": see R (on the application of Al-Haq) and the Secretary of State for Business and Trade [2025] EWHC [1615 (Admin)] at [83], per Males LJ and Steyn J.
77. As I understood the final state of the objection made by Mr Elliott, it was that entertaining the judicial review claim would involve the court ruling on the conduct of negotiations between the UK's executive (HMRC) and a foreign state (Spain, in the form of the SCA). Reliance was placed in this regard on Campaign for Nuclear Disarmament v The Prime Minister of the United Kingdom [2002] EWHC 2777 (Admin) ("the CND case") at [36] where Simon Brown LJ explained that our courts are not charged with policing the conduct of the UK "on the international plane". Mr Elliott argued that the application of this principle in this case means that HMRC should be allowed to achieve the outcome that it considers is correct from the UK's perspective in MAP negotiations with other competent authorities. He argued that having the Court "supervise" the UK's attempts to reach agreement under the DTA has the potential to undermine the UK's negotiations.
78. As a provisional view, I was not persuaded by these arguments. As I have said, the DTA has been incorporated into domestic law, which UK courts and tribunals interpret and apply. In particular, the tax tribunal in the course of a statutory appeal where a taxpayer relies on the DTA as part of a claim for relief from UK tax, may interpret and rule on the application of the DTA. In these circumstances, I find it hard to see how it can be said that the Decision and acts of HMRC under the DTA are not subject to the jurisdiction (and within the competence) of the Court. This reflects conclusions expressed in Heathrow Airport Ltd and ors v HM Treasury [2021] STC 1203, where Green LJ derived the following two principles from the case law (at [138]):
- "The first principle is that the exercise of the royal prerogative to conclude international treaties and agreements is non-justiciable, as a general rule, whilst it operates in the international law sphere only. The second principle (which is a corollary of the first) is that if the international law measure descends from the international plane and becomes embedded or assumes a foothold into domestic law then the Courts acquire the right and duty of supervision."
79. Although Green LJ noted that "there are grey edges to both propositions in terms of their application in practice", my provisional view is that the Decision here in question appears to fall within the second principle. It is far removed from the issues of interpretation of an unincorporated treaty and high-level international relations raised by the CND case. As explained by Simon Brown LJ in that case at [36] the domestic courts are "...the surety for the lawful exercise of public power only with regard to domestic law". To accept HMRC's submission that by reasons of non-justiciability or competence the court must not as a threshold issue even address the legality of HMRC's actions under the DTA would mean the court was not acting as a surety for the lawful exercise of public powers under domestic law. I put an example to Mr Elliott during his

submissions to test the limits of HMRC's justiciability argument. I asked whether HMRC would say, in reliance on this broad objection, that the High Court could not by mandatory order require HMRC to take action if they had refused to even consider a taxpayer's request that they start the MAP with Spain under Article 25 (Stage 2 as I have described it above). Unsurprisingly, his instructions were that this would be permissible given that under domestic law the rights under the DTA are to be given effect. But what then is the principle based on justiciability which bars court review in some situations but allows it in others? I do not consider there is any principled distinction.

80. Although I express no final conclusion on the point, on the arguments presented I was not persuaded that there can be a justiciability objection as a matter of principle. That is not to say that every decision HMRC makes under the DTA will create a judicially reviewable decision, and in respect of the Decision under challenge in this case, my reasons under Issues Two and Three show why the Claimant's case cannot proceed under established public law principles. But those are not related to any issue of justiciability which is a concept that needs to be kept within narrow and clearly defined boundaries as a restriction on access to courts to review claimed unlawful conduct.
81. Finally, for completeness, I should record that Mr Elliott also relied on Pompe v Secretary of State [2025] EWHC 1489 (Admin) per Chamberlain J at [19]-[22], but I did not find that case of assistance. It concerns the established objections to judicial review of the exercise of the foreign relations prerogative and treaty making powers. That is far removed from the case before me.

VIII. Permission on the merits

82. Although I have decided to refuse permission for the reasons given above, I would have refused permission on the merits, even if I had found the Decision was amenable to judicial review. I will give some brief reasons for that conclusion, taking the grounds in turn (I will use the lettering and numbering in the SFG). The test I have applied in deciding whether to grant permission is that described in the Administrative Court Guide (2025) at [9.1.3]. I have asked whether in the light of the evidence and arguments, arguable grounds for seeking judicial review exist - these are grounds which would merit fuller investigation at a further oral hearing and which the Defendants have not been able to show the court will definitely fail. In practice, that requires the Claimant to show that there is an arguable ground of review which has a realistic prospect of success: see White Book Vol 1 (2025) at [55.4.2]. This is a modest hurdle.
83. I underline that in this judgment, I am not making any judicial determination as to the Claimant's treaty residence or endorsing any of HMRC's conclusions in that regard. My judgment in this section is confined to considering whether arguable grounds for judicial review exist in relation to those conclusions on traditional public law grounds. My decision is not a judicial determination of any issue within the terms of the Tailpiece to Article 25 of the DTA.

Error of Law: 2 COVIs

84. Under Ground E1.1, Mr Rivett KC argued that the Letter contains an error of approach because (so it is said) it states that it was possible for the Claimant to have his COVI in both the UK and Spain. As I read it, Article 4(2)(a) of the DTA envisages that (i) a

person's COVI will be in only one state, (ii) identification of a person's COVI involves consideration of the person's personal and economic relations with each state, and (iii) determination of COVI is a comparative exercise and, weighing the factors in favour of each state, it is possible that these factors will be balanced such that it is not possible to determine the state which is the person's COVI (and thus treaty residence may have to be determined under Article 4(2)(b), (c) or (d)). I did not understand this reading of the DTA to be in dispute. Were the Letter in fact to be read as Mr Rivett KC argues, there would be plainly be an error of law.

85. In my judgment, it is not a tenable reading of the Letter that HMRC were suggesting that the Claimant had a COVI in both the UK and Spain. Read as a whole, the Letter identifies the relevant paragraphs in the OECD Commentary and is clearly identifying and weighing up the various factors in favour of the Claimant's COVI being in either the UK or Spain. I note that in its conclusion on COVI the Letter states: "Based on the extensive amount of information supporting JCF's COVI, it would not be unreasonable to conclude that COVI is closer to Spain than the UK", which indicates HMRC's understanding that a taxpayer only has a single COVI (to which more than one state may be close). When in the next paragraph the Letter states "I believe his COVI was strong in both the UK and Spain and therefore is not determinative", this is simply shorthand for stating that the Claimant's factors relevant to COVI were strong in both the UK and Spain.
86. Ground E1.2 is a challenge to HMRC's conclusion on COVI, which I will consider below when I address the rationality challenge.

Habitual abode

87. Under Grounds E1.3-1.4, the Claimant says that HMRC have misunderstood the approach to habitual abode, and he challenges the conclusion that the Claimant had an habitual abode in both states during the Early UK Tax Years (that is, 2009/10 – 2015/16). The material part of the Letter began with a day count of presence in UK/Spain/other countries:

	UK	Spain	other	Total
2009/10	168	136	61	365
2010/11	192	115	58	365
2011/12	157	133	76	365
2012/13	170	128	56	365
2013/14	158	95	112	365
2014/15	185	86	94	365
2015/16	192	77	97	365
2016/17	189	47	129	365
2017/18	213	27	125	365
2018/19	214	57	94	365
2019/20	225	50	91	365
2020/21	365			365

88. The Letter then continued:

“Whilst the numbers do reduce significantly, when the difference in days in the UK and Spain reaches and stays consistently over 100 days, I believe it is only from 2016/17 that we could reasonably conclude that [the Claimant] no longer has a habitual abode in Spain, due to him not being customarily present, nor having a settled routine of frequent, regular stays in Spain. When broken down further below there is a clear habit of attending Spain on a regular basis each month, that is up until 2016/2017 [the Claimant] visibly spends less time in Spain but still maintained a pattern of presence during summer and Christmas period. I believe the decline in days spent in Spain could indicate a loosening of ties to Spain. He spent more time travelling the world in later years sometimes without [his wife]. [His wife] spent more time in Spain without her husband. He still attended business meetings connected to the family business but these were sometimes held in other countries. I conclude that [the Claimant] had an habitual abode in both the UK and Spain for UK tax years 2009/10 until 2015/16 and as this test cannot be determined to one country over the other, we should progress to nationality. For years 2016/17 to 2020/21, [the Claimant] only has an habitual abode in the UK and should be considered UK treaty resident.”

89. In my judgment, there is no error of law on the face of the decision, which cites the relevant paragraphs of the OECD Commentary and necessarily considers the number of days that the Claimant spent in Spain (and the UK). In circumstances in which it is agreed that the Claimant has a permanent home in each state at which he spent significant periods of time (at least 3 months in most years, with a minimum of 77 midnights) in Spain in each relevant year, HMRC’s decision on habitual abode was plainly rational. I do not accept Mr Rivett KC’s submission that it is arguable that the only rational conclusion was that the Claimant’s habitual abode was in the UK for all relevant years.

COVI: irrationality

90. Under Grounds E1.2 and E2, the Claimant challenges HMRC’s conclusion in the Letter as to COVI on the merits on a rationality basis. The conclusion follows a lengthy summary of the facts and says:

“Considering the personal and economic relations for each year, we need to take a balanced approach, and just because a taxpayer was born and raised in one country and maintained a home there does not automatically determine a treaty residence going forward. It is accepted, as per paragraph 15 of the OECD commentary, that retaining a home in one country whilst setting up a second home in another country may demonstrate he has retained his COVI in the first state, although it is also stated that this is when all other elements have been considered. Personally, [the Claimant] has his immediate non-dependant family in the

UK, with whom he enjoys spending social time with when present in the UK. However, they also socialise in Spain regularly and are joined by his Spanish extended family. Economically, [the Claimant] has assets in the UK in his own name, and shareholdings in Spain, but other assets are in the name of his wife or company that he also has shares in. It is not unreasonable to assume that he maintains full use and enjoyment of these family assets, and they should not be ignored as a personal and economic interest for him in Spain. He clearly has more assets and financial interests in Spain than the UK which is understandable given his extended family's business has always been headquartered there. This was in place long before [the Claimant] became UK resident. Based on the extensive amount of information supporting [the Claimant's] COVI, it would not be unreasonable to conclude that COVI is closer to Spain than the UK, given the family connection, family business, assets, interests, and long-term depth of cultural links. The funds he has lived off when in the UK are passive savings income, whereas the Spanish companies are ongoing economic interests. However, due to the significant immediate family day-to-day connection to the UK, and smaller number of assets, I believe his COVI was strong in both the UK and Spain and therefore is not determinative. Accordingly, we must move on to Habitual Abode."

91. As confirmed by the OECD Commentary and case law, and as a matter of commonsense, determination of a person's COVI is a highly fact-sensitive issue. Moreover, a conclusion on COVI in a case of this nature will necessarily be determined by the weight that the decision-maker attributes to relevant factors, and the weight to be given to each factor is a matter for the decision-maker under classic public law principles. In my judgment, the reasoning in the Letter and conclusion plainly meet a rationality test. I note that there is no dispute as to the underlying facts relating to the Claimant's connections with the UK and Spain, and Mr Elliott is right to submit that it does not assist the Claimant to provide a one-sided list of the factors connecting him to the UK (as he does in his evidence) when it appears that he also has significant personal and economic factors connecting him to Spain.
92. It is also significant that Mr Rivett KC did not argue that any relevant considerations were left out of the factual analysis. The decision on COVI is a matter of fact and degree where equally reasonable decision-makers can come to different conclusions. The submission that HMRC's conclusion, and the reasoning underlying it, was irrational is not arguable.

Breach of Legitimate Expectation

93. Under this ground, Mr Rivett KC advanced four sub-grounds. Before dealing with them I should record that in relation to Ground E3.1 ("Expectation that rights conferred by the DTA would be enforced"), unless the Claimant establishes an error of law in

HMRC's application of the DTA, this Ground adds nothing to Grounds E1.1 and E1.3. There was no error of law.

HMRC's Change of View

94. Ground E3.2 relies on the facts that are the subject of the witness statements I have summarised above. As I have noted, HMRC previously held the view that the Claimant was treaty resident in the UK during the Early UK Tax Years but, in the course of MAP, HMRC reviewed their position and now consider that he is treaty resident in Spain. In relation to this Ground it is important to identify precisely how the Claimant is suggesting HMRC must now proceed. The Claimant's pleaded position is that HMRC must "adhere to their repeated assurances that the Claimant was resident in the UK for the purposes of the DTA" [SFG §76]. In other words, and as I understand the argument made by Mr Rivett KC, it is that: (i) HMRC's communication of their initial position amounts to an assurance that they would never change their position in the course of MAP, such that (ii) HMRC are obliged to retain their initial position and (iii) HMRC must refuse to review their position or endeavour to reach agreement (favourable to the Claimant) with the SCA in the course of MAP.
95. In my judgment, this argument is untenable in light of HMRC's actual obligations under Article 25 of the DTA, and in circumstances in which the Claimant himself specifically requested the competent authorities to enter into MAP for the purposes of reaching agreement. The function of MAP is that the competent authorities may well begin the process from a position where they disagree and one of them has made the preliminary decision that the taxpayer has a justified complaint of taxation not in accordance with the provisions of the DTA. In this situation under what I have called Stage 3, they will use their best endeavours to reach agreement. This is expressly stated in Article 25 (which, as the Claimant emphasises, is given effect under Article 2 of the 2013 Order). MAP is a "collaborative process between the competent authorities of two jurisdictions" and a "collaborative procedure intended to give effect to the terms of the Treaty" (McCabe at [44] and [46]). Where the two competent authorities begin with different views, it is incumbent on them to review their respective positions for the purpose of endeavouring to reach agreement, as they are obliged to do under Article 25(2).
96. HMRC rightly do not deny that their previous view was that the Claimant was UK treaty resident in the Early UK Tax Years, and that they communicated that provisional view to him, but then changed their view in 2024 when Ms Grisdale reviewed the case as part of MAP. However, in my judgment, in the context of MAP, it is not arguable that the fact that HMRC previously had a provisional view on his residence for treaty purposes should be escalated to a legitimate expectation that HMRC would never change their mind. Indeed, I note that HMRC specifically informed the Claimant at various stages that their decision on his treaty residence was under review. On 16 January 2024, Ms Grisdale sought further information in relation to his habitual abode (being the test that applies if COVI is not determinative) and on 27 February 2024 she confirmed that HMRC were undertaking a full review of the case (as recorded in a Deloitte document): "[Kelly Grisdale] explained that she was undertaking a full review of the case to make sure that everything is covered rather than just carrying on with what was done before to ensure that nothing had been missed and that there was a balanced view of everything, in case this unlocks a route to a conclusion."

97. I agree with Mr Elliott that having requested HMRC and the SCA enter into MAP under Article 25, thereby obliging them to use their best endeavours to reach agreement, the Claimant cannot complain when one (or both) of the competent authorities does indeed review their position for the purpose of reaching agreement in accordance with Article 25. Indeed, having requested that HMRC and SCA enter into MAP, his legitimate expectation was that they would comply with Article 25 by seeking to reach agreement and, given that MAP commences with the competent authorities potentially holding contrasting preliminary positions, that process will necessarily require both states to review their positions (otherwise no agreement would ever be reached in MAP). In reviewing their position, HMRC have therefore acted in accordance with their obligations under Article 25 and (in the absence of any irrationality or error of law in their approach) their review of their position cannot be open to challenge.
98. In short, in the context of Article 25, it is not arguable that it would be outrageously or conspicuously unfair for HMRC to review their position, since that is precisely what is expected of each competent authority. Mr Elliott also took a point in relation to a lack of evidence of detrimental reliance but the case on legitimate expectation fails for more straightforward reasons.

Adherence with Published Practice

99. Under Ground E3.3 the Claimant contends that HMRC have failed to comply with their published practice in their Statement of Practice 1 (2018) on the MAP in three respects. Leaving aside any issues regarding whether reliance on guidance could (in principle) create a legitimate expectation in this case, I do not consider it arguable that HMRC failed to comply with the statements relied upon. I briefly deal with each in turn (underlining the words in the Statement of Practice relied on by the Claimant):
- (1) Statement that HMRC will write to the other state if they consider that a MAP request is inadmissible or not justified. HMRC accepted that each of the Claimant's MAP request were admissible and therefore this guidance was not in point.
 - (2) Statement that HMRC require sufficient information to assess a request for MAP. HMRC considered that they did have sufficient information to assess the request. However (addressing the real argument being made), nowhere is it stated that, having accepted a request for MAP, HMRC will never review their position in light of the information held. Indeed, if this were stated then (as noted above) it would be a clear breach of HMRC's obligations under Article 25.
 - (3) Statement that HMRC will only pursue a MAP request which is admissible and justified. HMRC did consider that the MAP request was admissible and justified and therefore have complied with their guidance. However, as recognised by the OECD Commentary, this is only a "preliminary assessment".
100. In my judgment, it is not arguable that HMRC failed to comply with their published practice. In substance, the arguments under Ground E3.3 appeared to me to be means of emphasising that HMRC initially considered that the Claimant was treaty resident in the UK in the Early UK Tax Years, and therefore (rightly) accepted the request for MAP, but have now reviewed their position (all of which is accepted by HMRC).

101. For completeness, I should note that Mr Rivett KC did not appear to press a further argument (under Ground E3.4) which complained that HMRC had failed to “prosecute the Claimant’s case in respect of UK tax years 2006/07 – 2008/09”. I say nothing further about that because HMRC’s position remains that it is preferable that these UK tax years are the subject of MAP, and this remains their position in negotiation with the SCA. However, the SCA have not thus far accepted that these years are the subject of MAP and, given that MAP is a process of mutual agreement, there is nothing that HMRC can do other than continue to seek to persuade the SCA.

IX. Conclusion

102. Permission to apply for judicial review is refused.