Spanish Tax Alert

Countdown to the decision on whether to continue applying the Spanish tax consolidation regime

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On 1 January 2015, the Corporation Tax Act 27/2014 of 27 November 2014 (the CTA) entered into force, replacing the former corporation tax law.

The new CTA includes changes regarding the Spanish tax consolidation regime. One of the most significant developments for 2015 is the **mandatory inclusion of certain companies in already existing tax groups**. In this respect, Transitional Provision 25 of the new CTA provides that any entities which, pursuant to the new legislation, meet the requirements to be included in a tax group whose requirements they did not previously meet, shall be included in such group in the first tax period commencing on or after 1 January 2015.

In particular, some of the scenarios which could arise and require the inclusion of new entities in already existing tax groups are as follows:

— Any Spanish entities with a common non-Spanish parent (which can be considered the parent company under the rules set out in the new CTA) shall be included in the already existing tax group (meaning that any sister companies with a common non-Spanish parent shall be included in the tax group); this implies the consolidation of Spanish entities without requiring that they have a common Spanish parent.

— In addition, any Spanish entities indirectly owned by the same common shareholder through other entities that might not form part of the tax group (for example, in the case of non-Spanish entities) shall be included in the already existing tax group.

Under the new CTA, the requirements for qualifying as a parent company are as follows: (1) the parent company must have a separate legal personality; (2) it must be subject to and not exempt from Spanish corporation tax (CT) or an identical or similar tax; and, (3) it must not be resident in a tax haven. In addition to being required to own a holding of 75%/70%, the parent company must hold, directly or indirectly and throughout the entire tax period, the majority of the ***voting rights*** of the entities included in the tax consolidation group.

It is important to bear in mind that the inclusion of new entities in existing tax groups is mandatory and the only alternative for avoiding this inclusion is to forgo the application of the Spanish tax consolidation regime, with all the consequences this would entail, such as, for example, the inclusion of eliminations made in prior tax periods. Such decision to forgo tax consolidation must be made within the two months following the end of the last tax period of its application, meaning that, in general, the deadline for forgoing the application of the regime expires on 28 February 2015.

In conclusion, **the scope of the tax consolidation group introduced by the new CTA requires that all existing tax groups review their current corporate structure in order to identify which entities are required to be included in the tax group in 2015 and evaluate the financial and tax effects of this inclusion**, **in order to have time to decide whether or not to continue applying the Spanish tax consolidation regime before 1 March 2015**.