

New company and reduced 15% rate: key DGT criteria

The General Directorate of Taxes (DGT) has recently clarified how the reduced 15% rate under Corporate Income Tax applies when the **same shareholders set up a new entity to carry out the same activity**.

CASE BACKGROUND

A group of individuals, shareholders in a commercial company that already carries on an economic activity, incorporates a **new company** with the aim of performing that **same activity**.

The question raised is whether this new entity **may apply the reduced 15% rate** provided for newly created entities, even though its shareholders already held interests in another company with an identical corporate purpose.

LEGAL FRAMEWORK

Article 29 of the Corporate Income Tax Law establishes a reduced 15% rate applicable to **newly created entities** in the **first tax period in which they have a positive taxable base and in the following** tax period, **excluding** those entities:

- That form part of a **corporate group**.
- That qualify as a **holding/asset entity** “*entidad patrimonial*”.
- That carry on an **activity previously performed by related persons or entities** and transferred to the new company.
- Where the activity had been carried on in the previous year by a **shareholder holding more than 50%**.

The purpose of these limitations is to prevent the artificial use of new companies solely to gain access to the reduced rate.

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THE KEY POINT IN THE DGT'S RULING: CONSULTATION V1627-25

In the **scenario analyzed**, the following circumstances apply:

- The shareholders are **individuals**.
- None holds an **interest of more than 50%** in the new company.
- **There is no transfer of assets**, business, or structure from the pre-existing company.
- The **new entity** starts the activity using its **own resources**.

In light of the above, the DGT **concludes** that:

- **There is no corporate group**, since the fact that the majority shareholders of both companies are the same individuals does not, in itself, determine the existence of a corporate group.
- **There is no transfer of a business**, because if the new company neither acquires nor receives the previous company's business and instead begins the activity independently, the requirement relating to business continuity is not deemed to be breached.
- **The limit relating to majority shareholders is not infringed**, because as no shareholder holds more than 50% in the new entity, the fact that those shareholders carried on the same activity in the previous year does not prevent application of the reduced rate.

Consequently, the DGT considers that the new company **may apply the reduced 15% rate**.

This criterion confirms that a **mere coincidence of shareholders and activity does not automatically imply the loss of the tax benefit**.