TOWARDS A CONTRACTUAL MODEL OF THE CORPORATE GROUP CONCEPT

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SYNOPSIS

This paper discusses the need to reach a basic agreement about the definition of "group of companies" as a reality existing in the economic life and focus of legal economic interests, which sometimes overlap and contrast or contradict the entities that integrate them. They are still a "strange" or "abnormal" figure of our legal system, which partially regulates it in each of its legal categories.

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- ***Article based on the normative of December 31, 2014.***

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It is noteworthy that even if the group of companies as reality is fully accepted in the economic and legal life of our country, we do not have a clear legal concept or legal definition. The "group of companies" is still not totally accepted by our legal system, which approaches it in a biased and fractional manner, not only in the different branches of the legal system, but also within each of them, by establishing different concepts of the group, according to the perspective from which it is addressed . There is no legal certainty about what deserves to be considered as a group, and it may not be considered as such for the purposes of corporate tax or the value added tax.

That is why I consider convenient to reach a minimum consensus and definition about what should and should not be considered as a group of companies, without leading us to a unique concept. In this article we consider the different definitions of group that exist in our law, highlighting the similarities and differences between them, to finally consider the experience of some neighboring countries, as a guiding tool in the search for a clear concept or definition.

1. ECONOMIC CONCEPT OF GROUP OF COMPANIES

Our daily activities show the constant presence of groups of companies or economic partnerships in the economic life. The economic agents find many advantages to associate their purposes in favor of a common goal: to achieve the maximum profit for their activities. Such advantages may be market positioning, or logistical, financial, and fiscal advantages, as we will see.

However, a systematic regulation of the group of companies' concept continues to lack in our country's regulation. There are only partial regulations considering it, such as Article 42 of the Code of Commerce[1]; in Articles 64 to 82 of the Consolidated Corporate Tax Law approved by RD L 4/2004 of March 5; Articles 163 of Law 37/1992 on Value Added Tax of December 28. There are various other laws, none of which has established a comprehensive legal regime. It is also noteworthy that none of the existing sectorial regulations refers to the concept or definition already existing in another legislation, or even in the same sector of the system, as in the case of CT and VAT. In short, we have a concept of group of companies for the purpose of the obligation to prepare consolidated financial statements, another for the purposes of the income tax, and another for VAT purposes.

1. *It was the Law 19/1989 of July 25, the partial reform and adaptation of commercial legislation with EU directives on companies, which first introduced the concept of group of companies.*

In other situations, the jurisprudence has been able to fill this loophole, developing a concept and associating legal consequences to the existence of groups of companies. This is the case in the field of labor law.

Based on the economic reality, we can highlight that corporate groups always present two characteristics:

- **Legal plurality,** as though in some regulations the group is recognized as such, as subject of rights and obligation (this is the case, as we shall see, for income tax and Value Added tax purposes) but its legal corporate identity is not recognized, although its components are the ones that hold such corporate identity.
- **Economic Unity,** i.e., unity of goals or purposes. In other words, subordination of the particular interest of the members to a "common good".

The doctrine agrees on both aspects and defines the group of companies as "the grouping of two or more companies in one economic unit"; or as "a plurality of separate legal entities under one power only"[2]. Another definition is "a set of entities that are related to each other through corporate relationships, by owning shares of a company in the capital of other companies. From a business point of view, even if all of them are legally independent, they act as an economic unit as a result of the influence, control or dominance that one company has over others"[3].

2. CONCEPT OF GROUP OF COMPANIES FOR COMMERCIAL PURPOSES[4]

The Law 19/1989, of July 25, partially reformed and adapted the commercial legislation on corporate matters to the Directives of the European Economic Community. It introduced Article 42[5] of the Code of Commerce in our law for the first time: the requirement to consolidate the financial statements and a management report. Here there is no definition of the group of companies, but only a number of assumptions to submit the consolidated financial statements. Such assumptions are in force today. In the original text, they were included in the original drafting as a closed list, unlike the wording in force today, which provides for an open list, by establishing that: "control will be presumed to exist". It also did not include the presumption of control established in the present article 42.1.d, stating that "this situation is presumed when most members of the board of the acquired company are members of the board or senior managers of the dominant company or other dominated by it .... ". Also in Law 19/1989, the dominant company was required to be a partner of the dominated one by providing that "it is mandatory for all corporations to prepare the annual accounts and consolidated management report (...), if, as a member of another company, "the assumptions that require consolidation are present". On the other hand, the current wording of article 42 allows being able to reach the majority of the voting rights of the dominated company, through agreements with third parties; without being specific, although the status of the dominant partner will be the common base for the assumptions.

2. *MANÓVIL, Rafael M. Grupo de Sociedades en el Derecho Comparado. Abeledo Perrot Editorial. Buenos Aires, Argentina. 1998. Pg 155; tomado de RUEDIN Roland. Vers un droit des groupes de societés. Societé suise des juristes, Helbing and Lichtenhahn Verl., fascicule 2, 1980.*
3. *Definition taken from Memento Consolidated Group 2010, Pg 1. Editorial Francis Lefebvre.*
4. *LIRA, Mónica. El concepto de grupo de empresas en el Derecho español. Ediciones Deusto. Referencia nº 3334.*
5. *See original wording of article 42 of CCo.*

In 2003, through the Law 62/2003 of December 30, on fiscal, administrative and social measures, there is a change in the definition of the group for the purposes of consolidation, which are going to be based on a single management unit. This is provided in the new wording of Article 42[6] of the Code of Commerce, which states: “a group exists when several group companies constitute a unit of decision”. It then establishes that “it will be assumed that there is a decision unit” on the same assumptions on which the previous legislation established the obligation to consolidate, but with the difference that it opens the door to the decision unit in cases other than those listed. It also introduces the single management unit concept, as one of the assumptions on which such decision unit is presumed, and as the current regulation, this decision unit is presumed to exist “when most of the members of the board of the acquired company are board members or senior executives of the parent company or another dominated by it.” By leaving the door open so the decision unit outside the cases listed could be proven, the group concept was much broader than in the previous legislation, since it “horizontal or coordination groups” concepts are now possible, in which such unity could be achieved by contract decision and by assumptions determined by financial or technological dependence. Against this concept, we can mention its lack of definition, since although there would be cases in which such decision unit was evident, it would not be the same in many others, since the concept is an indeterminate legal concept.

It was precisely the criticism of legal uncertainty that prompted the new reform of Article 42 of the CCo[7] via Law 16/2007 of July 4, reforming and adapting the commercial legislation on accounting matters for international harmonization based on the regulations of the European Union, which regulations are still in force. With the new wording, “the decision unit” is abandoned as the focal point of the group of companies, and be based on the control that a dominant company exerts on the dominated ones, assuming such control when attended an open list of factual circumstances that otherwise are virtually identical to those cases where the previous rules assumed the decision unit. The new wording of Article 42 of the CC seems to omit completely the horizontal or coordination groups, giving instead a place for the so-called Multi-group concept characterized to be a joint management as associated companies, in which one or more of the components of the group exerts a significant influence.

Regardless of the obligation to present or not consolidated financial statements, the group’s existence for commercial purposes is expressly recognized by Article 18 of Royal Decree Law 2/2010, of July 2, approving the revised text of the approved Act on Corporations, referring their definition to the provisions of Article 42 of the CCO. This express recognition of the group should serve to interpret and clarify certain rules that, applied in strict terms, frustrate the existence of the group as such and would make impossible the intra-group transactions. We refer in particular to the possibility provided for in art. 204 TRLSC, to challenge the agreements of the General Meeting when “they affect the public interest for the benefit of one or more partners or third parties.” In view of this article, one might wonder: Would it be possible to challenge a Board agreement harming a company that adopts it, if it may be beneficial for the group? This Agreement, in the case of groups, would obviously be adopted by the affirmative vote of the parent company, which ultimately decides about the group’s interest. If we choose the possibility of challenging such agreements, this would make impossible the functioning of the group, and in addition, we would create the paradox of leaving the company operated by a minority of shareholders. However, we must also bear in mind the interests of minority shareholders and corporate creditors, who must be able to react to social agreements if these adversely affect the interest or assets of the entity.

6. *See Article 42 CCo as worded by Law 62/2003, December 30.*
7. *See current wording of art. 42 of CCo, Law 16/2007, July, 4.*

The same balance of interests should be considered in situations of conflict, which within the governing bodies, is expected in the art. TRLSC 229. That article provides that "managers should communicate ... .Any direct or indirect conflict that they may have with the interests of the company "by providing that" the affected administrator will refrain from participating in agreements or decisions relating to the operation to which the conflict refers to." As for the case of the General Meeting, the legal mandate should also be understood in a way that will not hinder the performance of the group. A literal interpretation would lead the administrators appointed by the parent company to refrain from participating in any decision of the intra-group transactions, leaving again the decisions in the hands of administrators appointed by the minority shareholders.

The Italian Corporate Law stands in the same line, which after the reform of January 17, 2003, applies the so-called "Rozemblum doctrine" Articles 2497-2497, seventh paragraph of the Civil Code. In summary, this regulation states[8]:

1. The parent company control on subsidiaries is legitimate, although this concept is replaced by "activity of direction and coordination."
2. Such activity of direction and control will only determine the responsibility of the parent if it is proved that it acts in its own business interest or otherwise in violation of the principles of the corporate and business management of these companies. In addition, with effective damage to the social benefit or the value of the participation of partners of the dominated one, which is not compensated by the synergies generated by the central management and coordination activity or appropriate compensation measures.
3. The liability towards the creditors is solidarity, external, but subordinate to the non-payment by the dependent company.

Similarly, the conflict of interest that should compel a manager to refrain from participating in the decision-making process should be a personal interest in the issue at stake and not in his capacity as designated by the parent company.

By contrast, in the tax law field, in particular in Article 16.5 of the TRLIS tax law as amended by Law 36/2006, the deduction of expenses is conditioned for services between related entities, not for them to produce an advantage or profit in the group considered as such to produce such benefit or value in the target company individually considered. Thus abandoning any notion of "interest group" as legitimizing budget for the deduction of expenditure.

8. *VICENT CHULIÁ, Francisco. Grupo de sociedades y conflicto de intereses.*

3. CONCEPT OF GROUP IN TAX LAW [9]

In tax law, we also did not find a single group concept that could be used for all taxes. Thus, we find a concept for the purposes of CIT and another for VAT purposes. But indeed, the very concept established for CIT purposes when the tax consolidation regime is regulated is not used as a reference by the regulations included in the TR approved by RDL 4/2004 of March 5, that in numerous articles, for instance articles 11.4 s, art. 12.3.6.7 and art .21 TRLIS tax law, refer to the commercial concept included in Article 42 of the CCO, but not as it is established in the commercial regulation, but by introducing nuances to it. Thus in Article 107 of the CIT Law, which regulates the international fiscal transparency, several references are made to art. 42 CCO, but for purposes of determining the degree of participation necessary for the implementation of such scheme, it states that it requires an equity of 50% and includes the computation of indirect interest to persons or entities related to the purposes of Article 16 of the same law. The example of Article 108 of TRLIS tax law is even clearer, when for the purposes of calculating the turnover, which determines the application of the incentives system for small companies, it determines that the turnover of all entities belonging to a group within have to follow art. 42 CC, “regardless of the residence and the obligation to prepare consolidated financial statements”. It specifies that it would also compute in such business figures those companies in which an individual along with their spouses and direct or collateral relatives, reach the majority of voting rights required by the commercial regulation “regardless of the residence of the entities and the obligation to prepare consolidated financial statements.” That is, we are reaching a situation in which, not only every area of law has its own definition of a group, but each special regime or article introduces clarifications or exclusions to existing concepts.

3.1. Concept for the purposes of fiscal consolidation

Currently the possibility of being taxed at the consolidated group tax rate is established in Articles 64-82[10], Chapter VII, and Title VII of the special tax regime of Legislative Real Decree 4/2004 of March 5. It approves the revised text of the Corporation Tax Act, as amended by the First Final Provision approved by Royal Decree Law 2/2011 of February 18, to strengthen the financial system.

The first thing to say about the tax consolidation is that it is a voluntary scheme, in which the group is recognized as a taxpayer, that is, as a subject of rights and obligations. Its representation corresponds to the parent company, which also corresponds to pay the tax debt without prejudice to the joint responsibility of all the companies included in the group. This is a beneficial regime, which main advantages can be summarized as[11]:

- Deferred taxation of income generated in transactions between companies in the group. These revenues are eliminated at the time of determining the taxable income of the tax group, because the taxable income are exclusively from transactions with third parties

9. *It has been taken from the reference article of ROMEO IBAÑEZ, Miguel Ángel y GARICANO DEL HOYO, Juan Ignacio, published in Revista Ekonomiaz, nº68, 2º four month period, 2008.*
10. *The tax consolidation regime was introduced in Spanish law by Law 43/1995 of December 27on Corporation Tax. With this, starts the possibility to establish that the group of companies may be the taxable person.*
11. *Lopez SANTACRUZ MONTES, José Antonio, ROS AMORÓS Florentina and ORTEGA Carballo, Enrique. 537. Quote Memento Groups Conso lidados 2011. Editorial Francis Lefebvre.*

- Compensation in the same period of the taxable income obtained by companies of the group with negative tax bases obtained by other companies in the tax group.
- Application of the total tax deductions at group level.
- Exemption from the obligation to withhold and to pay in respect of dividends or shares in profits, interest and other income paid between companies part of the same tax group.

It is Article 67[12] of TRLIS TAX LAW, which defines the composition of the group without establishing a definition for it. Far from the composition as established by corporate legislation, the TRLIS TAX LAW establishes its own composition. Therefore, the group states that the fiscal consolidation purpose will consist of "companies, limited and joint-stock limited by shares and credit institutions[13] referred to in paragraph 3 of this article, Spanish residents formed by a parent company and all its subsidiaries." Precisely the incorporation of credit institutions in an institutional protection scheme as possible components of the group for the fiscal consolidation purposes has prompted the reform of Article 67 of the TRLIS tax law

Then paragraphs 2 and 3 of art. 67 of TRLIS tax law define what should be understood as a parent company and subsidiary, basing these definitions in the control exercised by the first over the second, control based on a participation in the capital that must achieve 75% or 70 %, if in this last case, the companies' shares are traded in a secondary market[14].

However, and without having to achieve the above mentioned percentages of participation, the paragraph 3 of Article 67 of TRLIS tax law provides that: "this same consideration will be given to credit institutions in an institutional protection system which is referred in letter d) paragraph 3 of Article 8, Law 13/1985 of May 25, on Investment ratios, internal resources and obligations of information from Financial Intermediaries. As long as the main entity of the system is part of the tax group and is sharing 100% of the results of the system members and the mutual commitment to solvency and liquidity between such entities reaches 100% of the funds of each one of them. Such requirements are considered fulfilled in those institutional protection schemes through which central entity, directly or indirectly, several savings banks in a concert manner engaged exclusively its objective as credit institutions, as provided in paragraph 4 of Article 5[15] of Royal Decree-Law 11/2010 of 9 July on governing bodies and other aspects of the savings banks legal regime. "

The Royal Decree Law 2/2011 of February 18, to strengthen the financial system has also been introduced in the TRLIS tax law the Thirty-Third Transitional Provision. It sets January 1, 2011 as the date from which the integrated entities in an institutional protection system may be taxed in the tax consolidation regime. It includes in it "the companies which fulfill the conditions laid down in Article 67.2a) of this Law. When their representative shares of capital stock have contributed to the central entity in compliance with the system integration plan and if this entity holds its participation until the end of the tax

12. *See Art .. 67 TRLIS approved by RDL 4/2004 of March 5.*
13. *This refers to the credit institutions in a comprehensive protection system that letter d) of the third Article 8 of Law 13/1985 of May 25 on investment ratios, own resources and reporting obligations of financial intermediaries.*
14. *In the original wording it was understood by dominant company a direct or indirect ownership of at least 90% of the share capital of another or others. This percentage has been declining over the years. So, as from January 1, 2002, Law 24/2001 of December 27, reduced to 75%. For tax periods beginning on or after January 1, 2010 the first disposal. Four Law 11/2009 of October 26 reduced it to 70% , "if it is companies whose shares are admitted to trading on a regulated market ". Finally the third final provision, one of the Law 2/2010, of March 1, with effect from January 1, 2010, this percentage reached in the case of indirect interest held by companies listed on a regulated market.*
15. *Original wording of art.5º of Royal Decree-Law 11/2010 of July 9.*

period, through operations benefiting the tax regime established in Chapter VIII of Title VII of this Law. They can be also provided in Article 7.1 of Royal Decree-Law 11/2010 of July 9, of governing bodies and other aspects of the legal regime of savings banks, and that they had the consideration of subsidiaries of the credit institution because the latter entity is taxed in this regime as the parent company. "

It also provides in item 3 that "In the case of indirect exercise of the financial activity of savings banks according to the provisions of Article 5 of Royal Decree-Law 11/2010, of July 9, governing bodies and other aspects of the legal regime of savings banks. The savings bank and the bank to which all its financial business contribute, may apply to the tax consolidation regime regulated in Chapter VII of Title VII of this Law from the beginning of the tax period corresponding to the period in which such contribution is made, as long as the requirements in Article 67 of this Law are fulfilled."

The above articles and the doctrine of the Directorate General of Taxes must be interpreted in light of the recent Judgment of the European Court of Justice of June 12, 2014 , Joined Cases No. C-39/13, C-40 / 13 and C-41/93. It states that "arts. 49 and 54 of the Treaty on the functioning of the EU must be interpreted as opposed to a Member State legislation under which a resident parent company may constitute a single tax entity with a resident subsidiary if it controls it through one or more resident companies, but not if it controls it through non-resident companies without permanent establishment in that Member State. Furthermore, the aforementioned items must be interpreted as precluding legislation of a Member State under which a single fiscal unity regime is granted to a resident parent company that controls certain resident subsidiaries, but excluding sister companies residents whose common parent company has not its registered office in that Member State nor has it with a permanent establishment". Therefore, it must be allowed, that participation in the companies of the group is reached indirectly through non-resident companies in the Spanish territory.

In turn, Article 67.4 of the TRLIS tax law establishes a series of circumstances, which prevent group membership, namely:

a. Being exempt from this tax.[16]
b. That at the end of the tax period they are in situation of insolvency, or in financial position under Article 363.1.d) of the Consolidated Companies Act, approved by Royal Decree 1/2010 of July 2, even without being corporations, unless before the end of the year in which the annual accounts are approved this situation had been overcome[17]. Such exclusion is justified "from the time this tax regime is taxing the group as an economic unit, to the extent that the parent company exercises control and decision-making on dependent ones[18]."Such decision power is lost in the necessary insolvency, and is suspended in voluntary insolvency; therefore, entities in such situation should not be included within the limits of the group.

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16. *The Consultation 1489-2002, DGT 4/10 states that exempt companies, which cannot be part of a group of companies, are entities exempt from art. 9 TRLIS, so Venture Capital companies, which enjoy an exemption of 99%, can be part of it.*
17. *In order to interpret the cause of exclusion in the art. 67.4.b) the following consultation of the Directorate General of Taxes (hereafter DGT) V0804 / 11 29/03 should be considered . The consultation of the Institute of Accounting and Accounts Auditing (ICAC) See 4 BOICAC nº79 of 01/09/2009, regarding the accounting treatment of cancellations of appropriations between the parent company and subsidiaries companies. Also the interest from the criterion of TEAC resolution of July 25, 2007 , (No. Resolution: 00/1435/2004, Third Investigation Board) which declares unlawful the exclusion by the Inspectorate of Finance, of a company belonging to a tax group which was understood as to be affected by any circumstance of dissolution, as "the dissolution must be of social accounting and non-accounting criteria from Inspection. That is, to determine whether or not the cause of social dissolution corresponds to administrators and the general meeting of the company, and where appropriate, the judge, but not to the administration".*
18. *See footnote 9.*

c. The subsidiaries that are subject to a corporate income tax rate different from the tax rates of the parent company[19].
d. The subsidiaries which participation is achieved through another company that does not meet the requirements to join the tax group. Although, based on the EU Court judgment of June 12, 2014, mentioned above, the indirect interest in the subsidiaries should be allowed via non-resident companies.
e. The subsidiaries which fiscal year, as determined by law, cannot adjust to the dominant company[20]

Finally, and even if we will show later the differences between the different concepts of group existing in our law, it is important to highlight that the separation between the different sectors of our system reaches the point where the taxable income in the tax consolidation regime is not obtained from the consolidated financial statements. In fact, it results only from adding the individual tax bases of each of its components.

3.2. Concept for the purposes of Value Added Tax

Article 4, paragraph 4 of the Sixth VAT Directive, introduced the concept of VAT group into Community legislation[21]. As in the preamble[22], the aim of the provision relating to the group for VAT purposes is that Member States, aims at administrative simplification, and at fighting abusive practices (e.g., division of a company in several taxpayers, so that each of them can benefit from a special regime).

Therefore, they cannot consider companies as independent taxable persons if their 'independence' is purely legal.

Article 4, paragraph 4 was amended by Directive 2006/69 / EC of July24, 2006[23], whereby a second paragraph was included. As stated in the preamble of the proposal[24], with such modification is intended to help Member States to avoid unfair situations resulting from the creation of VAT groups. Therefore, by the second paragraph Member States are authorized to take measures to prevent that group arrangements for VAT lead to tax evasion or tax fraud.

Once the recasting of the Sixth Directive is done, the provisions on VAT groups are now included in Article 11 of the VAT Directive. With this rewriting, there have been no changes in the scope of the regimes of grouping for VAT purposes nor in the pre-conditions to qualify for them.

The main effect for the possibility of grouping for VAT under Article 11 is to allow taxable persons linked in the financial, economic and

19. *The V0102 / 2006 Consultation 19/01 DGT, to a situation where a subsidiary that is considered as a small sized company, and therefore may apply for a reduced rate, which is a parent company that is taxed at the rate generally not excluded from the group, as appears from the art.67.4.c), but merely states that cannot apply the tax incentives provided for small companies.*
20. *The Consultation V1739 / 2008 of 26/09 DGT, interpreted this requirement as a "company that by operation of law or regulation is required to have a different fiscal year as of the dominant one ... that fact does not determines the exclusion of the group, so that the company should be part of it ... .the end of the tax period of a subsidiary at the date of completion of the fiscal year in accordance with the standards of individual taxation, date not coincide with the the parent, no tax incidence in the group".*
21. *Sixth VAT Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes - common system of value added tax: uniform basis (DO L145 of 13.6.1977, p.1).*
22. *Proposal for a Sixth Council Directive on the harmonization of the laws of the Member States relating to turnover tax of business- Common system of value added tax: uniform basis (COM (73) 950 of 20.06.1973.*
23. *Directive 2006/69 / EC of July 26, 2006 amending Directive 77/388 / EEC as regards certain measures to simplify the procedure for applying the value added tax imodified and contribution to the fight against tax evasion or tax fraud and amending certain Decisions granting derogations (OJ L 221, 12.8.2006, p.9).*
24. *Proposal for a directive of the Council amending Directive 77/388/EEC as regards certain measures to simplify the procedure of application of the value added tax and contribution to the fight against tax fraud and evasion and that repealing certain decisions for A the granting of exceptions. (COM(2005) 89 fine, 16.3.2005).*

organizational orders to stop being considered as independent taxable entities for VAT purposes and become a single taxpayer. In other words, a series of closely related taxable persons merge into a single taxable person for the purposes of VAT. The European Court of Justice in Case C-162/07 has confirmed this effect[25]

In this regard, a VAT group could be described as a 'fiction' created for the implementation of this tax, in which economic substance prevails over legal form. A VAT group is a particular type of legal entity that exists solely for tax purposes, based on financial, economic and existing organizational links between companies. While each member of the group remains legally a separate entity, for exclusively VAT purposes, the group takes precedence over secondary legal forms, e.g. civil law or corporate law.

The logical consequence of considering a group for VAT purposes as a single taxpayer is that the group can only be identified with a single VAT number, in accordance with Article 214 of the VAT Directive, to the exclusion of any other individual VAT number.

The use of just one number answers the need, of both economic operators and the tax authorities of the Member States, to identify with certainty the authors of transactions subject to VAT[26]. The tax authorities can keep the ID individually number for each Member, but only in order to allow control of the internal activities of the VAT group.

As we see, in the spirit of the Community regulations, it is possible to consider the group as a unique taxpayer. It was not only as a possibility of introducing a benefit for them (as has been translated into Spanish law), but also as a prerogative of the State for not allowing the division of the group activity when economically they act as a single subject, grouping all the companies legally separate, under one deduction system. As it seems, the purpose of the Community provision was to enforce the deduction system that "economically" correspond to the group, regardless the legal divisions created by the different legal entities. In such cases, one could envisage the obligation to apply the special scheme, empowering the Tax Administration to implement it, not leaving it solely to the discretion of the taxpayers.

A clear example of artificial division of activity, with the sole purpose of benefiting from a favorable deduction system, are today in the real estate business of financial institutions. Financial institutions, due to their activity, mainly performed VAT exempt activities under the provisions of Article 20 of Law 37/1992 Uno.18º Value Added Tax, being therefore, it's pro rata share (percentage deduction) very close to 0%. This is why, during real estate sector crisis in which we are immersed, financial institutions in cases of non-payment of property developers, do not directly claim promotions. Because if they did so, they could not be allowed to deduct the VAT on such purchases. Therefore, they created intermediate holding companies, of which they are sole shareholder, and have no personal media or materials other than those of the financial institution itself, for, by sales of loans or through direct funding to them, acquire such promotions by legally independent companies and are entitled to deduct VAT. Something similar happens with the incorporation of holding companies by educational institutions or providing health services for which they bear the fees arising from the construction of new schools or educational institutions, and then conclude it with the same assignment contracts of such facilities.

In all the above cases, although in certain cases, if the works are directly assigned by the financial, educational or hospital entities,

25. Case C-162/07, Ampliscientífica, paragraph 19.
26 Case C-162/07, Ampliscientífica, paragraph 20

they could constitute differentiated sectors, and therefore be indifferent to the constitution of such instrumental entities, if at least a deferral of payment of tax is achieved.

In such cases the community regulation should be considering that regardless of the legal independence, the corresponding deduction rules apply to a true activity of the group to each of its members. But as we shall see, the translation into domestic law of this legal option has been quite different.

Under Spanish law the concept of group under the Value Added Tax is found in Chapter IX of Law 37/1992 on Value Added Tax, introduced by Law 36/2006 of November 29, Articles 163. Such concept is a result of the authorization included in Article 11 of Directive 2006/112 / EC of November 28,2006, which states: "After consulting the Value Added Tax Advisory Committee, a Member State may consider as a single taxable persons those established in the territory of that Member State, legally independent but which are closely linked to one another by financial, economic and organizational links. A Member State exercising the option in the first subparagraph shall take the necessary measures to prevent that the application of that provision could make possible fraud or tax evasion."

The European Commission in its Communication to the Council and the European Parliament of July 2, 2009, discusses the aforementioned art.11 of Directive 2006/112/EC, as follows: "The members of a group, dominant and dominated must be entrepreneurs or professionals. Financial, economic and organizational ties, having seen the concurrence of all, must join dominant and dependents. "To this end the Commission understands "by financial ties those defined in accordance with participation rates above 50%, which hold the majority of voting rights or be a franchise agreement to ensure control of an entity over another. Meanwhile, economic ties serve the activity of all entities of the group that should be the same, or in other words, the entity must provide services globally for the group. Finally, organizational ties are those determinants of common partial or total structure.

The only condition required by both Article 11 of Directive 2006/112 / EC of November 28, 2006, as the Communication of the European Commission on July 2, 2009, is that all group members have individually considered taxable status as "Article 11 falls under Title III 'Taxable persons' in the VAT Directive. Furthermore, Article 11 does not provide for any exception to the definition of taxable n Article 9, paragraph 1 thereof. It follows that people considered as a single taxable person must also be taxable persons in their own right, since the meaning of the concept of "group" is to "gather" to different people engaged in all activities that fall within the scope of the VAT Directive". Therefore, in principle, nothing would prevent a taxable person who was individual membership to be the same. However, as the "financial ties" are defined it only seems possible to occupy the dominant position thereof. However, as currently drafted, the Spanish regulation excludes this possibility when referring to dominant and subsidiaries.

Meanwhile paragraph one of Article 163 of the LIVA states that the special regime for groups of entities is voluntary for "entrepreneurs or professionals that are part of a group of entities. It is considered as a group of entities formed by a dominant entity and its subsidiaries, provided that the headquarters of business or permanent establishments of every one of them are situated in the territory where the tax is applied"[27]. It must be clear that in the case of VAT, not only non-resident entities are excluded from joining the group, as in the case of IS, but also to companies located in the Canary Islands, Ceuta and Melilla, since they are not part of these territories where the tax is applied.

27. *Art. 163.dUno Law 37/1992, December 28 on VAT.*

We should emphasize that, unlike what happens in the IS, where the application of the consolidation regime is voluntary, the inclusion of companies under the dependency requirement is mandatory, with the VAT, companies can be chosen, by fulfilling the requirement of participation according to Article 163d. One form part of the group for the purposes of applying this special scheme.

Paragraphs Two and Three of Article 163d define what should be understood as a dominant y dependent company[28], basing those definitions, as in the case of IS in the control exercised by the ruling on dominated ones, this control is assumed when the shareholding is equal to or more than 50% . Is this point, we should note that the Spanish regulation separates from the interpretation of the Commission on two points:

- The Commission when defining the financial ties that should bind to the parent with dependent is about "participation above 50%, which hold the majority of voting rights." On the contrary, the letter b) of paragraph two of Article 163d of the LIVA, only mentions direct or indirect participation percentages of at least 50%, avoiding any majority of voting rights[29]. The options left open by the Community law motivated at first to raise the possibility of requiring a percentage of participation in the dependent company of 75%, even referring to the computation of indirect participation with the rules established in Article 69 of the Consolidated Corporation Tax Law, approved by Royal Legislative Decree 4/2004, March 5. (See in this regard Amendment 147 introduced in the Senate by the Parliamentary Socialist Group).

  If the final text was to be approved in these terms, it would have been close to the group concept in the IS and the VAT, but finally this wording was not adopted, establishing a need to hold at least 50% in the capital of the subsidiaries
- Similarly, the Commission presupposes financial ties between dominant and dominated ones when "there is a franchise agreement to ensure control of an entity over another." By contrast, the Spanish regulation does not refer at any point to the possibility that the franchisor and franchisee can form a group for VAT purposes if such franchise agreement is not associated with the participation percentage in the terms described.

However, the delimitation of the group for Vat purposes has recently been extended under the provisions of paragraph 5 of Article 7 of the Royal Decree-Law 11/2010 of July 9, governing bodies and other aspects of legal regime of savings banks. Under these, "The special regime for groups of entities regulated by Chapter IX of Title IX of Law 37/1992 of December 28, states that the value added tax may be applied by businessmen and professionals that integrate a protection institutional system under the conditions provided in paragraph d) of paragraph 3 of Article 8 of Law 13/1985 of May 25, Coefficient of Investment, Equity and Reporting Obligations Financial Intermediaries[30]". This is without apply to them the requirements of Article 163d of the LIVA, by express provision of paragraph 7 of section 5 of this article. For these effects, the dominant will be considered as the "central entity determined by binding policies and business strategies and levels and measures of internal control and risk management of institutional protection scheme",

28. *Art. 163d Two Law 37/1992 of December 28 of the Value Added Tax.*
29. *<?> The DGT Query V0266- 09 , sees no obstacle to an entity which owns 75% of capital, but which as a result of statutory clauses, only owns 25% of the voting rights is integrated in the group. However, it seems to go beyond the percentage of participation, which provides that "the shares equal to or greater than 50% must be accompanied by" a financial, economic or organization ties, without the concurrence of the three orders simultaneously. " However Query V2437- 09 , 30/10, leaving any hint of going beyond the percentage interest to determine the dependency relation.*
30. *Article 8 of Law 13/1985, of May 25, as amended by RD-L ey 11/2010 of July 9.*

and as dependent “entities belonging to such institutional protection scheme as well as those in which they maintain a direct or indirect ownership of more than 50% of its capital “. However the requirement is maintained, that both dominant and dependents must be registered for tax purposes.

Finally, to make it clear that this special scheme supports two ways of implementation, a basic pattern and other advanced, being also the voluntary option for the advanced mode.

In summary[31], we can say that the basic form consists in that the self-assessment of the group will be the result of integrating and compensating the self-assessments of each of its components. This implies that the self-assessments to enter any of the entities can be offset by other accredited balances with consequent financial savings, since in the general scheme can only obtain the repayment of those balances to offset in the last self-assessment of the year.

The advanced mode in turn involves three advantages with respect to the general scheme:

- The taxable amount of supplies of goods and intra-group services delivery amount is determined by the cost of goods and services used directly or indirectly in their elaboration, for which VAT has been input.
- The intra-group transactions are a distinct sector in order to determine their deduction system.
- There is the possibility of giving up to all exemptions of art. 20. One of the VAT law and not just the real estate companies as in the general scheme.

Again, given the wide margin of autonomy that Article 11 of Directive 2006/112/EC of November 28, 2006, leaves the States, the Spanish legislation is different from the approach taken by the Commission[32]. When “with regard to the internal operations of the VAT group, that is, for consideration among its members taken individually, another consequence of considering single taxable group is that these operations must be considered by the group itself. In this case, this is one of the most important effects of the creation of a VAT group, since, except for assimilated deliveries[33] (Articles 16, 18, 26 and 27), internal operations against payment within a VAT group do not exist for VAT purposes; they are “outside its scope.” Therefore, the possibility for a VAT group to be established may also be advantageous for companies in terms of cash flow”

The Spanish norm establishes the specialties listed above for intra-group operations, but in any case remain within the scope of the taxation.

31. *ROMEO IBAÑEZ, Miguel Ángel and GARICANO DEL HOYO, Juan Ignacio, en Ekonomiaz nº 68, 2º fur month period, 2008*
32. *Comunicación al Consejo y Parlamento Europeo de 2 de julio de 2009.*
33. *See Articles 16 , 18 , 26 and 27 of Law 37/1992 of December 28 of the Value Added Tax.*

4. MAIN DIFFERENCES BETWEEN THE EXISTING LEGAL CONCEPTS

The common link between different definitions of group in the Spanish legal system is the equivalence between control and group. Both the CCo, as in the TRLIS Tax law and the VAT Law, the existence of the group is identified with the situation where a company (dominant) obtains control over other/s. This equation, otherwise common to other systems in our environment, seems only appropriate to reflect the existence of so-called hierarchical groups, but leaves out the concept called peer groups or coordinated groups, where a group of companies independently decides to subordinate their individual interests for a common interest, yielding to that effect part of their administration and management powers.

The European Commission also seems to consider hierarchical groups in its Communication to the Council and the European Parliament on July 2, 2009, when, analyzing various issues relating to Art.11 of Directive 2006/112 / EC, for the purposes VAT states the following: "The members of a group, dominant and dominated must be entrepreneurs or professionals. Dominant and dependents must be joined by financial, economic and organizational ties, all of them being justifiable". "To this end the Commission understands "by financial ties those defined in accordance with participation rates above 50%, which hold the majority of voting rights or be a franchise agreement to ensure control of an entity over another. Meanwhile, economic ties mean that the activity of all entities of the group should be the same, or in other words, the entity must provide services globally for the group. Finally, organizational ties are those determinants the constitution of a total or partial management structure."

The Tax General Directorate also seems to equate control with the existence of a group of companies. The Consultation V0266/2009 of February 12 appears to require more than a percentage of equity to affirm the existence of a group of companies. It claims that to be effective for the VAT "the percentage must be equal to or greater than 50%, and must be accompanied by strong financial, economic or organizational links, without requirement of the simultaneous concurrence of the three orders ". Consultation V2437/2009 of October 30, once again associate the existence of the group and percentage of ownership. It provides that: "an entity that acts as senior partner of the participating entities in the group needs a majority of shareholding. It exercises authority or issue instructions binding on the grouped cooperatives, so that a unit decision is formed within the scope of those powers, it is not considered a dominant company of a group of entities if it does not meets the requirement of direct or indirect participation, with at least 50% of the capital of another or other entities ".

This is the single point of connection of the Spanish legislation, which differs in everything else, so in summary but not limited to we may note the following differences:

- The different way of calculating these percentages, because although corporate legislation talks about the majority of voting rights in the field of taxation it refers to percentage of ownership[34].

34. *See in this sense Consultation V1660- 08 , of 12/09 DGT. Which provides that the requirement in art. 67.2.b), it is about the corporate interest in the acquired entity, any time, although this participation is subject to a ceiling of voting rights, the requirement of participation is understood as fulfilled, which the investee be integrated into the consolidated group. In turn the Consultation Number 918 04 05/04 DGT provides that for purposes of computing the degree of participation if the acquired company owns shares 'nominal value of treasury shares will reduce the amount of share capital in order to determine the percentage of participation in the implementation of tax consolidation regime"*

- The CCo covers other ways to gain control apart from obtaining the majority of voting rights, mentioning as ways to achieve it, the agreements with other entities to obtain such majority, and having appointed most members of the governing body, or be in position to do so. It also leaves the door open that for other forms of control, by providing "Control is presumed to exist ".

- The trade group is much broader than the fiscal group concept, integrating the Jointly controlled entities characterized by joint management, and Associated companies, which are characterized as such if a component of the group has a notable influence on them.

- The different subjects that can be part of it, as both the TRLIS tax law and VAT Law, require that all members of the group should be resident in the Spanish territory

- (VAT in the territory of application of the tax, since Canaries, Ceuta and Melilla are excluded), while the CC does not restricts it in any way[35].

- Similarly, Article 29 of Law 12/2002 of May 23, on Economic Agreement with the Basque Country, paragraph seven, section 7 must be considered. "Entities benefiting from the special group regime will be taxed applying the rules contained in this section 7, with the following specialties": First: the subsidiaries whose inspection (...) is entrusted to administration entities, statutory or common, different from that applicable to the parent will be considered excluded from the Group of entities. The rules of attribution of competences for inspectors are detailed in paragraph 6 of that article.

- Besides, art. 67.1 of the TRLIS tax law limits the legal figures of companies that can be part of the tax group to "corporations, and limited joint-stock companies as well as credit institutions in paragraph 3 of this article refers to" (integrated in an institutional protection scheme), although those required legal forms appear only for subsidiaries. By contrast, there is no limitation of legal forms for VAT purposes.[36]

- Meanwhile the VAT legislation requires that both dominant and dependent threshold be considered as professional or entrepreneur pursuant to Article 5 of VAT Law for general purposes.[37]

- The of the rules related to the existence of "group" in the case of TRLIS TAX LAW and VAT Law are default rules, relying on voluntary application, compared to the binding nature of the regulations governing the account consolidation.

- The adoption of the application agreement of the aforementioned rules correspond to different entities. The Executive Board of each company in the case of IS[38], and the Administrative board in the case of VAT.

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35. *This requirement has been interpreted in different consultations DGT, see to that effect Consultation s s V0075- 10 of 20/01, the Consultation V2146-10 , of 28/09, and V0668- 11 , of 16/03, which supports the existence of mercantile group, in the case of two foundations, in which one designated to most employers the Board of the second.*
36. *In this sense Consultation DGT V1021-09 of May 8, allows the inclusion in the scope of the corporate group for VAT, a European Economic Interest Grouping, which is considered to entrepreneur or professional.*
37. *See Consultation V2642-09 , of 30/11. Therefore DGT Queries V0022-10 , of January 18, and V2051-08 of 05/11 denies the possibility that a municipality and a holding company whose sole purpose is to acquire holdings in other undertakings without intervene directly or indirectly in the management thereof, may join the group. By contrast, there is no impairment for an dependent, inactive, but not dissolved company to be part of the group. See V0037-10 of January 18th.*
38. *The judgment of the High Court of December 20, 2007 underlines the character of constitutive requirement and not merely formal agreement to be adopted by the Shareholders' Meetings of all companies will be integrated into the tax consolidation group in the period immediately preceding so that without such agreement, the regime is not applicable.*

- Finally, commercial consolidation allows the financial years of the companies of the group not to be concluded on the same date as that of the dominant, while fiscal consolidation requires the coincidence of financial years, although failure to do so is not a cause for excluding it from the tax group.

There are therefore important differences that underlie the concept of group of each of the normative presented. Such differences are observed not only between different branches of law, but even within the Tax Law, given that the regulation differs between the TRLIS tax law (Corporate law) and VAT Law. Not even part of the regulation of one sector is used in another. Thus, rather than starting from the consolidated results of the group, the Fiscal consolidated regime starts from the individual accounting of each of the companies, i.e. the individual tax base of each of them, being the aggregation of each of them corrected in the incorporations and deletions imposed by the regulations, which form the tax base of the consolidated group.

5. THE GROUP OF COMPANIES CONCEPT IN LABOR LAW

In this area of the law, in the absence of a legal regulation, the jurisprudence has been outlining the notion of group of companies for labor purposes. The base that has served as a basis for such concept has been the flexibility of Article 1.2 of the Workers' Statute, which defines the entrepreneur as "all persons, natural or legal, or community property receiving delivery services of the persons mentioned in the preceding paragraph." Article 1.1 provides that "This Act shall apply to workers who voluntarily provide their paid services to others and within the scope of organization and direction of another person, natural or legal, called employer or company owner." The reference to community property as devoid of definition as a legal entity has allowed the Spanish jurisprudence to identify the group of companies as an employer, in order to extend their liability for contractual breaches. The issues raised by the groups of companies in this area of law determine who "the subject that must face labor obligations to the employees" is. The company that has formally engaged the employee or the group of companies as such"[39], i.e., who holds the position of labor entrepreneur, and not simply accepting the name that appear as such in the labor contract.

The Spanish jurisprudence is of the idea that "the Group of Companies is not presumed by mere commercial matches, but the burden of proof of the existence of the conditions to declare a Group of Companies for labor purposes lies on the plaintiff", and should not "set guidelines or general criteria"[40]. "The general principle of independence and no communication of responsibilities between the companies of the group, on the basis that the economic links and organizational management, do not alter the status of companies as independent or separate entities; they have separate legal personality and therefore are independent of each other and responsible in their scope"[41]. Thus, "it is not enough that two or more companies belong to the same business group to derive from this a solidarity responsibility in respect of obligations to their own workers[42]. That «a company holding shares in another or several companies undertake an economic collaboration policy does not necessarily entail the loss of their independence for labor legal

39. *Judgment No 487/2008 of 27 May, the Social Chamber of the Superior Court of Madrid.*
40. *Judgment of the Supreme Court of May 3, 1990 cited in Judgment No 487/2008 of 27 May, the Social Chamber of the Superior Court of Madrid.*
41. *Judgment No. 487/2008 of May 27, cited above.*
42. *Judgment of the Supreme Court of 30 January 1990 cited in Judgment No 487/2008 of 27 May, the Social Chamber of the Superior Court of Madrid.*
43. *Judgment of the Supreme Court of May 3, 1990 cited in Judgment No 487/2008 of 27 May, the Social Chamber of the Superior Court of Madrid.*

effect”[43]. For creating a collective liability of the group towards employees, “it is necessary that the group of companies act fraudulently. They make an abusive use of independent legal personality of each of the entities in prejudice to the workers; this is an abuse of rights or a fraudulent intent based on a legal framework that disguises factual situations in which one employing entity acts under the formal appearance of different independent legal companies. So one can only deduce a group liability towards the workers, when a fraudulent and misuses of legal norms is done, but we will not require such liability, when the group of companies is acting according to the law, when the constitution of such groups to operate in the market is perfectly legitimate”.[44]

The premises that have allowed the courts to disregard the legal independence of the group of companies, highlighting their economic unity, declaring the joint responsibility of all of them are as follows[45]:

- **Confusion of workers or existence of a single payroll**, a situation that occurs when the services are simultaneously performed or successively undifferentiated for various group of companies, denoting a single field of organization and management. Notes evidencing this confusion according to the courts are the existence of a single workforce, the simultaneity of services delivered to various companies, dissonance between the provision of services and the formal affiliation to a company.[46]

- **Confusion of corporate assets,** a situation that occurs when between companies in the group there is a high degree of communication between their assets. Notes evidencing this confusion according to the courts are: existence of a common fund, payment of debts relating to another company of the group.[47]

- **Unity of management,** a situation that occurs when the companies of the group operate under one management power. For example, the existence of a single governing body for labor purposes, the competence to decide the members of the management bodies or supervision of subsidiaries.

- **External appearance of business unit,** a situation that occurs because of a common operation in the market and which produces an appearance of unity confusing the good faith of those entering in contractual obligations.[48]

As a summary of the criteria mentioned before, it can be said that “for the joint and several liability in the fulfilment of the duties of employment between the components of the group, it is necessary that the connections between its members are no longer economic or financial, but labor type: single workforce or separate….. Confusion of assets, single external appearance and unity of management”.[49]

In similar terms this jurisprudence appears in the tax field in Article 43.1.g) and h) of General Tax Law 58/2003, of December 17, as a vicarious liability case of “persons or entities holding the control, total or partial, direct or indirect, of legal persons or with a common leadership... “and” persons or entities that taxpayers have the full or partial control, or where a common leadership will concur with those parties governing common tax... “when” it is established that such persons or entities have been created or used improperly or fraudulently”[50].

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44. *Judgments of the Supreme Court of September 25, 1992 and June 27, 1994.*
45. *AYLWIN Chiorri, Andrew and RED MINO, Irene “Enterprise groups and labor legal effects in comparative law” . Ius et praxis 2005, vol. 11 No. 2 pg. 197-225.*
46. *Judgments of the Supreme Court of June 19, October 7 and December 16, 1986 and January 30 and May 3, 1990.*
47. *Judgments of the Supreme Court of November 10, 1987, June 8, 1989 and January 30, 1990.*
48. *Judgments of the Supreme Court of October 8, 1987 and December 22, 1989.*
49. *Judgment of the Supreme Court of June 30, 1993.*
50. *Art. 43.1 L GT 58/2003 of December 17.*

6. TOWARDS A CONTRACTUAL GROUP MODEL

The economic practice shows how the reality that underlies the idea of group is that of "unitary leadership", as independent subjects they put their particular interests in the service of a common interest, which usually come to match with their individual interest, but sometimes but sometimes may come into conflict. At this point, match doctrine and jurisprudence,[51] pointing out as delimitations for the existence of the group:

- Multiple independent companies.
- Instrument for obtaining the leadership power.
- Joint management as a necessary element for the constitution of the group.

However, the difficulty of delimiting the concept of "Joint management", coupled with the need to provide some legal security to the concept of group, lead the Spanish legislation to consider the control as an equivalence for the group.

Precisely, this need for legal certainty, coupled with the fact that the equivalence between control and group is not appropriate because it leaves out of the concept economic realities that should deserve the qualification of group since they act as a decision unit. This has led to a sectorial doctrine referenced by Embid Irujo[52], which proposes the concept of GROUP CONTRACT as a correct formula to narrow the group concept, similar to the German notion of control agreement. Thus, the group would consist of entities (with a broad understanding of the term) that in the free exercise of their autonomy choose to join the group, subordinating their specific interests to the interests of the group. This contract should be provided with the necessary formalities, certainty and advertising, via a public deed and open registration for each of the companies participating. It would not be a bilateral contract as the German contract, but multilateral, open to all types of entities, although with the qualifications that each domestic rule imposes according to the relevant legislation. Similarly, we would move away from synallagmatic contracts of obligation exchange to join the scope of the contracts of organization, where the concept of joint management should be reflected in the background of the concept of group. This contract, in addition to setting the basic legal regime for the group operation, should articulate appropriate protection measures for the legal defense of the interests of the different agents that could be harmed by subjecting the individual interests of each of the components of the group, to its dominant interests.

We refer mainly to the creditors of the companies, their workers, and the minority shareholders.

This seems to be the legislator's current position in Article 4 of Decree-Law 11/2010 of July 9, on governing bodies and other aspects of the legal regime of savings banks. In the process of reorganization of the Spanish financial sector, which openly talks about "contractual agreement" between savings banks as a source of the new financial institutions which, in their corporate form, are the result of the merging.

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51. Judgement Audiencia Provincial de Vizcaya of 13.06.2002, No. 311/2002

52. EMBID IRUJO, José Miguel . "Introducción al Derecho de Grupos de Sociedades". Colección de Estudios de Derecho Mercantil. Editorial Comares 2003.

7. CONCLUSION

For the sake of legal security, I favor this last commercial or contractual conception of the Group. Therefore, this would be formed by those entities that, in the free exercise of their autonomy, decide to belong to the group.

Based on this business concept of the group, there could be the case of dominants and dominated companies that would not join the group, distinguishing in this case between factual and legal groups. The establishment of such group would be attractive in those legal sectors that provide favorable legal disposition to the group as in the case of Tax Law. This does not happen in those sectors where belonging to the group can only have negative consequences, as it may occur with the social responsibility statement for labor debts in labor law.

Regardless such cases, abusive or fraudulent use of the legal personality may be covered by the doctrine of piercing the corporate veil, maintaining the presumption of the existence of the group in case of control for these abusive uses of factual groups.

This opinion is linked to the voluntary nature that the legislator has granted to the tax rules associated to the existence of the group, since the various consolidated tax regimes are optional in CIT and in the special regime for groups of entities in VAT. More recently, it seems to be the choice of the legislator in Article 4 of the Royal Decree-Law 11/2010, July 9, on government entities and other aspects of the legal regime of savings banks.

Based on this basic idea of linking the rules on the group to the existence of the contract, there would be no problem in introducing refinements to its legal regime and including to the intervening subjects, depending on the interests involved in each area of the law.

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