



The impact of EU tax policies on the social economy

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EU policies

Proposal of Directive in Common
Corporate Tax Base

State aid rules

Corporate taxation on SE undertakings

- Technical:
- Have into account differences



- Corporate tax base
- **AFFECTED BY PROPOSAL OF DIRECTIVE ON CCTB**

- Incentives:
- Accomplishment of social and territorial cohesion goals
- Compensation of overcost because of working in “market failure” areas (social services, agricultural, employment, etc)
- **AFFECTED BY STATE AID**

CCTB

Scope

- Affecting specially to cooperatives (Annex I)
- It will be the seed of the CTB harmonisation in EU

Provisions affecting cooperatives

- *Article 12 Non-deductible items*
- *By way of derogation from Articles 9 and 10, the following items shall be non-deductible:*
- *profit distributions and repayments of equity or debt;*
- *(...)*
- *the transfer of retained earnings to a reserve that forms part of the equity of the company;*

Profit distribution

Countries treating as bonuses

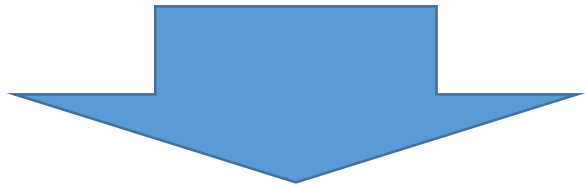
- They are considered income of the member, and not the cooperative
- So the distribution is not taxed at the cooperative tax base, but in the income tax of the member

Countries treating as dividends

- The income from operations with members are slightly best treated in order to avoid the double taxation (smaller tax rate)
- Interest paid on equity is deductible

Transfer of earnings to a reserve

- Some countries have regulated compulsory transfers to non-distributable reserves



- The profits are totally or partially reduced

- 2 kind of reserves
- A) Financial: to balance the variability of equity, and the difficulty of accessing to finance
- B) Solidarity: usually to promote cooperativism, or other goals of Social Corporate Responsibility
- (not covered by art. 9.4 about gifts to charitable bodies)

Conclusions on CCTB

- So these cooperatives would not be allowed to choose the CCTB system.
- In my opinion, differences between cooperatives and other undertakings could justify different treatment when calculating the income for tax purposes (as pointed out by Court of justice ruling of September 8th 2011)
- This aggravates the situation of cooperatives, that have lost plenty of their special regimes in the last years.

State aid

Cooperatives

- They have special treatment in some countries, although they are very poor.
- Even so:
- Problem with selectivity element as these are related to undertakings by their “legal form”

Social undertakings

- Not having usually any tax incentive, although:
- their accomplishment of very important social goals,
- and the assuming of social costs derived of the “market failure”

Cooperatives

The procedures of the Commission, and the ruling of the Court covered also the same subjects:

- Taxation on profits by operations with members (distributed or not)
- Allocation of profits to non-distributable reserves

The Court pointed out the differences of cooperatives, as much as they follow the criteria set up by:

Regulation on European Cooperative

Communication on the promotion of Cooperative societies in Europe

Social business: social services of economic general interest

- It is raised more than once if Social Economy undertakings are providers of Services of Economic general interest, because of their peculiar way of functioning
- In Spain, Special employment centres (for disabled people) and Work integration social enterprises have been declared Organizations providing Services of economic general interest by Law on Social Economy, in 2015
- That following the lead of the Social Business initiative
- First time it is declared to a SE undertaking just because of being itself

Implications

- The declaration would be considered the act of entrustment required by the Almark ruling, about the provisions of art. 106 TFEU
- This article establishes a more favourable régime for State aid than the general rule contained in art. 107.
- But it is very difficult for tax regulations to meet the requirements for notification exemption (and the legal certainty attached) because they are not “transparent”
 - This is a very important setback in order to Member States to regulate some fiscal incentives.

CONCLUSIONES

- Tax treatment on SE undertaking in European countries is probably reflecting very poorly the social goals they accomplish and the overcosts they carried out.
- Any tax incentives are threatened also because of the uncertainty of the legal framework of State aid.
- The framework of the services of general economic interest would be a good approach to the treatment. Even so, fiscal incentives could not meet the criteria to be exempted. This situation would have to be changed.
- Even the technical rules could be erased by the CCTb.

So, it would be convenient

- To take notice of the specificities of tax treatment of SE undertakings in Europe,
- To amend the CCTB proposal
- To study the possibility of applying SGEI to a number of SE undertakings
- To change the rules about transparency of State aid for SE tax measures, or at least some of them
- To improve the tax treatment of SE providing social services all over European countries