

Europe Region of the International
Co-operative Alliance

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Paper on the draft Directive on a Common Consolidated Corporate tax Base (CCCTB)

Cooperatives Europe is the voice of cooperative enterprises in Europe.

On behalf of its 91 member organisations from 35 European countries across all business sectors it promotes the co-operative business model in Europe.

Its members represent 123 million individual member co-operators owning 160.000 co-operative enterprises and providing jobs to 5.4 million European citizens - a force for economic growth and social change.

The Draft proposal on a Common Consolidated Corporate Tax Base

In March 2011, the Commission published a common system for calculating the tax base of businesses operating in the EU. The objective is to lift obstacles linked to corporate taxation that are holding businesses back. Businesses would be offered one single set of corporate tax base rules. These rules are optional for businesses and alternative to rules provided for by national legislations. They are applicable to different kind of businesses, including cooperatives.

Cooperatives and CCCTB

Cooperatives Europe welcomes the objective of the text as a contribution to consolidate the Single Market. Nonetheless, it firmly contests the absence of any attention for specific rules applicable to cooperative businesses in several Members States.

The draft text specifies in its article 7 that when a company opts for the system provided by the directive, it 'shall cease to be subject to the national corporate tax arrangement'. It means that when the national rules provide cooperatives with a regime that differs from CCCTB rules, cooperatives, if they want to benefit from the CCCTB directive, would have to abandon their cooperative regime. Such a rule is discriminatory towards cooperatives, which would have to follow rules that have been written for other types of enterprise, while the shareholders companies will find the same rules in the CCCTB than in their national rules

Also, by not including specific provisions for co-operative enterprises, which are linked to their specific structure, the CCCTB effectively excludes co-operatives from the possibility of opting in. This discrimination is not acceptable.

Shareholder companies are not the only way of doing business. It is important to protect and preserve this diversity of forms of doing business for achieving the single market and maintaining the European social model. Cooperatives, as businesses managed and controlled by stakeholders have a proper identity and are regulated by specific operational principle recognized at national, European and international level.

In particular, at EU level the specificities of cooperatives are recognized in article 54 of the European Treaty and by the adoption of the Statute for the European Co-operative Society. More recently, the European Court of Justice¹ has also acknowledged the specificities of cooperatives, pointing out that they follow specific operating rules, which distinguish them from the other economic actors.

Ask for two specifics amendments

This discrimination is patent in the implementation of two articles.

→ According to article 14 on non-deductible expenses 'the transfer of retained earning to a reserve, which form part of the equity of the company' shall be treated as non-deductible expenses'.

The third cooperative operational principle (*members' economic participation*) stipulates, inter alia, that part of the capital of a cooperative enterprise should be the common property of its members and aimed at the long term development of the enterprise, under the form of cooperative reserve funds. This cooperative principle also suggests that at least part of such reserve funds should be explicitly indivisible, namely submitted to an "asset lock" by which under no circumstances can members have a claim on them. A number of countries in the EU (e.g. Italy, France, Belgium, Spain) and elsewhere in the world have enshrined indivisible reserves in their binding legislation as a sui generis type of property. Given the specific nature of this type of property, and the fact that it cannot belong to specific individuals neither in the present time nor at any point in the future, states have generally established equally specific regimes to tax the part of the enterprise profits that is earmarked for this type of reserve.

According to the draft article 14, the earnings transferred to reserves cannot be included into the common system determining the taxable income. This norm would thus not allow cooperatives opting for the CCCTB system to deduct the retained earnings to a reserve, which forms part of the assets of the company. This will prevent the cooperatives from choosing the CCCTB and will then weaken the system.

¹ Ruling 8 of September 2011, C. 78.08

Therefore, we recommend formulating the text as follows:

Article 14: The following expenses shall be treated as non-deductible:

(...)

*(c) the transfer of retained earnings to a reserve which forms part of the equity of the company, **except for the earnings retained to a indivisible reserve by cooperative enterprises, consortia and cooperative group in accordance with provisions of national taxation legislation for cooperatives;***

→ According to article 15, the benefit that shareholders (..) holding a direct or indirect participation in the companies receive shall not be deductible.

This clause limits the deductibility of benefits granted to shareholder members. While such an arrangement could be justified for non-cooperative companies, it is not grounded for cooperative businesses, which, contrarily to the other enterprise forms are precisely characterized by returns to members in proportion to their transactions with the cooperative (which can take place under the form of purchase of goods, sale of products, or staff remuneration), and which should be considered as a year-end adjustment of the price of such transactions. For this reason it has to be understood in compliance with the definition given by article 66 of Regulation (EC) 1435/2003²:

Therefore, we recommend formulating the text as follows:

Art. 15: Expenditure incurred for the benefit of shareholders

1. Benefits granted to a shareholder who is an individual, his spouse, lineal ascendant or descendant or associated enterprises, holding a direct or indirect participation in the control, capital or management of the taxpayer, as referred to in Article 78, shall not be treated as deductible expenses to the extent that such benefits would not be granted to an independent third party.

2. The part of results that cooperative enterprises and consortia and cooperatives groups grant to their own members are in any case deductible.

Conclusions

If the CCCTB regime will not be modified, there will be no possibility to reconcile the new regime proposed by the Commission and some of the national rules concerning the taxation on cooperatives.

On the contrary, taking these remarks into account will contribute to developing a true cooperative policy in the EU and allow this business model to develop as key actor for a sustainable European Union for the benefit of citizens.

End

² « The statutes may provide for the payment of a dividend (ristourn) to members in proportion to their business with the SCE, or the services they have performed for it. »