

European
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Policies

EZAI

COOPERATIVES IN THE EUROPEAN COMMON CONSOLIDATED CORPORATE TAX

Position Paper



EZAI FOUNDATION

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The institutional position of EZAI Foundation in relation to the common consolidated Corporate Tax Base in Europe is as follows:

1. EZAI Foundation believes the Commission's initiative to approach regulation of a Common Tax Base for the purpose of the Corporate Tax in Europe would be very positive because:
 - It could be an essential starting point in order to enable the comparison and exchange of best practices among the different tax systems in Member States.
 - It seems to be a necessary step once the accounting harmonization process has started in Europe.

In any case, as explained in this note, EZAI Foundation understands that this harmonization is of particular relevance and interest in relation to cooperative societies.

2. EZAI Foundation understands that, in their capacity as limited liability entities ("incorporated entities"), cooperative societies are subject to CCTB (Common Consolidated Tax Base) rules, in accordance with paragraphs 13 *et seq.* of the working paper on "Personal scope of the CCTB" drafted by the DG Taxation.
3. Just like other company types, cooperatives are subject to different Corporate Tax regulations in each Member State.

However, cooperatives show a substantial difference as compared to other entities, since the different approaches to Corporate Tax regulation among Member States usually affect, in the case of cooperatives, certain basic aspects of the Tax, and even the very essence of the concept of benefit subject to Corporate Tax.

4. In particular, it is common for cooperatives in the different Member States to decide at year-end to make certain payments to their members. The amounts of these payments are related -or limited- to profit & loss figures.
5. These "payments" to members at year-end have two basic forms:



- a) Payments in proportion to each member's interest in the capital of the cooperative.
 - b) Payments in proportion to each member's participation in the cooperative's operations throughout the year (depending on the type of cooperative, these operations may be measured in terms of work-related compensation to the cooperative's employees, purchases made by members, and so on).
6. The terminology used to describe these payments varies according to the type of legislation: returns, dividends, interests, profit distribution, etc.
 7. The treatment of the two concepts mentioned above for Corporate Tax purposes differs substantially among Member States:
 - In many MS, payments made in proportion to the operations of members with the Cooperative are considered tax-deductible expenses, and payments to members in proportion to their equity interest are non-deductible for tax purposes.
 - In other MS, on the contrary, payments made in proportion to operations with the Cooperative are non-deductible for tax purposes, and payments in proportion to capital are tax-deductible.
 8. For this reason, it is necessary for the CCTB regulation to clarify the concept of Taxable Base in relation to cooperative societies and, particularly, to determine whether the income accrued in favour of members in the items indicated above should be included in the Taxable Base or considered a tax-deductible expense.
 9. In the opinion of EZAI Foundation, the most logical and sound alternative would be to consider payments made in proportion to operations as a deductible expense, and the payments made to members in proportion to their equity interest as the non-deductible taxable base.



10. The main reasons supporting this criterion are the following:

- This is the criterion applied by tax laws in most Member States.
- This is the most logical criterion for comparative purposes, as this treatment is similar to the one given to equivalent operations in other types of entities.

Quite often, the tax rule must pay more attention to the economic reality than to legal formalities where a conflict exists between them both.

In this regard, irrespective of the particular legal characteristics of cooperative societies, it seems to be clear that, in a capital company, it is the equity retribution that is subject to taxation under Corporate Tax.

On the contrary, a year-end bonus in favour of employees, suppliers, etc. would always be considered as an additional cost of the operations with these stakeholders, and thus be tax-deductible under Corporate Tax.

11. For the same reasons, we believe that an identical criterion should be applied in relation to retained earnings (“reserves”). If these reserves are subject to the rights of equity holders, they should be considered non-deductible for Corporate Tax purposes. On the contrary, if these reserves –as is the case in some cooperatives– are subjected to members’ rights on the basis of their participation in the Cooperative’s activities or operations, then they should be considered tax-deductible.

12. In view of the foregoing criteria, a proposal is made for the DG Taxation and Customs Union to modify the text of the document **“COMMON CONSOLIDATED CORPORATE TAX BASE WORKING GROUP (CCCTB WG). CCCTB: possible elements of a technical outline”.CCCTB/WPO57/doc/en**“ to read as follows:



CURRENT TEXT

“IV. Tax base of individual companies

...

25. The Commission Services suggest that the definition would be accompanied by a list of non-deductible expenses, to include

-profit distributions, repayments of equity or debt or any payment to or expenditure incurred for the benefit of shareholders or persons related thereto,

...

-appropriation of retained earnings which form a part of equity (reserves)

...

All expenditure on staff, including directors, would be treated as a business expenditure on the assumption that MS would subject, if deemed necessary, any private element/benefit in kind to personal income taxation. ...”

SUGGESTED TEXT

“IV. Tax base of individual companies

...

25. The Commission Services suggest that the definition would be accompanied by a list of non-deductible expenses, to include

-profit distributions, repayments of equity or debt or any payment to or expenditure incurred for the benefit of shareholders or persons related thereto,

...



-appropriation of retained earnings which form a part of equity (reserves) = except when these earnings are retained not for the purpose of capital repayment, but for the repayment of member operations with the company-

...

Payments to members would be deductible, even if they are called “profit distribution”, when they are not paid in proportion to their respective equity interest but in proportion to their participation in company activities or operations, as is the case with certain cooperatives in which – conversely, and by application of the general criteria– payments to members in proportion to their equity interest would be considered non-deductible.

All expenditure on staff, including directors, -except where paid in proportion to their respective interest in the entity’s equity- would be treated as a business expenditure on the assumption that MS would subject, if deemed necessary, any private element/benefit in kind to personal income taxation. ...”