THE COOPERATIVE ACT AND ITS TAXATION IN LATIN AMERICAN COUNTRIES

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Abstract:
This text analyzes the legal figure of the Cooperative Act based on the Latin American doctrine countries, demonstrating that this act is the central element of cooperative societies. From the understanding of the meaning of the Cooperative Act, it is possible to think of a model of taxation of cooperative societies, which must be carried out from the Cooperative Act. The methodology to be used is the bibliographic review of the works on cooperative law and the legislation of the countries.

Keywords: Cooperative Act; Integration; Taxation.

1. INTRODUCTION

The most natural Cooperative characteristic is a constant process of expansion of their base of action. For this, a series of strategic alliances between cooperatives, society and the market are necessary which, legally, are made by a "cooperative act". However, the concept of cooperative act, especially in Latin America, comes from the 1960s and was not updated, mainly making use of national legal systems, making integration between cooperatives from different countries difficult. With this, the current framework allows cooperatives from different countries to have economic relationships with each other, but these relationships are not legally considered cooperative acts.

The cooperative act is the one performed by the associate with his cooperative to obtain the service whose provision it organizes, and for which it was established. So are the acts carried out by the associates of cooperatives that have inter-cooperative agreements for reciprocal use of services, as well as the socio-economic relationships that cooperatives carry out with each other and/or with the integration body. Cooperative acts are regulated by cooperative legislation and the statute of each cooperative and, in a supplementary manner, by the law that regulates the activity carried out, and they do not involve exchange operations that generate income, which is why they are not subject to taxation.

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The practical consequence is the need for a specific cooperative societies tax legal subsystem in Latin American countries. The legal rules that deal with the cooperative act and its taxation are diffuse within the legal systems of the countries, with no adequate organization level, which negatively impacts the operation of cooperatives in the region.

The study aims to review the legal concept of cooperative act and analyze the structure of cooperative acts in the main countries of Latin America, pointing out the convergent and divergent points, as well as pointing out the directions for the change in the concept of cooperative act in that it comes to allow the due taxation of cooperatives and the integration of the businesses of Latin American cooperatives.

2. THE COOPERATIVE ACT - A LATIN AMERICAN VISION

This article will adopt the definition of intercooperation as expressed by the International Cooperative Alliance at its Centenary Congress (Manchester, 1995) and accepted by Recommendation 193 of the International Labor Organization, voted at its 90th Conference, held on 20.06. 2002:

Cooperatives serve their members more effectively and give strength to the cooperative movement, working together through local, regional, national and international structures.

This reference is pertinent, insofar as the principles declared by the Alliance are expressly mentioned in several laws in Latin America, such as art. 7 of the Uruguayan Law[3].

The cooperative act is a concept present in the legislation applicable to cooperative societies in several countries in Latin America. The cooperative act originally accounted for the double quality of the cooperative's member, as an expression of the unique relationship between the two, which is established not only in the corporate dimension, that is, in a proper exercise of the right of property, but in an operational dimension: the cooperative necessarily integrates its economic activity with the economic activity of its cooperative, so that the marginal gain resulting from the operation tends to occur directly in the partner's equity (distribution of results according to the operations) or in the community equity (not divisible).

In this normative organizational structure of cooperatives, an element of the greatest importance for the understanding of the specificity of cooperative societies must be highlighted, and which, when not well understood, results in a complicating factor capable of limiting the vision of the organization and the functioning of cooperatives. It refers to the operational aspect that influences the resulting organization, which is the purpose of cooperatives. It is the fact that they, the cooperatives, are constituted to provide services to their own members.

This principle is called by the cooperative doctrine of double quality, which presides over the operating system, in which the associate is a partner and a user (client partner for the French). It follows that from mutuality (common services) and cooperation (economic collaboration) the cooperative presents itself as an auxiliary company, the purpose of which

[3] Cooperatives must observe the following principles: 1. free membership and voluntary dismissal of members; 2. democratic control and management by the partners; 4. economic participation of the partners; 5. autonomy and independence; 6. cooperative education, training and information; 7. cooperation between cooperatives; 8. commitment to the community.

is to provide services to its members, with its object being the chosen branch of activity (credit, insurance, joint sale of production, supply, etc.).

In legal terms, there are, therefore, the existence of relations between members and the cooperative of two types: corporate and business. The advantage of the member and that results from his status as a member is that of using the services of the cooperative, obtaining a profit or a reduction in costs.

This essential aspect of the formation of cooperatives is so important that not only does doctrine give it meaning and emphasis, but it also regulates it with cooperative laws. Thus, the Brazilian law, Law 5.764/71, was not limited to dispose of the corporate organization itself (constitution, administration, etc.), as occurs in other companies, having gone further, to govern what it called the operating system of companies. For cooperatives under the aegis of this law, it regulates the cooperative act, the distribution of expenses, the cooperative's operations, losses, and the labor system. Thus, emphasis was placed on the business relations between cooperative members and cooperatives, regulating the type of service to be provided, which is connected to the objective of the activity and according to them, the nature of the act, which is therefore configured as a cooperative act (Bulgarelli, 1992, p 337).

At the center of cooperative practices and operations are so-called cooperative acts. Cooperative acts, in their original concept, have essential and indelible aspects that are common to them (Cracogna, 1969, p. 205):

a) partner and cooperative intervention;

b) object of the act identical to the object of the cooperative;

c) spirit of service.

But from an early age there was an intention to say more with the expression cooperative act than its original notion. The most recurrent over the years have designated as cooperative acts

1. all acts and legal business carried out between the cooperative and its partners, including the constitution of the company itself, from which all other cooperative acts derive, and not only the circumscribed acts in operation, but that is also, in the integration of the respective economic activities, which is manifested in the condition of the identity of objects.
2. all business acts practiced by the cooperative for the purpose of carrying out the operation in which the economic activities of the company and its partners are integrated. In this case, cooperative acts can also be those practiced by society with third parties (Krueger, 2004, p. 34).

In 1994, Paraguay enacted Law 438, which defined the cooperative act from the most diffuse notion:

> Art. 8. The cooperative act is the solidarity activity, of mutual help and non-profit purposes, of people who join to satisfy common needs or foster development. The first cooperative act is the constitutive general meeting and the approval of the bylaws. Cooperative acts are also those performed by: a) cooperatives with their partners; b) cooperatives among themselves; c) cooperatives with third parties in

fulfillment of their corporate purpose. In this case, it is considered a mixed act and will only be a cooperative act in relation to the cooperative.

This definition of the cooperative act contrasts with its older position, from 1971, in Brazilian Law 5.764, which is much more restricted (pure):

> Art. 79. Cooperative acts are those practiced between cooperatives and their members, between them and those and by cooperatives among themselves when they are associated to achieve social objects.
>
> Single paragraph. The cooperative act does not imply market operation, nor a contract for the purchase and sale of a product or merchandise

Returning to intercooperation, even adopting the more restrictive definition of a cooperative act, it can be recognized in it: cooperatives practice cooperative acts with each other, not necessarily in an operational relationship organized vertically and formalized in business signed between lower and higher degree cooperatives (singular with centrals and federations and these with confederations).

In the Brazilian case, where, as seen, the pre-existing corporate bond between the parties is a requirement for the qualification of an act practiced by them as a cooperative, the National Cooperative Council, in Resolutions no. 21 and 28, respectively of 20/10/1981 and 13/02/86, recognized the validity of the cooperative association in another of the same degree, regardless of its objects. There is a necessary logical link in these Resolutions in admitting the CNC to practice cooperative acts between them, without which the corporate bond would lose meaning due to the impossibility of providing services, according to the intelligence of arts. 4, I, 7, 8 and 35, IV of Law 5.764/71.

The new Uruguayan Law thus defines the cooperative act:

> Article 9 - Cooperative acts are those carried out between cooperatives and their partners, by them and the members of their partner cooperatives, or by cooperatives among themselves, when they are associated in any way or linked by affiliation to another of a higher degree, in compliance of its corporate purpose. They constitute specific legal businesses, whose economic function is mutual aid, are subject to cooperative law and for their interpretation will be understood as integrated according to the statutory provisions.

About the definition of a cooperative act, it can be said that the Uruguayan Law is as close to the concept of purity as that provided for in Brazilian law, if Paraguayan Law is considered as another end of the arc of semantic possibilities in the current state of the art. There is significant variation in its flexibility, as to the strict correspondence between the operational link resulting from the cooperative act and the corporate link as its formal presupposition: there is a cooperative act between the member of the singular cooperative and the Central to which that partner is associated - and not he which gives meaning to the provisions of art. 80, item D. This device provides as follows:

> Art. 80 For reasons of social interest or when it is necessary for the better development of their economic activity, whenever they do not compromise their autonomy, the cooperatives may provide services of their corporate purpose to non-members, to whom they will not be able to grant more favorable conditions than those

granted to members. The net surpluses that derive from these operations will be allocated as provided for in art. 70 of this Law.

Operations carried out with non-partners, those carried out for the following purposes, shall not be considered:

A) to serve members of another cooperative;

B) to dispose of fixed assets which the cooperative has idle or depreciated;

C) to serve the public, for reasons of general utility, at the request of the government;

D) in the case of second- or later-degree cooperatives, also those operations that are carried out with the members of their partner entities;

E) Operations that are carried out between cooperatives.

Before proceeding in relation to intercooperation, it is interesting to explain the basis for the link between arts. 70 and 80 in such a way as to distinguish that non-partner to which these devices refer, to clarify the meaning of the list of exclusions that appears in the last article cited. It is pertinent here to return to the distinction between purpose and object. In the Walmor Franke lesson (1973, p. 15):

> The purpose of the cooperative is the provision of services to members, to improve their economic status. The economic improvement of the member results from the increase of its income or the reduction of its expenses, through the obtaining, through the cooperative, of credits or means of production, of occasions for the elaboration and sale of products, and the achievement of savings. Object of the cooperative enterprise is the branch of its business activity; it is the means by which, in the singular case, the cooperative seeks to reach its end, that is, the improvement of the economic situation of the cooperative member [translation of authors]

It appears that the cooperatives operate with their members, within a circle, with acts characterized as internal and practiced due to the corporate agreement. Therefore, there is no mandate or representation, in the strict sense, but what we call cooperative delegation, which is characterized by a specifically operational representation, in view of the objectives and formulations of the corporate contract. If commercial law allows the mandate without representation, typical of the commission contract, in which the commissioner operates in his own name, but according to the orders and instructions of the principal, after all being nothing more than a service provider, there is nothing to be done. It is strange that in Cooperative Law, delegation operates, whereby society, receiving a specific mandate through the social contract, operates in its own name, but for the associate, providing him with services from the specific object of the Cooperative (Bulgarelli, 1998, p. 107).

However, the cooperative does not necessarily benefit its members to the full of their potential only by operating with the delegation (mandate without representation). When the cooperative operates without the economic integration of a partner's activity, that is, without the presence of the cooperative act, the cooperative is in a way deviating from its purpose, even if it is in an oblique sense of its economic reason, so it can proceed to better fulfill its purpose.

If the cooperative carries out an operation without practicing the cooperative act, it is because the partner does not appear as a user with no interest opposite to that of society. In this case, the member remains only as a member of the cooperative. He would be the

recipient of the net results of the operation, as the owner of any company. The cooperative would then operate not on behalf of the partner, but on its own to achieve these results and, after all, distribute them to the partners. If these marginal results were distributed according to the equity ownership of the company, it would be in the face of the profit distribution; profit being the purpose of the operation carried out.

However, the solution of the Uruguayan Law, when admitting that the cooperative operates without practicing cooperative acts, admits that the cooperative derives, in its operational starting point, from its purpose. However, this deviation is not consummated in the end by an inhibition: this is the meaning of item 3 of art. 70.

This sense is necessary to identify the so-called accessory businesses, exemplified in item B of art. 80 of the Uruguayan Law. These businesses are indirectly linked to the object of the cooperative or to the purpose of the cooperative, but which in any case exist due to the operations carried out by the partners with their cooperatives. In this way, it is important to always identify a nexus of dependence between the accessory business and the middle business and the end business.

Item C clearly expresses the contemplation of the 7th principle of universal identity of the International Cooperative Alliance in its Centenary Congress (Manchester, 1995) and welcomed by Recommendation 193. Then, in considering the principles expressed in art. 7, it is evident that there is an equation of item C with the appropriate treatment to the operations resulting from the cooperative act, which gives prestige to the principle of economic participation of the partner. In this bias, it is also possible to examine items A and E.

Neither item A nor E need to be considered cooperative acts to adapt the Uruguayan Law to its purposes, as in these cases there is no manifestation of the dual condition of user and owner of one cooperative in relation to the other. Even though item D, as seen, eases the strict formal observance of this condition, it does not dispense with it, as it imposes the need for the succession of corporate bonds, through the lower-level cooperative.

It is necessary to understand the meaning of this imposition: the cooperative act, as a manifestation of will in its original notion, emerges as an entity that differs radically from market acts. Its foundation is the absence of opposition of interests of economic content between the parties that practice the business. This identity of interests of economic content between the cooperative and its individually considered partner manifests itself as a common benefit to all members - all of them equally users of the cooperative.

A misunderstanding of a very common premise among those who talk about cooperatives is the statement that the cooperative members have in common the entrepreneurial unit as a sufficient element to visualize the profit. This status alone is not sufficient to single out a cooperative. Every society has such a connotation. The identity that makes the cooperative unique is the benefit that the cooperative members derive from it. In other words, the kinds of services that the cooperative provides must aim indistinctly at all members, effectively or potentially (Machado, 1975, p. 26).

Otherwise, it would be difficult to assess objectively the abuse in a cooperative way, embodied in the legal prohibition on the distribution of financial advantages or privileges or not in favor of any associates to the detriment of the others, which is not due to the integration of their economic activities.

Common profit is not a subjective element of law. It is an objective element that rises from the comparison of the services that the cooperative provides to its members and its corporate object, in the sense of identifying the unity of its recipients, the group of its members, whose economic activities are integrated into the cooperative in a homogeneous manner of interests.

This perception is fundamental for the distinction between what is a mixed cooperative and the abuse of its form. Naturally, the cooperative may have more than one object. That is, members can perform more than one economic activity with the cooperative, if the recipients of the different services relevant to these activities (cooperative acts) are the same, and not the opposite.

The agricultural production cooperative with a credit section is a mixed cooperative because the user of the different services provided by the cooperative (credit and the processing and marketing of the rural product) is always the same: the rural producer.

The medical cooperative that associates patients constitutes abuse of form. There is no unity in this case in the cooperative's membership. The disunity that concerns the identification of abuse lies in the difference in economic interests at stake. In this case, economic interests are potentially conflicting: the doctor is interested in obtaining the highest possible income for the service provided; the patient is interested in the lowest possible expense for the same service.

Considering that the cooperative precisely serves the economic interests of its member, there is no common economic benefit between the doctor and his patient. Finally, it is impossible to recognize in this case the practice of cooperative acts: doctors and patients do not cooperate in their respective economic activities (Pontes de Miranda, 1972, p. 432). Among them, there is a market relationship, although mitigated by the common interest in preserving health as best as possible.

Although everyone may have a common interest in the best possible education, this interest is not essentially economic. The teacher wants the best possible remuneration for his work and the parents want the lowest possible cost for the best education that they manage to offer to their offspring. It is curious to demonstrate that in this case there is the teachers' under-sufficiency due to the very affirmation of the singularity of voting that characterizes the cooperative: it is reasonable to suppose that there will be more parents than teachers in any cooperative that proposes the affiliation of both.

In this way, it is credible to assume that in the assembly there will be a tendency to outweigh the economic interests of parents to the detriment of teachers, so that the supremacy of the assembly is not sufficient to guarantee the dignity and decency of their work.

What is intended to be argued is that the cooperative act can only be recognized for a specific part of the set of possibilities for intercooperation. There can be intercooperation between parents and teachers, insofar as they organize themselves into cooperatives and they contract with each other. The same is possible between consumer cooperatives and agricultural cooperatives.

There is intercooperation, but not the practice of cooperative acts, as conceptualized in Brazilian or Uruguayan law, consistent with its own original notion, in which it sought to affirm its otherness, that is, what it is not: an act of market. For the economic interest of the

members of one cooperative, which is the same as that of the cooperative, is opposed in the market to the economic interest of the members of the other cooperative since there is only an identity of interests between them.

But what is foreseen in art. 80 of the Uruguayan Law is the equivalence between the adequate treatment given to operations resulting from cooperative acts and those resulting from intercooperative acts in the market. In this sense, the new Uruguayan law was happy to stimulate cooperatives and optimize the mandate for intercooperation, without having to abandon the conceptual tradition of the cooperative act, whose importance lies in facilitating the understanding and preservation of the cooperatives' operational identity in view of what lies ahead the paradigma in market operation. At this point, the Uruguayan Law remains faithful to the original ideas of Salinas Puente, which remain current and still gain greater relevance in a critical circumstance, such as that experienced globally.

The definitions of the market act do not at all deny the existence of two essential factors: interposition in the circulation of goods and profit, which is the reason for this action. This speculative purpose has reached extraordinary proportions, and this leads to a collective imbalance.

In the context of this intensity, the Cooperative Law intends to constrain the members of the cooperative organization to fix a fair price as much as possible, in a continuous effort to obtain a lower cost of living. In this way, all forms of exploitation of man by man will also be avoided, giving each of them the full value of their work (Puentes, 1954, p. 132).

3. GENERAL CONSIDERATIONS ON THE TAXATION OF COOPERATIVES IN LATIN AMERICA

Cooperatives and, in general, companies in the solidarity economy may have tax treatment equal to that of other taxpayers or preferential treatment, which, in turn, may be permanent or transitory; for example, during the constitution; for a certain number of years; or depending on the type of company in question, for example, associated labor companies, agricultural companies or social cooperatives.

The ILO (2002) states that governments could consider adopting policies that recognize that, in principle, cooperatives have to be subject to fiscal contributions in the same way as other commercial enterprises; that the principle of equal treatment should be applied, and that any incentives offered to investment companies and their shareholders should also be made available to cooperatives.

But, in the case of some types of cooperatives, tax breaks may be justified, with a view to stimulating certain activities considered to be in the public interest. Thus, a temporary tax exemption could be convenient so that cooperatives can begin to participate in the national business world in which investment companies are already present.

Cracogna (2005) points out that the reality of the different countries shows different attitudes or policies of the state in tax matters towards cooperatives that are usually related to the degree of development reached by them. In general, when cooperatives are incipient, tax treatment is usually favorable; and as they grow in importance that treatment tends to be less and less favorable.

On the other hand, he observes that the general framework of the situation of each country also conditions the tax policy towards cooperatives: thus, the lower the degree of development of the country, the higher the fiscal support for cooperatives tends to be, since they are considered as contributing factors to economic and social development and, therefore, deserving of a special stimulus.

In other way, in developed countries, the tax treatment of cooperatives tends to differ little or nothing from that granted to commercial companies in general. For this reason, the creation of an advisory body of the tax authority in charge of reporting on issues related to draft rules and procedures processed before the tax authority seems appropriate, provided that it is expressly requested by the claimant; that assumes the interpretation of tax regulations and proposes the most convenient measures for the application of the tax regime (Spanish Advisory Board, created in 1948) (Crespo Miegimolle, 1999).

For their part, Heras and Burín (2013) report a proposal in Argentina to establish a different fiscal body from the AFIP, something like the Federal Administration of Solidarity Income, which is in charge of supervising and administering the taxes that are applied to this sector.

Other important points are the sources of the law. By sources we refer to the regulatory set where the tax regime applicable to the solidarity sector is found. The tax regime of the sector, according to the constitutional order of each country, may be included in the common tax laws, which may be the general tax law or the corporate tax law; in addition, it can be applied in a main or supplementary way.

Another factor is that the tax regime is contained in the general law of the sector, or in a special tax law, as is the case with most laws in Latin America. For López Díaz (1999) this last path seems to be the most recommended due to the peculiar characteristics of the cooperative that, unlike the corporate legal entity, requires a series of rules that we could call technical, which only adapt the planned tax regime for commercial companies, the cooperative phenomenon and the complexity of the applicable regulations, which is not limited to a single tax, such as corporate tax, but affects most of the tax system.

It can be seen that in Latin America there is a great multiplicity and diversity of legislative instruments that regulate the subject in different countries, especially in recent years, as well as the constant reforms and adjustments that they experience.

In addition, good tax practices can be counted as a source, which can be understood as the set of principles, values, norms and guidelines that define a good behavior of the company with respect to its tax obligations. They are aimed at generating relationships of trust, transparency and legal security, both within the organization and with respect to external stakeholders and society as a whole (Martín Fernández, 2017).

3.1.Types of companies according to tax treatment

3.1.1 According to its object

If there is a diverse system of tax treatment, solidarity companies would have a special treatment according to their type, social purpose or area of activity, for example, those of associated work, where the disabled, women, etc. receive a differentiated tax treatment.

In this way, Larrañaga Zabala (1987) considers that not all cooperatives should deserve a stimulating tax treatment, but such stimulus should be limited to those that truly perform a transforming function of the socio-economic structures and of social and community development. This would be the legitimizing source of the fiscal promotion, which would also prevent the constitution of false cooperatives, with the sole purpose of taking advantage of certain fiscal advantages.

On the contrary, it is estimated that the differentiations cannot and should not be made according to the characteristics of each segment (branch of cooperativism (or of the social and solidarity economy), because in addition to the offense of the principle of non-incidence, the absolute disrespect for the constitutional precepts of isonomy is also evident (Teixeira, 2011).

3.1.2 According to their degree of development

Also, there would be a differentiated tax treatment according to the degree of development of the joint venture from an economic point of view; according to the demands of particular sectors or their dimensions, including the various mutualistic purposes that are modeled in the content of the service management they fulfill.

3.1.3 Depending on specific objectives

Pastor del Pino (2012) estimates that, in the face of the problems of the existence of specific tax regimes due to the social type, above all due to the competition problems that are generated, there is a change in the articulation of fiscal stimulation policies and promotion, setting up a uniform model for the allocation of benefits based exclusively on the achievement of specific objectives and not on the form or legal nature of the entity that achieves them. In this way, the fiscal stimulus to cooperatives is justified to the extent that they are shown as an ideal model to achieve certain economic and social policy objectives.

3.2.Tax treatment systems

The regulatory tax treatment of solidarity companies can take many different forms:

Nonexistence

It may be that the legal norm that regulates the cooperative or solidarity entity in a specialized way does not contemplate rules in tax matters at all, so this aspect is regulated by ordinary tax legislation like any other company.

Unique system

It may be that the single system prevails whereby all entities in the sector are given equal treatment, without differences.

In this sense, if there is confidence in the effective application of the principles of the cooperative law, and it is ultimately controlled so that this form is not used for the camouflage of capital companies, it seems logical to accord to all cooperatives, without distinctions, the favorable treatment, from the fiscal point of view, that is necessary to

contribute to the fulfillment of their aims. In harmony with this, a very severe sanctioning regime should be established for cases of fraud.

Thus, by recognizing that all cooperatives are subject to the same tax regime, bureaucratic arbitrariness in the distinction between protected and unprotected would be eliminated. On the contrary, the work already carried out in the substantive legislation defining the specialty of the cooperative would be deepened.

Homogeneous system

It should be noted that the common tax regulation cannot achieve complete uniformity, taking into account the structural, legal, and purpose and objective differences between the different entities. For other reasons, because it is not possible to do without the specific technical or adjustment rules that are sometimes required to carry out the necessary adaptation of tax regulations to corporate or substantive legislation.

That is why this homologous treatment should be limited to the establishment of a lowest common denominator, of some basic forecasts that can be generalized to the entire scope of the social economy, without prejudice - it is insisted - of those specific rules that in some subsectors are precise.

The basic uniformity proposal is based on the following arguments:

1. Due to the unitary nature of the entities given by the Social Economy Law that recognizes them, beyond their differences, however significant they may be, common features, among which are the observance of coinciding principles and the pursuit of related objectives, both aspects that justify the promotion and development of the sector as a whole.

2. For the adequate protection and promotion of the values and principles that constitute the distinctive seal of the social economy and of the entities that belong to that sector. Certainly, some of these principles operate with greater or less intensity depending on the case, depending on the type of entity of the social economy in question, given the wide diversity of existing modalities, but above these differences there is a dominant factor that brings together and identifies all of them: their belonging to a unitary legal category — that of the entities of the social economy — which is distinguished precisely by the concurrence on all occasions of the same guiding principles. It is therefore the global nature of these principles, and not the simple presence or preponderance of any of them in particular, that characterizes the social economy and justifies a common tax regime for all its component parts. Respect for these values and compliance with the constitutive principles of the social economy must therefore suffice for a certain entity to be able to avail itself of the aforementioned tax regime, and such conditions must be considered achieved with the simple, though scrupulous, observance of the norms that regulate the creation and operation of each type of entity, already sufficiently rigorous in order to preserve that said principles are not infringed. A functioning of the entity in accordance with the substantive regulations that regulate it means that it complies with the criteria and reporting principles thereof, and must be a sufficient requirement to access the special tax regime established to protect and promote such principles.

For others, the adoption of a common regime of tax incentives for the creation, capitalization and maintenance of Social Economy entities would be justified, but not, of course, the establishment of a common special tax regime for the taxation of their income. That is unimaginable in the face of the diverse reality presented by the Social Economy.

Diverse system

Under this system, there are rules that provide tax benefits for cooperatives that meet certain requirements, and adjustment rules created to adapt general taxation to the specialties of cooperative operation (Alonso Rodrigo, 1999). Tax benefits are granted to entities that comply with their cooperative obligations, as is the case in Paraguay.

In this way, the maintenance and improvement of the traditional tax model or statute would be achieved, inspired by the double criteria of granting tax benefits (to protected tax cooperatives) and the establishment of technical specialties in the application of the common tax regime (to cooperatives not fiscally protected).

In this sense, according to its tax protection, according to the system adopted in Spain, there would be:

1. Protected cooperatives: those that are established in accordance with the provisions of cooperative laws. In this case, the protection would be intimately linked to the fulfillment of factual assumptions that the legislator considers necessary and unavoidable for their enjoyment, for example, that they conform to the substantive law that regulates them.
2. Especially protected cooperatives: those to which the law, by reason of their corporate purpose and the subjects or associates that constitute them, gives them superior and special protection. For example, those of associated work, agriculture, fishing, etc.
3. Unprotected cooperatives: those that have incurred any of the causes that motivate the loss of the qualification (Crespo Miegimolle, 1999).

The key argument is that of cooperative specificity: although it works in the market, the cooperative is a different company from the others. The Corporation Tax as a tax on the profits obtained by companies is designed from the characteristic structure of conventional capital companies, so it seems logical that its forecasts should be adjusted at the time of applying it to a corporate model, the cooperative, which operates with differentiated operating parameters and rules (instrumental nature of capital, protagonism of the people and democratic participation, mandatory endowment funds that remain captive for the use of the cooperative or even social and educational purposes) (Alonso Rodrigo and Santa Cruz Ayo, 2016).

For Cracogna (2015), the underlying issue consists in granting cooperatives the tax treatment that corresponds to their nature; in other words, they should not be confused with profit-making capital companies and in this way they are intended to be taxed in the same way as these. It is not a question of offering them preferential treatment but rather of considering them according to their own characteristics and of not treating the same companies that are different, particularly in that they are companies of persons and not of

capitals, they do not have profit-making purposes and are created to provide services to their associates.

This position is based on the principle of equality, inherent in constitutional principles, which presupposes that people placed in different situations are treated unequally, in their proper proportions. Giving isonomic treatment to the parties means treating the equals equally and the unequal ones unequally, to the exact extent of their possibilities.

In this sense, the tax incentives enjoyed by financial cooperatives do not constitute a privilege, but are the manifestation of the unequal treatment that should be given to those who are not in the same taxable conditions, that is, the appropriate application of the principle of justice (Lara Gómez, 2018).

A specific tax treatment for social economy entities and companies exists in most EU countries. Opponents of this specific treatment have long argued that it could be considered unequal treatment that constitutes illegal state aid in contravention of free competition rules.

However, in 2011, the Court of Justice of the European Union ruled that the specific tax treatment is justified because social economy entities (cooperatives in the case before it) are different in nature from for-profit companies. A rigorous conceptualization and legal recognition of social economy entities are necessary to highlight the significant differences between the different forms of business (Ciriec-International, 2016).

In this way, despite the various trends and strategies adopted between Latin American and European Law - especially regarding the cooperative act - it is evident that in order to give adequate tax treatment to cooperatives, the law must recognize the special nature of cooperatives and the substantial difference between the transactions between the cooperative and its members and the differentiated nature of the results of those operations, not as a privileged treatment, but as a treatment appropriate to their characteristics (De Conto and Andrade 2016).

In this way, there could be a different tax treatment to the acts carried out by the solidarity company: tax exemption or non-taxation for the activity with its members (cooperative, mutual or solidarity acts) and tax liability to operations with third parties. Thus, in some Western European countries, without explicitly adopting the concept of the cooperative act or activity, there are no different tax bases or types of tax, but any transaction with members is deducted from the tax.

However, as Sánchez Boza (2016) points out, in the 90s, laws were passed in different countries of the Central American region to eliminate all kinds of tax exemptions, as a kind of cleaning up of the tax system. This abolished some of the incentives to establish cooperatives and the facilitation of their initial development as companies, generally made up of people with little knowledge of business activity, the risks that their development implies and the challenges of keeping them in operation, as well as the weak initial capital.

A different issue is that relating to the exemptions or deductions that the State decides to grant to cooperatives in view of the benefits derived from their activities, which correspond exclusively to the fiscal policy adopted in each case.

According to their contribution to development - It is proposed that the laws should achieve a cooperative taxation model that is more appropriate to the values of sustainable development, shifting the tax burden in response to economic and social variables, and not establishing a tax system based solely on the principle of economic capacity (Aguilar Rubio, 2015).

3.3.Justification of the applicable tax regime

Certainly, tax treatment is a critical aspect for the sector. Now, what taxes can be demanded from cooperatives? Should they be treated differently from other economic organizations?

Cracogna (2005) observes that there are different points of view to answer these questions. Some argue that cooperatives should be exempted from paying taxes because they contribute to the economic and social development of the community. Others say that cooperatives should have equal treatment to corporations, etc., without differentiating between them. Still more, others advocate for a tax exemption for cooperatives for a certain time or in the initial period (as it is in Cuba) or in accordance with the volume of transactions or the socioeconomic activity developed.

There are two fundamental positions on the special tax treatment for the sector: no justification and justification.

It may be that there is no real or explicit justification or rationale for giving companies in the sector special tax treatment. As stated by the European Commission (decision 668 of 07/12/2000), the aid granted to companies or cooperatives in the form of tax facilities "falsifies" the competition between them and can affect community exchanges, therefore they are incompatible with the free market, when the truth is that they make solidarity companies (usually small) able to participate in the market on equal terms.

However, Cotronei (2001) argues that only in the event that the magnitude of these facilities is such as to effectively alter the free competition between companies, can a violation of free competition be sustained. It is also necessary to bear in mind the strong limitations that the legislation imposes on the cooperative company regarding the distribution of profits and the reserve, the distribution of residual equity, the mandatory distribution of part of the profits, the subscription of social contributions, etc. that contribute to weaken the relative capacity compared with the other companies (ordinary society), counterbalancing the weight of the, incidentally, limited facilities.

3.3.1 Due to the different nature or specificity of the solidarity entities

The tax treatment of cooperatives must be in accordance with their true nature as entities supported by their own efforts and mutual help to provide services to their own members. Therefore, cooperatives may be subject to some, but not all, taxes (Cracogna, 2005).

Armendáriz (1992) maintains that the exclusion from the taxation of any tax incompatible with the nature of cooperatives does not amount to requesting a privilege but rather recognizes that it is a relationship of a different nature that should receive different treatment. And this, because the cooperative act carried out between the cooperative and the

associate does not constitute a market operation, but rather the fulfillment of the corporate purpose.

In the opinion of Montero Simó (2016), the existence of a specific tax regime for certain types of companies can only respond to the fact that these companies present structural differences with respect to the companies to which the general rules apply and that, therefore, it is necessary to establish special rules, which adapt the general ones to these entities.

The tax benefits provided to cooperatives must be directly related to the fulfillment or development of activities that promote the economic and social purposes provided for in the Constitution, for which the fulfillment of exclusive conditions that affect them must be required.

These tax incentives must be shared with other entities that adopt different legal forms, but that pursue or contribute to the achievement of said objectives. The peculiarities that cooperatives present, inherent to their legal form, must be considered through adjustment rules.

Aspects such as the limitation of operations with third parties, the mandatory restriction of the results of said operations to unredeemable funds and therefore, the inaccessibility of the partners to said benefits, as well as the separate accounting of the results as a guarantee method of the previous budgets, constitute essential aspects of the cooperative which, without a doubt, the current tax regime accommodates.

Therefore, imposing income tax on cooperatives as if they were profit-making commercial companies, ignoring their nature, characteristics, economic regime and lack of profit, would break the principle of tax equity and create a notorious legal inequality (De Conto and Andrade, 2016).

The new cooperative legislation of Bolivia (2013) establishes that tax legislation must take into account the nature of cooperatives, incorporating the economic categories of cooperativism.

The cooperative does not have profit for itself — At present, in the context of a globalized economy, it is necessary to clarify that an adequate tax treatment of cooperatives does not imply a privileged treatment, but rather that such a type of society is considered as a common, non-profit undertaking, in the sense that the positive results of cooperatives, in operations with their members, are owned by the members and not by the cooperative. In other words, the objective of the cooperative is not to obtain results for itself, but for its members (De Conto and Andrade, 2016).

For the purpose of the sector — If taxes are established to apply them to social purposes, as long as they are consistent with the purpose of cooperatives, since the cooperative act pursues the general welfare, it will be unreasonable to impose tax burdens aimed at the same purpose. All cooperative activity is directed, as required by the system, to a social purpose.

Due to the social function — The special tax treatment of the solidarity sector can be based on the constitutional or legislative recognition of the utility, interest or national, public or social function that is given it, or as the legislative application of the frequent

constitutional provisions that agree that the State should promote the solidarity sector or cooperatives.

In this way, the ICA (2015) has determined that the economic and social contribution of cooperatives to a local or regional economy has a social influence that benefits the community and civil society. This contribution of cooperatives can be described as a management of common heritage in favor of the local community, its economy and society.

In the case of cooperatives that make this type of contribution a specific objective and purpose, it would be convenient for public administrations to recognize it by granting them a particular tax and legal treatment that recognizes their contribution to tackling inequalities in terms of wealth.

Strengthening the economy - Álvarez et al (2009) give a macroeconomic justification to the cooperative tax regime, in the fact that if cooperatives tend to generate less liquid income due to the realization of provisions, reserves and the establishment of new business areas, their contribution to the strengthening of the national economic structure would be verified and technical arguments would be established to support the convenience of the tax exemption for cooperatives that with their actions promote employment, general welfare and business growth (aspects that in times of economic crisis are known to boost the economy).

In addition, it is justified by the need to have a tax regime in accordance with the public policies that have been developed from the institutional for cooperatives (Álvarez, 2016).

Encouragement of entrepreneurship - For Pastor del Pino (2016) the fact that justifies the specificity of this model is, in short, that it constitutes a business initiative by a group of people who, apart from the capitalist participation of each partner, has as its purpose the satisfaction of their needs through the recovery of the form of personalistic company and democratic internal functioning.

This differential fact, and the economic and social policy achievements that can be achieved through said model, are those that should underpin the particular consideration and treatment of the cooperative, including at the fiscal level. It may be because the cooperation allows groups of subjects who, having the capacity to work, but scarcely endowed with capital, to develop an economic activity, confronting companies incorporated under another legal form in the Market.

Due to the indivisible accumulation made by the solidarity company - The rule in tax exemption that allows the profits produced by cooperatives to be allocated to indivisible reserves. It is this that has allowed Italian cooperatives to obtain consistent forms of capitalization. This has determined the amount of the members's remuneration, either through the return or the distribution of profits. However, this favorable regulation from the fiscal point of view has inhibited recourse to capitalization through the raising of resources directly from the partners or abroad. The standard does not help the start-up phase of the cooperative.

Due to the parafiscal burdens that it supports - It cannot be forgotten that cooperatives also bear specific parafiscal burdens such as allocations to reserve funds, which

are protected even in the event of liquidation, or to the Cooperative Education and Promotion Fund.

However, the European Commission (2001) considered that the economic situation of the cooperative is not necessarily weakened by the capital contribution to the mandatory funds, since it conserves and uses them in very specific cases.

As compensation - As a compensation measure for the higher costs in terms of internal and external surveillance that companies in the social sector have, especially, cooperatives, and especially in the company creation phase and in the first years of the same.

3.3.2. No subjection to income tax

It is important to observe that as of 2011, the principle of non-taxation of cooperatives and other forms of solidarity began to return, started in Brazil in 1971, continued in Panama in 1977, with the Law of Popular and Solidarity Economy of Ecuador of 2011 and the 2012 reform of the cooperative law in Peru, although there is a current trend to eliminate it. This position of non-subjection of cooperatives and other solidarity entities to the tax is based on various criteria:

By the instrumental nature - It starts from the idea that cooperatives are legal persons of a merely instrumental nature: as enablers of the professional activity of their associates. The funds they receive from third parties do not constitute income because they are temporary income that belong exclusively to their associates (not to the entity), without increasing assets or decreasing social liabilities: they do not alter the liquid assets of the company.

Those funds received from third parties hardly pass through your box, due to the fact that they belong to your associates. This is consistent with the understanding that the only income belongs to the entity is income that modifies the equity of the company, increasing it. Those values that are received but belong to associates, even when they pass graphically in the company's accounting, do not make up its assets and, consequently, are elements incapable of expressing traces of its taxable capacity.

Rosembuj (2000) adds the following idea: ―The non-subjection or exclusion of the cooperative from the duty to contribute is imposed. The cooperative income will always be the one obtained by the member, since, strictly speaking, the cooperative does not demonstrate independent and separate economic capacity nor is it the effective owner of the wealth originated.

Due to the absence of profit motive - Due to the absence of profit motive of solidarity companies, since it is understood that profit is identified with the remuneration of capital. This opinion is based on the fact that no income or profit is produced within these companies, so there is no taxable event on which the company is taxed.

As Schneider and Coelho (2018) point out, the income tax of the legal entity affects the profit that is constituted in the increase of the effective capital or in a positive equity variation in a given financial year. Therefore, income from resources other than an increase in wealth does not serve as the basis for calculating income tax.

Indeed, if the reason for the income tax is to tax the profits generated by capital, cooperatives cannot be subject to this tax, simply because by virtue of their nature and purpose for which they have been created, they do not generate profits. The cooperative has no taxable material because it constitutes a tool that the associate uses to carry out his economic activity; it does not have an autonomous profit, a profit that can be taxed.

If it were taxed, its capital would be reduced or it would be transferred to the associates and, ultimately, they would be paying twice, once in their own individual tax balance and another in that of the cooperative. There would be double taxation or, in the last case, the cooperative would be displaced from the market because, by having to pay higher taxes than those paid by others, it would be out of the possibility of competing.

The benefit that the associate obtains is that of having used the cooperative's service because that is why he was associated; he did not associate to make a profit on that capital. He contributed the capital as a tool so that the service can be provided with it and when he retires he will take only what corresponds to him for the social contributions paid (ACI-Americas).

For not producing income - It seems that the most complete criterion is that of Zabala (2011, 2012 and 2014) according to which economic income is the difference between the payment made to a production factor and the minimum amount that must be spent to be able to use it . It is an economic surplus defined as the earnings of a factor of production in excess of the minimum amount necessary to keep it in use and prevent it from being transferred to other uses. The income tax would be understood as that which falls on all economic income that is capable of producing an increase in the assets of a person during a certain period of time.

Technically, the tax results from applying the percentage rate to the tax base, that is, to the sum of income and the deduction of costs and expenses attributable to it, which translates into applying a rate on the profit received during a given period.

The tax is established according to the taxpayer's ability to pay, which is understood to mean that the income received by the taxpayer is likely to produce an increase in their assets: such operation is called income and for this reason the tax levied on it is called income tax. There are people who do not have this obligation: persons not obliged to pay the tax, due to the fact that the source (generating event) does not cover the economic operation of the taxpayer: it does not generate income.

The cooperative is not constituted with the purpose of increasing the value of the factors involved in the production process, but rather these factors are used to fulfill a single mission: to supply a need for the associated entrepreneur, who in turn is a user.

Therefore, when establishing the factor costs, the surplus values at the end of the year should be applied not to give a greater value to the factors, but to give greater fulfillment to the mission of the cooperative, which translates into the establishment of patrimonial reserves that contribute to the permanence of the organization over time.

Ultimately, the cooperative does not produce an economic surplus whose objective (or ultimate goal) is to increase the assets provided by the associates or the enterprise itself, for which reason there is no economic income for them, strictly speaking. And, therefore, there is no taxable base on which to establish a tax such as income tax.

The Tax is established based on the taxpayer's ability to pay, insofar as the income received by the taxpayer is likely to produce an increase in their assets (income). Cooperatives, as non-profit entities, are not obliged to pay tax due to the fact that the source (generating event) of the same does not cover the economic operation of the taxpayer (it is not a generator of income) (Zabala, 2011).

By incidence, the specifically legal phenomenon of subsumption of a fact to a legal hypothesis is designated, with the subsequent and automatic communication to the fact of the legal virtues provided for in the norm. Therefore, when there is no subsumption of the fact to a legal hypothesis (norm) obviously there will be no incidence of taxes on the operation. This is, to all evidence, a situation that involves cooperatives in the provision of services to their members (Teixeira, 201).

This is the reason why, as expressed by Cracogna (2009), the exemption of certain taxes to cooperatives is because there are no taxable events on which to apply them. In such cases, there is technically no exemption, in the sense of granting favorable treatment, but rather the recognition that there is no matter for the tax.

It is possible to conclude that the income tax regime applicable to entities in the solidarity sector in Latin America differs remarkably. The system of subjection to the income tax law prevails, although the mechanism of tax exemption (total or partial) is preferably used, with only four countries favoring the non-subjection system.

4. CONCLUSIONS - CREATING A NEW FISCAL POLICY SCHEME

We observe that the current model of tax benefit foreseen by the regulations for cooperative societies suffers from important defects from the financial-tax perspective. Having legitimized this possible beneficial treatment on the constitutional basis of the work of promotion of this social type, derived from the important objectives that can be achieved with them, the expected achievements have not been obtained, among other reasons, due to the important inconveniences that have arisen of the articulated model on the simple form and/or the legal nature of cooperative societies.

The specific tax regime based on a purely mutualist conception of the cooperative society, excluding any type of openness, has considerably limited its use to this social model, resulting largely in ineffectiveness and inefficiency, given the demands of the current competitive market, resulting also in incoherency from the simple mutual perspective, given its limitation to these societies, and its impossible transfer to other social models with similar ends.

Proposal

For this, a change is proposed in the articulation of fiscal stimulation or promotion policies. Said change should lead to the configuration of a uniform profit attribution model based exclusively on the achievement of specific objectives, and not on the form or legal nature of the entity that achieves them.

The fiscal stimulus to the entities that make up the so-called Social Economy, and to cooperative societies in particular, will be justified to the extent that they are shown as suitable models to achieve certain and specific economic and social policy objectives.

There is no doubt that cooperative societies develop an important social function, both for their purpose and for their way of functioning, collaborating effectively in the achievement of certain constitutional objectives such as full employment, access to decent housing, or the improvement of cohesion. social and territorial. To the extent that the achievement of these objectives can be achieved through adequate fiscal stimulus policies, those tax actions that try to encourage them would be legitimized.

Once the objectives or purposes to be stimulated have been delimited, the next step will be to carry out a detailed analysis of the most suitable tax measures from a technical-legal and economic perspective, to achieve the proposed objectives (exemptions in taxable events, reductions in tax bases, reduced tax rates , or deductions and bonuses in installments), to be inserted in the most appropriate taxes to achieve the intended objective (Corporation Tax, Onerous Asset Transfer Tax, or Local Tax), without detracting from the legal nature of the tax instrument itself. Finally, it will be essential to monitor the measures envisaged after their application phase to verify their true effectiveness, the only justifying aspect of the indirect expense generated.

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