

GREEK AGRICULTURAL CO-OPERATIVES: LEGAL CONCEPTS AND TAX LEGISLATION AND TREATMENT

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Abstract

Co-operatives have already been in Greek legal life for 106 years, since the first legal instrument on co-operatives was promulgated in 1915. Special attention is paid to the case of agricultural co-operatives, since it is the most familiar and “regulated” co-operative form. Moreover, the legislative regime concerning the tax treatment of agricultural co-operatives is particularly interesting, since its study provides us with valuable insight as to the general attitude of the Greek State and its legislature towards co-operative organization and operation with a special emphasis on the agricultural sector. We attempt to gather and list all of the current issues specifically as to the taxation system of agricultural co-operatives in Greece, while presenting the historical background of co-operative legislation since 2000. There is a clarifying approach of the concepts of “surplus” and “profit” for agricultural co-operatives, an analysis of the current tax regime (income tax, VAT, etc.), its compliance with the EU competition and state aids provisions and a comparison between the taxation treatments of co-operatives with other capital based legal entities. Despite the fact that co-operative tax legislation is fragmented in several laws, which were themselves repeatedly amended, modified, repealed or re-enacted, at the end of the day the reader shall have an overall view of the issue.

Keywords: agricultural co-operatives; Greek legislation; tax legislation.

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1) Introduction

The current economic trends demand the substantial development of collective economic actors under the umbrella of social economy. Agricultural co-operatives in Greece are long-lasting entrepreneurial forms having existed for more than 100 years within an official regulated environment. Of special interest is their tax legislative regime; its study reveals the attitude of the legislature as regards their establishment and function in general.

In this paper we have tried to collect and present the whole body of current Greek legislation as regards the taxation of agricultural co-operatives. At first we refer to their legal definition and the legal definitions of “surplus” and “profit” of an agricultural co-operative, while doing a historical reference to Greek legislation since the year 2000 focusing on financial and tax issues. Hence, we analyse the relevant tax legislation with an emphasis on the direct (without ignoring the indirect) taxation of co-operatives (and their members where necessary), while we attempt a comparison with the respective tax treatment of capital-oriented entities with an emphasis on Société anonyme (hence SA).³ Finally, we present the incentives to form and function an agricultural co-operative in Greece and attempt a legal approach in the light of EU state aids legislation.

2) Definition – Basic Elements

According to article 1 of L. 4673/2020, agricultural co-operatives are autonomous voluntary associations of persons, which are formed in accordance with the provisions of this law (that is L. 4673/2020) and seek the economic development and promotion of their members, through a co-owned and democratically run agricultural co-operative enterprise.

Why are co-operatives an ideal form of business for farmers? At first, farmers, regardless of their production volume, are always small units compared to their trading partners. Thus, their bargaining power is very weak, if they act alone. On the other hand, agricultural markets are characterized by the existence of large buyers, who are in a relatively advantageous position vis-a-vis farmer. By creating co-operatives, farmers increase their bargaining power, when their production is to be marketed. They can achieve better prices for their products and meet the demands of buyers by gathering large quantities. They can also approach the market themselves by addressing more potential buyers, even if their farms are geographically dispersed.

³. It means anonymous company, it is a share capital entity and is roughly equivalent to public limited company in the United Kingdom and a public company in the United States.

Furthermore, farmers through their co-operatives can achieve more bargaining power to purchase their inputs (seeds, fertilizers, pesticides, machinery, etc.). A co-operative may more easily fund a research project to improve, e.g., its members' production methods, or market research to expand into new markets for its members' commodities. It may assist its members to adapt their crops to market needs and guarantee environmentally friendly cultivation methods and quality products. Last but not least, the co-operation and contact between the members create a quality way of life, promote the sociability of the members and strengthen the social ties that keep the agricultural communities united, while giving their members the opportunity to education, information and skills development (Szabo, 2006).

Co-operatives are *sui generis* private enterprises. It is this special nature that makes co-operatives a unique phenomenon. They differ from the other common commercial legal entities, because they combine an economic and a social facet in their activities (Fefes, 2020). It is wrong to ignore one or the other facets of a co-operative, because it will become either a for-profit enterprise or a charitable institution.

3) The evolution of legislation on Greek agricultural co-operatives

The first piece of Greek co-operative legislation was promulgated in 1914. This legal regime remained until 1979 having been amended several times. Since 1979, there have been seven laws concerning exclusively agricultural co-operatives. Apparently Greek legislation is very volatile as regards agricultural co-operatives amending their regime every now and then, with Law 4673/2020 being the most recent example (Fefes, 2020). In the present chapter we will examine the evolution of legislation since 2000.

a) Law 2810/2000

It is regarded as the best piece of co-operative legislation since 1979. It was a modern legal instrument covering in depth the organization and operation of agricultural co-operatives, while taking into account as its founding basis the internationally accepted co-operative principles as articulated by the ICA (Papageorgiou, 2015).

Article 1 provides the definition and states that “The agricultural co-operative is an autonomous association of persons formed voluntarily and seeks, with the mutual assistance of its members, their economic, social, and cultural development and promotion through a jointly-owned and democratically-controlled enterprise”. Fisheries, livestock, poultry, beekeeping, sericulture, forestry, agritourism, agro-crafts, household and other co-operatives,

of any branch or activity of the agricultural economy are also considered agricultural co-operatives. The definition is almost identical to that of ICA.⁴

The law defined co-operatives as legal persons of private law having commercial identity, therefore provisions of Greek Commercial and Civil Codes had an auxiliary application. Co-operatives were organized at three levels (first-level co-operatives, Unions and Central). As to their establishment, there should exist at least ten founding members either individual farmers or other agricultural co-operatives. The members were either natural persons with full legal capacity, who were employed in any branch or activity of the agricultural economy, or another agricultural co-operative, if so provided for by the statutes, with no right to vote for the Board of Directors. As to the function of the co-operative, the statutes were to describe most of the relevant issues such as the aim of establishment and the activities of the co-operative, the terms of entry or expulsion or exit for members, the members' rights, obligations and liability, the sum of co-operative share etc.

The minimum co-operative capital was the amount of € 10,000. Each member participated with a mandatory share, indivisible and equal for all members and had one vote in the General Assembly. If so provided by the statutes, the members could acquire additional mandatory shares, depending on the volume of their transactions with the co-operative.⁵ In such case, the statutes defined the additional votes corresponding to the additional shares, which could not exceed three votes in total for each member. The tax year was twelve months and there were procedures for closing the books and preparing the Balance Sheet. The Code of Books and Records (CBR) regulated the book- and account- keeping of the co-operative, while the co-operative was obliged to keep a Registry of Members, a Book of Minutes of the General Meeting and of the Board of Directors and any other book provided by its statutes.

A radical provision (an intersection of the law one might say) was the distinction between surplus and profit of a co-operative, in other words the introduction of the concept of surplus, as opposed to that of profit. The surpluses came from the transactions of the members with the co-operative. At least 10% of them were used for the formation of a legal reserve, while the rest might be distributed to the members in relation to the transactions of each member with the co-operative.⁶ Profits were all amounts in excess of the surplus, and came from the co-operative's transactions with third parties non-members. If the statutes

⁴. <https://www.ica.coop/en/cooperatives/cooperative-identity>.

⁵. The law defined the meaning of the transaction between co-operative and members as the total value of the products, supplies and services provided to the members by the co-operative.

⁶. Surpluses were considered as contributions of members to the co-operative.

provided that any additional mandatory or optional shares were to receive any reward from the surpluses or the profits or both, the relevant amounts were distributed as a priority, with the exception of the formation of the legal reserve. The final balance for the co-operative came after all kinds of expenses, depreciations and losses were deducted from the total gross income.

Co-operatives enjoyed certain tax benefits. For instance, the shares were not subject to tax or stamp duty or to any other charge in favor of a third party. Any deposits and withdrawals of the members to the co-operative, as well as the granting of loans by the co-operative to its members were exempt from stamp duties or other fees in favor of the State and from any contribution or right in favor of a third party. The surpluses to be distributed to the members were subject to income tax only at the members' level and not at the co-operative's level.

The Ministry of Agriculture exercised the administrative supervision of co-operatives of all levels in reference to their legal operation. Management control was exercised as in the case of SAs.

b) Law 4015/2011

This law was promulgated when Greece was in the middle of a time of economic turbulence and acclaimed by the then government as a landmark. Nevertheless, several of its provisions were violating the co-operative principles and the Greek Constitution, causing fierce criticism either by the literature (Papageorgiou, 2015, Fefes, 2020), or by other Greek actors (e.g., Economic and Social Committee). It was obvious that the legislature attempted to regulate as strictly as possible all co-operative issues leaving limited space to the initiative of the partners and their statutes under the pretense of the aim to avoid any phenomena of fraudulent behavior within co-operatives. It has to be mentioned that to this quest to identify potential fraud, for the first time the State control was extended not only to the legality of the co-operatives' actions but also the substantive reasoning of their expenditure.

The law created a Special Registry, wherein all agricultural co-operative collective entities should be registered and remain there as long as they were functioning. The reason for the new Registry was the closer and more effective state supervision. As mentioned above, the law envisaged the close surveillance of co-operatives and frequent involvement in their affairs.

In this spirit the law provided that at least twenty natural persons might form a co-operative. Other agricultural co-operatives might join a co-operative under strict conditions,

that is they could hold only one share each and up to the limit of 3% of the total shares held by natural persons. The minimum co-operative capital was set at the amount of € 30,000. The law provided for a number of incentives to create a co-operative, such as finance, investment, education, development etc.

As to the tax and financial incentives, it was provided that the statutes (or any of their amendments) were not subject to stamp duty or any other charge in favour of the State. The conversion or merger operations as well as enlistments at mortgage offices were also not subject to any fees. In addition, members' contributions were tax-free, and members' deposits, withdrawals, or loans with co-operatives were exempt from stamp duty or any other fee. As for the surpluses, the avoidance of double income taxation remained.

Goodwill arising from the sale of real estate owned by co-operatives was exempt from income tax, if the proceeds from the sale were to offset debts to the then Agricultural Bank of Greece SA, or went to social insurance funds, or to investment programs based on the respective business plan of the co-operative. Contracts between co-operatives and the State concerning agricultural products and other supplies were not subject to stamp duty or any other fee and charge in favour of the State. Any finance provided for in the law in favour of co-operatives was exempt from fees, other charges and contributions in favour of the State. There were also several VAT exemptions.

As a final remark, one should note that the law provided for an obligatory disposal of 80% of their members' production through the co-operative, while their financial viability should be documented based on their logistical data.

c) Law 4384/2016

The governmental change of 2015 led (as usual) to an abolishment of the former regime on agricultural co-operatives and the promulgation of the new Law 4384/2016. An agricultural co-operative was “an autonomous association of persons, which is formed voluntarily and seeks, with the mutual assistance and solidarity of its members their collective economic, social, cultural development and promotion, through a co-owned and democratically run enterprise”,⁷ with legal personality of private law and commercial identity, participating in any branch of rural activity with the exception of forestry.⁸ It is interesting that for the first time a law on agricultural co-operatives included a clear legal distinction between “mixed” co-operatives and women co-operatives in Greece. The

⁷. The definition is in fact copying the standard definition met in previous legislation.

⁸. Forestry co-operatives were exempted from the provisions of Law 4384/2016 and are still regulated by the provisions of Law 4423/2016, articles 1 to 39.

provision has been criticized, since it created a clear discrimination based on gender (Fefes, 2020).⁹

At least twenty natural persons could form a co-operative. Other agricultural co-operatives or legal persons involved solely in the rural sector might join a co-operative, if so provided for in the statutes. Each member should participate in the co-operative capital with one compulsory share carrying one vote in the General Meeting. Members could, if provided for in the statutes, acquire one or more optional shares with no voting rights. The statutes might also provide for the entry of investor-members, natural or legal persons, not doing business with the co-operative. The investor-members would hold optional shares not carrying voting rights.

The statutes described the rights and obligations of the members. Nevertheless, the law imposed on the members to deliver not less than 80% of their production to the co-operative or buy their supplies by the co-operative at a percentage defined by the statutes. It also prohibited members from developing competitive activities outside the co-operative. Doing so would result in the expulsion of the violating member. Such provisions were rather problematic, since they essentially deprived the members to decide for themselves (Fefes, 2016).

State supervision was exercised by the Ministry of Agricultural Development and Food and the Special Registry remained in force, thus all co-operatives had an obligation to register and provide specific data each year therein, financial statements included. As to the financial management, the tax year lasted 12 months, while each tax year annual financial statements were prepared in accordance with specific legal provisions (Law 4308/2014), approved by the General Meeting together with the auditors' report, and published. The Board of Directors was obliged to prepare an income-expenditure budget for the next year, which should also be approved by the General Meeting.

The distinction between surplus and profit remained. At least 10% of the surplus (if any) should go to a legal reserve, and the rest could be either distributed to the members according to their volume of transactions with the co-operative, or be invested in the co-operative activities, or go to serve social needs or sustainable development actions. At least 2% of the surplus should go to education and training of members. If so decided by the

⁹. "Where restricting membership is a direct response to wider gender discrimination and disadvantage women face in society, restricting membership to women only does not breach this 1st Principle". The legislator's attitude clearly comprehends Greece as falling in the category of countries, which place women at a disadvantageous position. <https://www.ica.coop/sites/default/files/publication-files/ica-guidance-notes-en-310629900.pdf>, pp. 10-11.

General Assembly, the surplus to be distributed could remain in the co-operative's treasury as members' deposits bearing interest. As for the net profit (if any), it should go in the legal reserve, unless gone to serve social needs or sustainable development actions. As to the books to be kept and the economic and tax incentives, they remained the same as in the previous law.

d) Law 4673/2020

This law abolished Law 4384/2016 and was promulgated a little after the elections of 2019, which brought another governmental change in Greece. It is the current legal regime for agricultural co-operatives in Greece. As for its definition the law repeats in essence the previous one, i.e. agricultural co-operatives are “autonomous voluntary associations of persons, which are formed in accordance with the provisions of this law and seek the economic development and promotion of their members, through a co-owned and democratically run agricultural co-operative enterprise”. Co-operatives participate in any branch or activity in the field of agricultural economy, with the exception of forest co-operatives and their associations. They are private law legal persons and have commercial identity.

The new law reduces the minimum number of founding members of a co-operative from at least twenty persons to ten or less than ten, if co-operatives are set up in mountainous areas or islands with less than 3,500 inhabitants. Members may be either natural or legal persons, which shall be either other agricultural co-operatives or legal persons participating in any branch or activity in the field of the agricultural economy. Each member holds one compulsory share and the minimum co-operative capital is set at the amount of € 10,000. Members, employees, investor-members or third persons may acquire optional shares not carrying voting rights.

The statutes may also provide for the entry of investor-members, natural or legal persons, not doing business with the co-operative. Nevertheless, the new law provides that investor-members may participate with more than one compulsory shares in the co-operative capital and each compulsory share corresponds to one vote under the condition that such shares and votes will not exceed 35% of the whole of compulsory shares and corresponding votes. This is a noteworthy change compared to the previous situation, which in fact indicates the wrong trend of the legislature to assimilate co-operatives and SAs in Greek market (Charitonidou, 2020, Fefes, 2020). This trend is also indicated by the facts that Law 4673/2020 provides for the supplementary application of the provisions of Law 4548/2018 on

SAs as regards matters not regulated by the law itself and the ability of co-operatives to give credits up to € 25,000 to each member.

The statutes described the rights and obligations of the members. Members are now obliged to deliver not less than 75% of their production to the co-operative or buy their supplies by the co-operative at a percentage defined by the statutes. As to the State supervision and the Books of the co-operative, the regime remains more or less the same. The Special Registry remains also in force as well as the tax incentives.

The same is valid for the economic provisions of the law. The tax year is 12 months, while each year annual financial statements are prepared in accordance with specific legal provisions (Law 4308/2014), approved by the General Meeting together with the auditors' report, and published. The Board of Directors prepares an income-expenditure budget for the next year, which is approved by the General Meeting.

The distinction between surplus and profit is a standard provision. At least 10% of the surplus goes to a legal reserve, and the statutes regulate the disposal of the remaining surplus (distribution to the members according to their volume of transactions with the co-operative, or formation of a special reserve). If so decided by the General Assembly, the surplus to be distributed may remain in the co-operative's treasury as members' time deposits bearing interest. As for the net profit, it goes in the special reserve, unless distributed to the members after a decision of the General Assembly.

Finally, the law preserves an entity called the Agricultural Corporate Partnership hence ACP), a hybrid company sharing features of both co-operatives and capital companies. Such a partnership has the legal form of SA or Limited Liability Company or Private Capital Company and does business in any branch or activity in the field of the agricultural economy. It is formed by agricultural co-operatives or other ACPs or other persons, its share capital is comprised of nominal shares and no partner will hold more than 20% of the share capital. Partners other than co-operatives or ACPs cannot hold more than 40% of the share capital and in the case the partners are less than five, no one may hold more than 50% of the share capital. As for the rest, an ACP is governed by the relevant legislation in respect to its legal form.

4) The notion of “surplus” and “profit” for agricultural co-operatives

In co-operatives, the total net income is the sum of the subtotal net income and the collected surplus income from investments in other companies. The subtotal net income is the

sum of surplus and profit and equals to the result obtained, if from the total gross income of the co-operative we deduct any kind of expenses, losses, asset depreciation and any interest paid to the optional shares (art. 26§1, L. 4673/2020).

According to the same article, the net result coming from the transactions of the co-operative with its members or the investor-members doing business with the co-operative is considered as surplus. On the other hand, the net result beyond surplus coming from the transactions of the co-operative with non-members third parties is considered as profit of the tax year.

The distinction between surplus and profit makes the fundamental difference between co-operatives and capital-based companies as regards their tax and accounting treatment. The surplus is not subject to income tax at the co-operative level, while the profit is subject to income tax (art. 26§10a). The remaining profit after tax expenses is either going to the legal reserve (art. 26§9a) or is distributed to the members after a decision of the GM. If distributed, the profit is taxed as members' income in the shape of dividends (art. 26§10b).

The notion of surplus springs from the overcharging of products and services that the co-operative offers to its members. If there was pricing at cost, there would be no surplus at all. The surplus may be divided to the members as a return connected to the volume of their transactions with the co-operative, or remain to the co-operative. Such surplus return must not be confused with dividend payments. A dividend is the entrepreneurial/investment reward for the entrepreneur/investor in commercial entities and comes from the profit, if any. Given such distinction, separate accounts are kept for the formation of surpluses and profits for tax purposes of keeping reserves, distributing surplus and distributing profits in co-operatives.

5) The tax treatment of agricultural co-operatives

a) The notion of “profit from business activity”

Though the generation of profit is an essential pursuit for an enterprise, this is not true for agricultural co-operatives. The element of profit is not an essential characteristic. However, co-operatives may generate profit through their activities. This profit is subject to income taxation rules. As an initial remark, it should be noted that the provisions on “Income Taxation” of Law 4172/2013 alongside the special provisions of Law 4673/2020 are applied on agricultural co-operatives.

Law 4172/2013 in art. 21 provides that profit from business activity (for all kinds of enterprises) is the total revenue/income coming from business transactions after the deduction

of the expenses, asset depreciation and provision for bad debts. As revenue/income is also considered any inflow from sale of assets as well as the outcome of the enterprise's liquidation during the tax year. Specifically, for the determination of income from agricultural business activity, the income from business transactions includes the income from the production of agricultural, poultry, livestock, forestry, logging and fishery products. Specifically, for those engaged in agricultural self-employment, in the determination of the profit from business activity are included only the basic aid as well as, in the amount exceeding twelve thousand (12,000) euros, the green and associated aid from the direct aids of Pillar I of the Common Agricultural Policy. Agricultural compensation as a whole is not included in the determination of profit from business activity.

Especially for entities of the Social and Solidarity Economy, a percentage of 35% of their profits before taxes is not considered a profit at all, if distributed to employees. The profit coming from business activity is determined for each tax year based on the profit and loss account, which is prepared according to the Accounting Standards provided in Greek legislation. In case the company applies International Accounting Standards, the profit is determined exclusively on a tax base.

b) Tax Rates

In the following section we present the tax treatment of surplus and profit and the income derived from them. Tax rates are different, depending on the type of income (surplus or profit) and on the person (natural or legal) that receives this taxable income, thus it is of great importance to categorize them case by case:

i) According to article 58§2 of Law 4172/2013 (as replaced by article 22 of Law 4646/2019), the profits of the agricultural co-operatives are taxed at a rate of 10% as from the tax year 2019 onwards. In Circular 1059/18.3.2015, it has been clarified that the term “agricultural co-operatives” includes associations of agricultural co-operatives, consortia of agricultural co-operatives, central co-operatives, as well as agricultural partnerships.

ii) The surpluses held and transferred to the regular or special reserve of the co-operatives are deemed to be an equal contribution of the members, and bear no tax at all (articles 26§10a and 27§1, Law 4673/2020).

iii) If any of the profits are distributed to the members, they are taxed separately as dividends and the tax rate is 5% (article 26§10b, Law 4273/2020 and article 24§1, Law 4646/2019).

iv) The surpluses returned to members-natural persons (whether professional farmers who deliver at least 75% of their production to the co-operative, or not professional farmers, but subject to the compulsory insurance scheme¹⁰) are included in the members' agricultural income. Agricultural income is subject to taxation, based on the following scale (article 27§2, Law 4273/2020 and article 15§1, Law 4172/2013 as amended by article 6, Law 4646/2019)¹¹:

Income (in euro)	Tax rate (%)
0-10,000	9%
10,001-20,000	22%
20,001-30,000	28%
30,001-40,000	36%
40,001 -	44%

v) The surpluses returned to members - legal persons are considered part of their total income of their business activity and such total income is taxed in accordance with the provisions of article 27§2, Law 4273/2020 and article 58, Law 4172/2013 (as amended by article 22, Law 4646/2019). The tax rate stands at 24%. It is worth to note that the tax rate for the above legal entities from the tax year 2016 till 2019 was 29%, a fact that indicates the volatility of Greek tax legislation.

Finally, we should refer to the tax treatment of the co-operative's member's labour, be it voluntary or not. In article 8§4 of Law 4673/2020 it is stated that such labour is not to be considered as a dependent employment relationship and its monetary value is transferred, according to article 26§6 of Law 4673/2020, to the annual surplus of the relevant economic year and is taxed as analyzed above.

c) Advance Payment of Income Tax

The Greek Code of Tax Procedure provides that all persons, natural or legal, co-operatives included, have to file with the tax authority an income tax return declaration for each tax year. Such declaration is filed during the first semester of the following year. Based on this income tax return declaration, each person is obliged to pay in advance an amount equal to 100% of its income tax, that is it has to pay in essence twice the same amount. As

¹⁰. The Organisation of Agricultural Security (Greek acronym OGA) was the compulsory security fund for farmers and is replaced by the Electronic National Social Security Agency, which is now the single security agency for all Greeks.

¹¹. A natural person not being a professional farmer does not enjoy the relevant income tax deductions.

said, such amount is an advance payment of the tax to be incurred the following year. When the accurate tax amount will be calculated, the advanced amount shall be offset. This percentage is reduced by 50% for three tax years for the newly-found enterprises, unless the new entity results from a merger or conversion of another legal entity.

Specifically for the tax year 2019, according to the Circular A.1186/2020, the tax amount to be paid in advance is reduced in respect to the rate of reduction of the annual turnover as reflected in the VAT return declaration¹² that refers to the 1st semester of 2020 compared to the 1st semester of 2019, as presented below:

Reduction of the annual turnover of first semester of 2020 compared to the first semester of 2019	Reduction of the rate of advance payment of income tax
≥ 5% - 15%	30%
15,01% - 25%	50%
25,01% - 35%	70%
>35%	100%

d) Profession Fee

Profession fee is a type of tax that is imposed on all professionals, natural and legal persons. It is supposed to be an "extraordinary" tax, which means that it will not be payable forever. The profession fee was introduced as a minimum tax to be paid by entrepreneurs and freelancers, who present small income amounts in their tax declaration. The tax was imposed in order to combat tax evasion, given that numerous taxpayers would be burdened with this specific tax. Agricultural co-operatives are exempted from such payment, according to Circular 1235/2018.

e) Financial Aids – Tax Incentives and Exemptions – EU Provisions

According to article 27 of Law 4673/2020, co-operatives are entitled to the following aids, incentives and exemptions:

- Members' contributions to agricultural co-operatives are not subject to tax or stamp duty or any other charge in favour of a third party.
- Co-operatives may be included in the development laws that are promulgated in Greece from time to time.

¹². VAT return declaration is the statement containing the information necessary to establish the amount of VAT due to the Tax Authority.

- The mergers of co-operatives are exempted from the obligation to pay any kind of tax, fee, tax in favour of third parties, mortgage fees, Funds fees, notary rights and any other exemption provided that all legal requirements are met. The registration of such mergers to the Mortgage Offices and the Cadastral Offices is free of any charge. Furthermore, mergers are allowed, even if the provisions of Urban Planning Code has been violated.

- By joint decision of the Ministers of Finance, Development and Investment and Rural Development and Food, additional incentives may be set for the merger and development of co-operatives. The incentives refer to the investments, the development of the co-operatives, the recruitment and training of executives, the eligibility for assignment of projects and the encouragement of initiatives and activities for the benefit of their members.

- Provisions providing facilitations or exemptions from taxes, stamp duties or other public fees, levies or royalties in favour of any third party for mergers, acquisitions, business transfers, spin-offs, etc., apply, *mutatis mutandis*, to co-operatives, provided they meet the conditions laid down by the relevant provisions.

- Provisions establishing incentives or exemptions of economic, tax or other nature for the conversion of commercial companies into entities of another legal type, apply, *mutatis mutandis*, to co-operatives.

- Co-operatives, have access to the financial aid, tax exemptions and incentives of the current development laws and European Union programs, and to all development programs, which are announced by the Greek State or on its behalf and are financed from national and EU resources.

Do such provisions violate the EU state aids provisions? In Joined Cases C-78/08 to C-80/08, *Paint Graphos*¹³ the EU Court faced, among others, the following preliminary questions:

“1) Are the tax benefits granted to co-operative societies, ..., compatible with the rules on competition and, in particular, are they classifiable as State aid within the meaning of Article 87 EC, ...?

2) In particular, for the purposes of determining whether the tax benefits at issue are classifiable as State aid, can those measures be regarded as proportionate in relation to the objectives assigned to cooperative societies; can the decision on proportionality take into consideration not only the individual measure but also the advantage conferred by the measures as a whole and the resulting distortion of competition?”

¹³. <https://curia.europa.eu/juris/document/document.jsf?docid=109241&doclang=EN>.

The Court stated that co-operative societies conform to particular operating principles which clearly distinguish them from other economic operators and both the European Union legislature and the Commission have highlighted those particular characteristics. In the light of those special characteristics, co-operative societies **cannot, in principle, be regarded as being in a comparable factual and legal situation to that of commercial companies** – provided, however, that they act in the economic interest of their members and their relations with members are not purely commercial but personal and individual, the members being actively involved in the running of the business and entitled to equitable distribution of the results of economic performance. Therefore, it is for the national courts to determine whether any tax exemptions are selective and whether they may be justified by the nature or general scheme of the national tax system of which they form part, by establishing in particular whether the co-operative societies at issue in the main proceedings are in fact in a comparable situation to that of other operators in the form of profit-making legal entities and, if so, whether the more advantageous tax treatment enjoyed by those co-operative societies, first, forms an inherent part of the essential principles of the tax system applicable in the Member State concerned and, second, complies with the principles of consistency and proportionality.

The specific case signals an important landmark in CEU case law as regards the nature of co-operatives and their tax treatment by national authorities.

f) Indirect taxation – Value Added Tax (VAT)

VAT is a general tax imposed on all activities of production and distribution of products and services. It is calculated gradually, based on the additional value that each product or service acquires at each stage of its production and distribution. This kind of tax is not paid in whole but in parts, as the tax payer, i.e., the enterprise that sells the product or provides the service, can deduct from the output VAT (the total VAT of the sold products) the input VAT (the total VAT of the raw materials and all the expenses needed for the production and distribution). VAT burdens the final consumer as a percentage of the final price of the product or the service, while the seller is obliged to collect and pay the VAT on behalf of the tax authority.

As for agricultural co-operatives, VAT is imposed on the agricultural products and agricultural services. Co-operatives are subject to VAT, according to art. 2 of Law 2859/2000, and the applicable VAT rate is 13%. Co-operatives, as all enterprises, are obliged to file VAT return declaration: i) for each calendar month, if they apply a double – entry method of bookkeeping and ii) for each calendar quarter, if they apply a single – entry

method of bookkeeping, until the last working day of the month following the end of the tax period, be it monthly or quarterly (article 38§4, Law 2859/2000).

g) Sales of products produced by members that are of the Special VAT Scheme through agricultural co-operatives

There are farmers that fall within a special VAT scheme regulated by article 41 of the VAT Code.¹⁴ Since 2014 (pursuant to Law 4254/2014), agricultural co-operatives holding agricultural products on behalf of members falling under that special scheme, are obliged to impose VAT on the sales of such products. Following that, those members may apply for and receive a flat-rate refund of the paid VAT, based on the amount of their sales as reflected in the books of the co-operatives.

h) Intra-Community Deliveries of Agricultural Products and Exports

Since 1993, a new VAT control system was introduced to intra - community trade.¹⁵ According to this system, intra-community deliveries (sales) of goods are exempted from VAT in the Member – State of delivery (shipment) when they are sold to a taxable person in another Member - State. VAT is paid at the State of arrival.

As a prerequisite of the above, any and all persons residing in a Member - State must be able to verify quickly and easily that their customers in another Member - State are taxable and have a valid VAT registration number for intracommunity trade. For this purpose, an electronic database is available to each national Tax Authority containing the VAT registry data of all national businesses that are taxable and have a valid VAT registration number, that is their VAT registration number, the date of issue, the company name, the address and, where applicable, the expiration date of the VAT registration number. Thus, an electronic VAT Information Exchange System (VIES) was set up and all Member - States of the EU (and Northern Ireland) are participating in. This system allows the exchange of information between the Members – States' authorities and businesses.

According to art. 28 of Law 2859/2000, when co-operatives with a valid VAT registration number for intracommunity trade sell their products to buyers in another Member – State, they are exempted from VAT payment. We should note that the said provision does not apply for goods sold by individual farmers of the special VAT scheme.

When co-operatives sell products to a buyer residing in a non – Member – State, they are exempted from VAT payment, if the following conditions are met:

¹⁴. Farmers of the special VAT scheme are those who sell products or provide services, whose total value is less than 15,000 euros or those who have received subsidies less than 5,000 euros.

¹⁵. <https://www.taxexperts.gr>.

a) There is a Customs Export Document that indicates the VAT identity number of the exporter,

b) there is an invoice that bears the indication “exemption from VAT pursuant to art. 24 of Law 2859/2000”,

c) there is documented proof of the exportation of the goods from EU territory and

d) there is a full payment of the total sum of the invoice through a banking institution.

6) Agricultural co-operatives tax treatment compared to capital-based companies

The comparison between the two entrepreneurial vehicles makes clear the importance of the distinction between surplus and profit for co-operatives. Such distinction differentiates the logistical results forming an important factor for further development of co-operatives.

At first, the part of the total annual revenue that forms the surplus remains tax-free, while the part of the total annual revenue that forms the profit is taxed at a rate of 10%. In contrast, in capital companies there is profit and it is taxed at a rate of 24%.

Secondly, the surplus returned to the members - natural persons (members or investor-members, who hold either mandatory or optional shares entitled to surplus, if so provided in the statutes) is income from agricultural activity and it is taxed according to the rates mentioned in the section above. Conversely, in companies of limited liability, there is no such possibility.

Thirdly, the surplus returned to the members - legal entities (members or investor-members, who hold either mandatory or optional shares entitled to surpluses, if so provided in the statutes) is income from business activity and it is taxed at a rate of 24%, while, as above, there is no such possibility for capital companies.

Fourthly, whenever the statutes provide for the distribution of profits to members, they are taxed as dividends, i.e., they have the same treatment as in the case of the distribution of profits to capital companies. The tax rate on dividends is 5%.

Finally, a tax advance payment is provided for both co-operatives and capital enterprises, while the co-operatives, in contrast to the capital companies, are exempt from the payment of the profession fee.

7) A Brief Critique

It is important to underline that the viable functioning of agricultural co-operatives should be a matter of priority for all Greek governments over time. Within this scope, special

attention should be given to any and all investments from the members through their agricultural co-operatives. Having this in mind, even if we accept that the new Law 4673/2020 achieves a “tidying up” and a simplification of administrative procedures (e.g., setting up, operation and management) of agricultural co-operatives, making them more “investment attractive”, this is not the case for tax issues.

The current Law (and more generally the legal tax regime) insists on a tax treatment, which remains to a great extent extremely complex and ineffective. What we need is a stable tax environment and fair tax rates, so that co-operatives shall become an attractive entrepreneurial model for farmers and the agricultural sector as a whole shall become more competitive leading to more investments and increased entrepreneurship. However, instead of adopting a simple, fair and stable tax system, which would encourage co-operation among farmers, in Greece we have a different approach.

Somewhat more specifically, in regard with direct taxation, although there is a low tax rate for the profits of agricultural co-operatives, this fact does not constitute a preferential treatment or an advantageous factor, given that the essence of co-operative activity does not focus on profit creation but on the provision of services to its members. On the other hand, the surplus returned to the members is taxed at a high rate, while the tax should be lowered in order to act as an incentive for the members to market the totality of their production through their co-operative or to invest in their co-operative.

As regards the Advance Payment of Income Tax, we strongly believe that agricultural co-operatives should be exempted from such a scheme, just as they are already exempted from payment of the profession fee. Finally, we suggest that VAT should also be decreased to the lower rate of 6%, as agricultural products are essential for all consumers. Furthermore, decreasing VAT would make the agricultural sector more attractive for further investments meaning a dynamic impact in the social, economic and technological aspects within co-operatives.

8) Summing up

We have tried to sketch the tax treatment of agricultural co-operatives in Greece. It is apparent that in several cases the legislation is complex and tricky. Moreover, the almost constant amendments of both the legislation on agricultural co-operatives and the tax legislation creates a number of impediments for their development and consolidation in the economic life of Greece. Nevertheless, one should point out that there is a shift since 2016,

which clearly stems from the need for harmonization with EU requirements. Let us hope that the recent tax incentives may motivate farmers to view membership in co-operatives as an advantage and do business through their co-operatives, even if the tax environment seems unstable and problematic for the average co-operative businessman-farmer.

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