

## *Foreword/Editorial*

**Ifigeneia Douvitsa, Cynthia Giagnocavo, Hagen Henry, David Hiez and Ian Snaith (editors)**

**Pilar Alguacil-Mari<sup>1</sup> (guest editor)**

- **Introduction**

The article section of this issue of the International Journal of Cooperative Law (IJCL) is entirely dedicated to the taxation of cooperatives.

Currently, 12% of the world's population is a member of a cooperative, and 10% of the world's employed population works in cooperatives. The global turnover of the cooperatives amounts to 2.14 trillion US dollars <sup>2</sup>. These data show the importance of cooperatives in the world economy. Cooperatives are part of what is known as the Social Economy. The concept of Social Economy, as Moulaert and Ailenei (2005) point out, is very broad and encompasses historical, institutional and local contexts, and is presented as a mix between the market, the State and civil society. These authors indicate that the Social Economy is a reaction to market failures and state intervention, which triggered socioeconomic crises. To face these crises, collective organizations were created based on social movements driven by solidarity and reciprocity.

Cooperatives have a legal regime that differs from that of commercial, capital-based companies. This means that they work differently, namely according to the cooperative principles set forth by the International Cooperative Alliance. Fici (2012, p.8) indicates that these principles are greatly relevant for the analysis of the identity of cooperatives, since they are even mentioned in some national cooperative laws, such as the Spanish, Portuguese or Maltese law. Likewise, a number of regional cooperative laws refer to these principles. Indeed, these cooperative principles show the interest that cooperatives have in their environment, since they are principles that put the interests of the person in the center, not the business profit.

Therefore, the question arises whether cooperatives should be taxed differently. The aim of this Special Issue of the IJCL is to improve the knowledge on how cooperatives are taxed in different countries around the world from a comparative law perspective. It is to help find answers to the following questions, among others: Where there is no specific tax regime for cooperatives, what tax regime applies? What are the limits of specific tax treatment or incentives for cooperatives? Why should cooperatives have a specific tax regime that mirrors their special characteristics?

For many reasons the taxation of cooperatives is a complex and controversial issue. For protagonists of cooperatives, a special tax treatment for cooperatives is simply fair; opponents claim it distorting competition. Already debated in the 19<sup>th</sup> century, the question is still alive. The recent (2021) “Action plan for the social economy” published by the European

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<sup>1</sup> University of Valencia, Spain, pilar.alguacil@uv.es

<sup>2</sup> Data base from <https://www.ica.coop/es/cooperativas/datos-y-cifras>, Consultation date September 21, 2021.

Commission (Action plan)<sup>3</sup> considers the taxation of cooperatives explicitly as a point of concern. In such a context, it must therefore not come as a surprise that the IJCL dedicates its first thematic issue to this important question. Compared to other issues of cooperative law transcending national borders the literature on the taxation of cooperatives abounds. But no synthetic study has been published so far. This special issue of the IJCL does not pretend to be such a study and it cannot provide an exhaustive overview of the taxation of cooperatives worldwide, but it covers most continents and it gathers analyses from most of the legal traditions.

Some countries apply a specific tax regime to cooperatives, one that is adapted to their legal structure (see Alguacil, 2003), in order not to discriminate cooperatives negatively as compared to other legal entities. However, other countries do not take into account the peculiarities of cooperatives and they apply the general rules on the taxation of legal persons to cooperatives as well.

The European Commission questioned the specific tax regime of cooperatives in countries such as Spain, Italy and France, arguing that this regime could be considered unlawful state aid.

The Italian case is particularly noteworthy. The European Court of Justice (ECJ) ruled on it in 2011. In the procedure leading to the ruling the Attorney General pointed out that the special tax measures for cooperatives would not constitute state aid inasmuch as they applied to cooperatives that follow the cooperative principles, and specifically, the principle of mutuality. According to this ruling, specific tax measures do not constitute unlawful state aid if and when they apply to cooperatives which *"are governed by particular operating principles that clearly differentiate them from other economic operators."*

In the Action plan, which includes cooperatives, the EU Commission foresees to adopt a recommendation to member states dealing with both state aid and taxation (p.7). Interestingly, the approach of this new document seems to dramatically reverse former communications which, while referring to the major conclusions of the ECJ in the case concerning Italy - more by necessity than by conviction - appeared to be restrictive. The Action plan appears much more pro-active, calling on the member states to use all possible margin of appreciation when adopting tax measures or supportive public policies in favour of the social economy.

- **Contributions to this special issue**

The 15 articles in this special issue of the IJCL enrich readers understanding of various aspects of the tax treatment of cooperatives in a great number of countries around the world.

The opening article on comparative law provides a brief review of the current regulations governing the life of cooperatives in various countries around the world, especially those which are not dealt with in the following articles. The article is written by **María Amparo Grau Ruiz** under the title "THE TIMELINESS OF A REVISION OF THE TAX STATUS

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<sup>3</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: building an economy that works for people: an action plan for the social economy (COM/2021/778 final).

OF COOPERATIVES BASED ON A COMPARATIVE LAW ANALYSIS IN THE LIGHT OF THE SUSTAINABLE DEVELOPMENT GOALS". It is based on the answers the author received to a questionnaire from experts in a number of countries.

Thereafter **Juan José Hinojosa Torralvo** produces a paper entitled "EUROPEAN TAXATION OF COOPERATIVES: AN EXAMINATION OF THE POSSIBILITIES OFFERED BY THE NEW CONCEPT OF LIMITED PROFITABILITY". The study analyses the contribution of European law to the construction of social cooperativism, emphasizing the taxation of cooperative societies and the role that the concept of "limited profitability" can play in this respect.

The following article, entitled "THE TAXATION OF CO-OPERATIVES' INCOME: ANALYSIS OF ITS RATIONALE", is signed by **Nina Aguiar**. She studies the taxation of the income of cooperatives with the aim of laying some conceptual bases on which the issue should be analyzed, with special emphasis on the definition of what should be considered cooperative income for tax purposes and on the justification of a favorable cooperative tax regime.

Then **Marina Aguilar Rubio** exposes a paper entitled "MODELS FOR DIRECT TAXATION OF COOPERATIVES UNDER COMPARATIVE LAW". She analyzes the special taxation of cooperatives from two points of view. Firstly, from the point of view that cooperatives fulfill a social function and contribute "in kind" to the social group, which must be honored with a special tax treatment that includes tax benefits. Secondly, a special tax regime is justified because of the reasons why cooperatives are established, their traditional principles and their legal structure, which differentiates them from conventional capital companies.

After these papers introducing us to the main features of the tax treatment of cooperatives, there is a string of academic works describing the tax regime of cooperatives in specific countries, starting with the one by **Sofia Arana-Landin**, entitled "US WORKER COOPERATIVES: A DIRE NEED FOR A PROFOUND REVISION OF THEIR TAX REGULATION AT A FEDERAL LEVEL". In it, the author offers an overview of the US tax system, focusing on the income taxation of cooperatives. This system differs from the rest of the countries since different tax provisions are applied depending on the legal and fiscal form chosen. In addition, the paper delves into the regulation of cooperatives, analyzing their low resilience due to the lack of adequate regulations and suggesting a different approach.

The article written by **Daniel Francisco Nagao Menezes** and **Manuel García Jiménez** under the title "THE COOPERATIVE ACT AND ITS TAXATION IN LATIN AMERICAN COUNTRIES" introduces us to several papers on the tax treatment of cooperatives in Latin America, opening a general perspective. The article reviews the legal concept of the "acto cooperativo/cooperative act" and analyzes this specific legal figure, found in almost all Latin American countries, pointing out that this figure is the central element of cooperative societies. The most relevant practical implication of the study is the proposal for change in the articulation of fiscal stimulus and promotion policies.

The article entitled "THE "MONOTRIBUTO" REGIME AND THE WORKER COOPERATIVES IN ARGENTINA : THE DIVERSIFICATION OF A FISCAL POLICY" by **Miguel Agustín Torres** describes, from a legal perspective, the "monotributo", which is

the main tax option that the Argentine tax system offers to the associates of worker cooperatives. Torres describes the main changes it has undergone since its implementation in 1998 with the creation of the "Simplified Regime for Small Taxpayers" by National Law 24977. He demonstrates that it was created with exclusively fiscal and economic objectives and then went through a process that positioned it as a wide-ranging public service policy that constitutes a useful tool for social inclusion.

Continuing with Latin America, **C. Orestes Rodríguez Musa**, **C. Orisel Hernández Aguilar** and **Liana Simon Otero** sign the article entitled "THE TAXATION OF THE COOPERATIVES. A PROPOSAL FOR ITS UNIFORM REGULATION IN CUBA". The authors analyze the premises that should guide the unification of the tax regime of Cuban cooperatives, in correspondence with the role constitutionally assigned to them and their identity.

This article is followed by a set of papers focusing on the tax treatment of cooperatives in Europe. The first is entitled "GREEK AGRICULTURAL CO-OPERATIVES: LEGAL CONCEPTS AND TAX LEGISLATION AND TREATMENT", signed by **Michael Fefes** and **Marietta Charitonidou**. In this article, the researchers study Greece's agricultural cooperatives, focusing on their tax treatment. Their study provides valuable insights into the general attitude of the Greek State and its legislature towards the organization and functioning of cooperatives, especially those in the agricultural sector.

Under the title "CRITICAL PROFILES OF THE TREATMENT OF SOCIAL COOPERATIVES IN THE ITALIAN TAX SYSTEM" **Maria Grazia Ortoleva** acquaints us with the situation in Italy. She studies whether social cooperatives that are governed by the Italian Law No. 381 on social cooperatives have been affected in their tax regime by the reform of the third sector since these companies are classified as social enterprises and as companies of the third sector and it is not clear whether that classification will have any consequence for the tax regime that is applied to them. The article also seeks to establish whether the tax regime applicable to social cooperatives is consistent with the role they play within the third sector. As the main practical application, the author proposes that the legislator intervene to "put a little order" in the general tax regime of social cooperatives and eliminates the aporias created by the stratification of legislative provisions and the changes in the regulatory framework concerning third sector entities.

The following article is entitled "COOPERATIVES IN BELGIUM IN THE ERA OF THE CODE OF COMPANIES AND ASSOCIATIONS: CURRENT DYNAMICS AND PROSPECTS FOR TAX LAW AND NON-TAX LAW". It is written by **Sabine Garroy**. This paper studies the tax treatment of cooperatives in Belgium by analyzing the connections between tax and non-tax law with the aim of raising a series of issues that need to be addressed in order to reform the tax system, which, in the opinion of the author, is obsolete.

The last paper on a European country is the one entitled "TRANSCENDENCE OF COOPERATIVES IN SUSTAINABLE SOCIO-ECONOMIC DEVELOPMENT IN THE BASQUE COUNTRY", signed by **Waleska Sigüenza**. This article analyzes the characteristics of the Mondragon Cooperative Corporation (CCM) and its impact on the sustainable socio-economic development of the Basque cooperatives from the perspective of the 2030 Agenda for Sustainable Development (UN2030 Agenda). The results affirm that

cooperatives are in a privileged position to collaborate in the achievement of the SDGs and have been able to adapt and internalize the global goals to their immediate environment.

Two articles are on Asia. The first is by **Santosh Kumar**. His article is entitled "CASE NOTES ON RECENT JUDGEMENTS BY INDIAN COURTS IN CLARIFYING THE NATURE OF CERTAIN ASPECTS OF COOPERATION THROUGH THE PERSPECTIVE OF TAXATION". This paper presents thematic summaries of two recent judgments of the Supreme Court of India and of a judgment of the Madras High Court in Chennai, which refer to cooperatives and taxation legislation in India.

The second article on Asia, entitled "THE TAX TREATMENT OF COOPERATIVES IN KOREA: A LACK OF CONSIDERATION OF COOPERATIVES' STRUCTURAL CHARACTERISTICS AND SUGGESTIONS FOR IMPROVEMENT", is signed by **Kim Yong Jin**. Jin examines the problems of the current tax legislation on cooperatives and proposes a legal reform in line with the cooperative identity since the current legislation divides cooperatives into two categories: non-profit societies that are entitled to tax benefits and for-profit societies that are not. Because of this dichotomy, general cooperatives, which represent the largest number of Korean cooperatives, fall into the latter category and are not entitled to any related tax benefits. This problem gives rise to the double taxation of the surpluses of general cooperatives. The article presents a proposal to amend tax legislation and to reform the legal framework of cooperatives, based on the analysis of the interconnection between the two sets of regulations.

Only one article deals with the situation in Africa. It is authored by **Ajibola Anthony Akanji** and is entitled "LEGISLATION AND THE ADMINISTRATION OF TAXATION OF CO-OPERATIVE SOCIETIES: DRAWING AN INTERSECTION FOR SUSTAINABLE DEVELOPMENT". This paper analyzes Nigerian cooperatives regulated by national and subnational legislation. From a practical point of view, he pleads for the abolition of the current tax exemption regime for Nigerian cooperatives and for its replacement with tax incentives for which he provides some recommendations.

- **Conclusions**

Some partial and provisional conclusions may be drawn. The major one is that there is a close link between the tax treatment of cooperatives and their identity. After more than a century of cooperative thinking, research at the end of the 20<sup>th</sup> century focused less on conceptual issues and more on technical questions. But, the tax question reminds us that the identity of cooperatives must be highlighted, protected, and, maybe, monitored. Indeed, a special tax treatment must never be a privilege. If cooperatives may legitimately claim for a tax treatment distinct from that of other enterprises, it is only because and to the extent that they can show objectively that they are different. In other words, all the thinking and writing about the cooperative identity remains crucial, provided it is not purely reiterative and a superficial repetition of the existing cooperative principles and values, but rather a reinterpretation and an adaptation to changed and changing circumstances.

The second conclusion we would like to draw is that this special issue of the IJCL is a first element of a better knowledge of the tax treatment of cooperatives and hence a call for further research. All along the articles of this issue the reader will observe a high degree of

diversity of tax legislations. This diversity stems as much from national contexts with their cultural, institutional or political differences as they are related to the differences between cooperatives. Broadly speaking, the special tax treatment of cooperatives may relate to their institutional features or to their activities. Therefore, cooperatives are likely to be submitted to diverse tax provisions. In other words, instead of a homogeneous special tax treatment, a deeper study of cooperative taxation might reveal the need for a special, but in itself diverse tax treatment.

At first glance, this assessment could be seen as an argument that weakens the advocacy for cooperatives, since it establishes distinctions among them, whereas their strength relies on their collective promotion. We would like to oppose two arguments to that fear. Firstly, it is dangerous to deny existing differences and the risk is to lose the special tax treatment for all cooperatives. Secondly, and this is far more optimistic: an homogeneous approach may be strategically right in a defensive position, but it is less fruitful in the case of an offensive one. To detail our opinion, we come back to the EU Commission Action plan. It states:

“Social economy has the potential to reshape the economy post-COVID through inclusive and sustainable economic models leading to a fairer ecological, economic and social transformation (EU Commission, 2021, p .3).”

As cooperatives are part of social economy, this claim is true for cooperatives as well. At least for the EU Commission this is new: the social economy, including cooperatives, has become a possible model to build a new society. What an opportunity, and responsibility! But if we take this quotation seriously, then we cannot imagine that the future society will be fully homogeneous. So, the diversity of cooperative enterprises, as well as the diversity of their tax regimes, become a richness.

Taking this diversity for granted, the role of a legal researcher is to provide critical analyses and above all systematic classifications to justify the differences. May the articles published here serve as first bricks! But the building is not achieved yet. We hope that this issue of the IJCL will stimulate future research.

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