Tax Credit In European Cooperatives. A Second Opportunity?

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Abstract
The current economic situation has led to increased losses cooperatives. The account and tax treatment of such losses has special mechanisms in cooperatives in some European countries as in the Spanish case. Also other legal forms include the ability to convert these losses in the field of income tax in tax credits that allow decrease future taxation of these entities.

Therefore in this work through the comparative analysis of the European Cooperative regulation, differences in accounting loss relief are evaluated, taking into account the use for this purpose can be given to the Mandatory Reserve Fund (NRF) to treat losses. Also, studies in European legislation, fiscal loss compensation mechanisms to determine the income tax.

Keywords: Cooperatives losses; Mandatory Reserve Fund; Tax credit;

Introduction and Objectives
The crisis has caused negative results in a lot of companies that may weigh down indefinitely its activity and determine its future dissolution and liquidation. It is desirable to detect early enough business failure to prevent it, and that has been the target of numerous research over many years. However, in the field of cooperatives, few studies conducted in this regard (Mateos, Marin, Mari, Segui, 2011) Therefore with this study we aim to analyze what is the treatment that can be given to losses in a cooperative in the accounting and tax matters in Europe.

We will focus on the south, with Spain, France and Italy, and we will compare them with northern countries, like UK and Germany. We must remember that cooperatives in the Spanish case, are regulated by fifteen different substantive laws whose application areas are limited to the Autonomous Community that has been issued, with the exception of Law 27/1999 State level and applicable to entities operating in various autonomous regions, or those that have not yet adopted its own law on cooperatives. Therefore the treatment of losses may be different depending on the Autonomous Community.

We consider it is necessary to analyze the situation of a cooperative with negative results initially but without solvency problems and can get to avoid business failure if you know properly manage the situation. So we make an analysis of the substantive law applicable, the tax regulations and accounting implications arising, in order to reach a second opportunity.

The losses in the Spanish cooperatives laws
The profusion of substantive rules for Spanish cooperatives is motivated by the powers assumed by the Autonomous Communities on cooperatives. This determines differences in its regulation, as is, for example, the economic system, and specifically the financial mechanisms that are linked to the compensation of losses. In this regard all laws of regional cooperatives establish that the allocation of losses can be made with:

- Voluntary reserve funds, if any, which generally may be charged all the losses.

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- The mandatory reserve, although various restrictions depending on the cooperative law in question are established.

The amount uncompensated with mandatory funds and volunteers normally will be allocated to members in proportion to their business, services or activities of each with the cooperative.

To ensure the solvency of these institutions the Spanish social economy cooperative legislation requires allocate a percentage ranging between 25 and 30% of the profit for the year to provide two non-distributable funds (in most of the Autonomous Communities) and indefeasible: Mandatory Reserve Fund (NRF) and the Education and Promotion Fund (EFF). The first one aims to consolidate the entity and can be used to offset losses, as already mentioned and the second seeks to promote the cooperative movement.

Mandatory Reserve Fund is set, therefore, as a fundamental tool in the management of Spanish cooperatives in adverse circumstances and situations of losses.

**Tax implications**

According to Law 20/1990 of Fiscal Regime of Cooperatives, the mandatory minimum for Mandatory Reserve Fund allocations can reduce taxable income in Society Tax by 50% of them. Therefore undistributed profits that it has been used to offset losses, will generate lower taxation.

Furthermore, commercial companies, under the rules of Income tax, losses may be offset against positive income of the tax periods ending in the immediate and beyond. However in the case of cooperatives, negative full contributions are compensated (art. 24, Law 20/1990)

**Losses in European cooperative legislation**

At the regulatory review conducted we can clearly see two groups of countries with very clear coincidence, as we can see in Table 1.

Southern countries have legislation that requires them to provide reserves to secure its solvency, with an indivisible character in case of dissolution, which determines its non-taxation in the Tax on the profit of the company. Spain and Italy provide them directly. Closed Cooperatives in France not taxed profits from operations with partners and they only tax a minimal income from its transactions with non-partners. Also these countries can offset the losses incurred in the exercise with future profits, limited in time (France), as well as limited in terms of quantity. However they do not allow compensation with past benefits.

In accounting context, the right to offset losses generates a tax credit. However, the cooperative legislation generally is radically different and it notes the incomes origin. Therefore, if such compensation is performed using input from partner or reserves, this will generate accounting inconsistencies because sanitation has already occurred, but in the balance sheet, a tax credit of tax origin will not disappear until not profits are made.
Table 1: Annual evolution of the mechanisms of offsetting losses employees

<table>
<thead>
<tr>
<th>Country</th>
<th>Spain</th>
<th>Italia</th>
<th>France</th>
<th>United Kingdom</th>
<th>Germany</th>
</tr>
</thead>
<tbody>
<tr>
<td>Provide FRO</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>NO</td>
<td>NO</td>
</tr>
<tr>
<td>Offset with last profits</td>
<td>NO</td>
<td>NO</td>
<td>NO</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Offset with future profits</td>
<td>YES</td>
<td>YES</td>
<td>YES, until 5 years</td>
<td>YES</td>
<td>YES</td>
</tr>
</tbody>
</table>

Source: By own author

In the group of northern countries, we observe that there are no obligation to provide funds to the Mandatory Funds. Therefore cooperatives do not have this first mechanism for compensation of losses. It can compensate losses with future tax benefits and using past profits, proceeding in this case to claim the amount to the Treasury.

Thus, all OECD countries support the mechanism of compensation losses, but just 7 do it with profits in prior years (Germany, Canada, United States, United Kingdom, Ireland, Japan, Netherlands ). The fact of compensating losses with profits in future years results in a loss for society which increases with the time horizon. This mechanism affects not only the effective tax rate of the company, it can also affect the pattern of investment in the society as well as the response to tax incentives such as accelerated depreciation of fixed assets investment (Cooper, Knittel, 2006).

Conclusions

As we have seen the treatment of losses in European regulations applicable to cooperatives it is uneven and we can distinguish two groups of countries. In the group of Southern countries we can see that the legislation is characterized by greater control and supervision over the solvency of the institution to force cooperatives in the provision of non-distributable Reserves at its dissolution and aimed at ensuring the survival of an entity, but in these countries the general tax legislation also provides offset losses against future profits. Also the Statute for a European Cooperative Society establishes a mandatory reserve that can be used to offset losses but does not establish their irrepartibility leaving to regulation by-laws.

As we mentioned this can create an inconsistency in the financial statements, since it can generate a tax credit that already has cleared the accounts with the Mandatory Reserve. In this respect the generated tax credits can help improve debt ratios of the entity. However only 31% of Spanish banks will use this option in the next 7 years (Monterrey, Sanchez, 2013), while the study of the Office of Analysis of the US Treasury estimates that between 50 and 60% of the companies will use it in the next 10 years (Cooper, Knittel, 2006).

The other group of countries, which some authors call the North (Romero, 2010), have been characterized as not contemplating any specific mechanism for cooperatives. It is recognized, for all companies not only the offset against future profits, also with the past benefits, which allows, according to several studies (Cooper, Knittel, 2006) to better exploit the potential of this mechanism.

These two models clearly reflect different spirits in the cooperatives policy in what refers to the degree of protection in times of crisis over other types of companies. This presents us with a future line of research to identify to what extent cooperatives employ this option enabled and compensates losses in the future, to determine whether it contributes to improve its creditworthiness.
References


