

MUTUALITÀ COOPERATIVA E AGEVOLAZIONI TRIBUTARIE

Abstract

The aim of this research is investigating the linkages between commercial and fiscal features of the legislation on cooperative companies in Italy. Provided that entwined substantial and tax-related aspects of co-operative enterprises' regulation has come into consideration, the analysis has been carried out through an interdisciplinary approach to better explore the ground for tax breaks in the unique fiscal regulation of cooperative companies.

In principle, cooperative enterprises should be subject to the ordinary tax legislation common to all private companies. Nonetheless, the legitimacy of a different and more favorable treatment for cooperatives is based on the assumption that the latter pursue commendable socio-economic aims which entitles them to such a treatment.

Article 45 of the Italian Constitutional Charter is identified as the legislative ground of fiscal benefit cooperatives enjoy. In fact, under article 45 the praiseworthy social role of mutual cooperatives is recognized and the opportunity for their promotion is accordingly emphasizes. In the light of such considerations, tax breaks are consequently individuated as the most adequate legislative tool in the view of recognizing the social purpose of cooperative enterprises.

The relevant literature has mostly tried to justify the atypical fiscal treatment of co-operatives recognizing the attempt to overcome possible substantial inequalities with profit companies and double impositions, rather than focusing on the favorable feature of tax breaks and exemptions. This approach, based on articles 3 and 53 of the Constitution, has appeared the most adequate to remove all doubt on the compatibility of the fiscal regulation of co-operatives with article 87 of the EC Treaty (state aid rules), given the primacy of the European legal system on the national legislations.

Consequently, the question of legitimacy of tax regulation of cooperative societies has shifted to the query over compliance with EC legislation. The analysis leads to the conclusion that the favorable fiscal measures are fully legitimate. In fact, such tax breaks have no "selective" nature and do not distort or threaten competition since legislation on co-operatives also entails specific obligations on such enterprises, to which profit companies are not compelled to. Therefore, tax breaks can be understood as trade-off measures to avoid imbalances between profit companies and mutual cooperatives. Whilst being subject to comply with obligations not requested to other companies, cooperatives are rewarded with tax breaks and exemptions. In a nutshell, heterogeneous situations lead to unlike fiscal legislation.