

# Taxation on Social Enterprises: the Case of Spanish Co-operatives

**Dr Marta Montero and Dr Alfonso C Morales**

This report studies the extent to which current Spanish legislation favours an efficient co-operative model for labour insertion. Our first step will be to analyse the reality of social enterprises (co-operatives and non-co-operatives) in Spain today. Then, focusing on co-operatives, two aspects will be considered from a legal point of view: a) How do the autonomous regions regulate this type of co-operative and to what point do State and Autonomous Region regulations contribute to the creation of 'labour insertion co-operatives'?; b) What fiscal measures exist for these co-operatives? A study will be carried out comparing the fiscal regime for co-operatives in the Basque Country to the fiscal regime for co-operatives in the rest of Spain.

## **1. A New Agent in Social Economy: Social Companies**

The demand that economic activity be highly competitive that has come about in the final quarter of the twentieth century has led to a 'natural selection' in economic sectors, territories and social groups that has resulted in high levels of unemployment through loss of jobs in traditional agricultural and industrial sectors. In the majority of European countries this situation led to the appearance of 'social companies' in the 1990s to contribute to the process of support and normalisation for people who have become victims of social exclusion or are under threat of being so.

Following to a certain extent the pattern of the paradigmatic case of the Italian social co-operative (Borzaga and Santuari, 1998; Borzaga and Defourny, 2001), a series of initiatives are organised within the framework of each country's cultural, political and institutional traditions, which stem from social movements and the desire to renew the spirit of solidarity and democracy. Given the 'social' (public) interest of these schemes, many entities are encouraged by public policies at different levels – local, national, European – since they are considered "new possibilities for employment" and sources of 'social cohesion'.

In Spain there are different legal channels for these initiatives (insertion companies, insertion co-operatives, etc). Our aim in this study is to analyse the extent to which the co-operative represents an effective legal model to encourage labour insertion, within current Spanish legislation. To this end, we will first explain the reality of social companies in Spain at both co-operative and non-co-operative levels. Secondly, two aspects will be analysed from a legal point of view. On the one hand, analysis

will endeavour to determine to what extent the regulation on co-operatives smoothes the way to the creation of "labour integration co-operatives", keeping in mind both state and regional regulations. On the other hand, taxation incentives for these co-operatives will be analysed as well as the extent to which this differentiating factor – that of being a labour insertion co-operative - implies the existence of greater fiscal benefits than those granted to the rest of co-operatives.

## **2. Social Companies: Main Organisational Features**

The concept of social company hinges on a series of characteristics: its aim, its activity, the structure of its workforce and the social character of its patronage.

### **2.1. Social aim**

In fact, we find ourselves looking at companies created for the social-labour insertion of potentially unemployable people. These companies hire workers legally in compliance with labour laws, allocating a large number of the jobs created to people considered unemployable by other companies. The objective that social companies strive for is not, in our opinion, enrichment through good business management. On the contrary, what is intended is a service to the community or to a certain local group, while trying to resolve a series of problems that hinder the capacity to adapt to labour conditions on the part of different sectors of the population. A job becomes the means of earning a living but simultaneously is an intrinsic element of the individual's identity and a vehicle for political and social participation. For this reason these companies claim coverage by the statutes of non-profit entities.

## **2.2. Business character**

Social entities constitute productive structures, organisations dedicated to industrial or commercial activities, or the rendering of services, which compete under the same conditions as those to be found on the labour market: their productive activity should obey criteria of profitability and economic viability. However, they have an additional objective in providing social and labour integration for a number of their workers. It is true that the combination of economic or business functions and social ones that characterises these entities is shared by a large number of the other organisations that make up the Third Sector. Even so, their total devotion to very specific groups of people who suffer labour and social discrimination lends them a profile with special nuances. The incorporation of the unemployed into the labour market is intrinsically conditioned by such factors as their actual level of employability or the opportunities that the market can offer them. The higher the level of employability displayed by the social entity, the higher the productive and competitive capacity will be.

## **2.3. A special collective of ‘protagonist’ workers**

This is a group of workers in the process of insertion whose levels of employability and production have to be improved. Social entities include as paid workers a certain percentage of people either suffering social exclusion or threatened with it – between 30% and 60% according to Autonomous Communities. Within this category can be included those perceiving minimum income, the long term unemployed, ex drug-addicts, convicts and ex-convicts, the homeless, and the ethnic gypsy minority, as well as youths, women and immigrants in special circumstances. Nevertheless social entities also need experts to carry out management and administrative tasks.

## **2.4. Patronage arising from social concern**

In practice, this type of company started up because of initiatives taken by local communities (family groups, neighbourhood organisations and even self-employment projects), and they became flexible enough to adapt to the individual needs of these disadvantaged people. For this reason, social entities are usually promoted and sponsored by public or private non-profit organisations. The

promoting entity forms part of the model of social intervention that this type of organisation represents, turning into real and permanent structures for social-labour insertion<sup>1</sup>. Although the activity of social organisations started out by being more of a relief effort than a vehicle for production and insertion, business crises and the realisation that relief measures were not enough in themselves to achieve social insertion through jobs, led to the sponsors of these entities progressively taking on profiles more akin to those of administrators and managers.

## **3. Features that Characterise Social Insertion Enterprises**

When analysing different types of social enterprises, varied criteria are used to classify them. Under the umbrella situation of temporary work done by employees in the process of being inserted, companies can aim at a transitory type of economic activity or one that is a springboard for the job market, or that sets out to make use of this activity as final insertion in the productive process for groups with difficulties.

### **3.1. The social insertion entity as an instrument for inclusion**

So we are dealing with social insertion entities created to take on people who, owing to insurmountable difficulties, need to work in this type of concern. This is a way for stable jobs to be provided for workers with low levels of productivity.

### **3.2. The social insertion entity as a process of transition**

In Spain, social insertion entities primarily started out as transition entities, characterised by the significant proportion of jobs held by individuals in process of insertion, who complete their training and achieve a high enough level of employability to move onto the labour market. Thus J Pradini (2003; 734) defines these companies as “legally established structures that produce goods and services, whose objective is to facilitate entrance into the normal job market by socially disadvantaged or excluded people, after undertaking a personal insertion project by way of an appropriate training process aimed at acquiring sociable work skills, basic training, labour qualification and knowledge of the job market, which improves their chances of employment”.

In this way, really professional training and

formation centres come to exist for full labour reinsertion of workers with a permanently reduced labour capacity. With this normalising vocation in mind, these centres must develop a series of mechanisms to capacitate and qualify them for some kind of labour activity that will finally make them 'competitively' employable on the free job market.

In the first place, aptitude has to be considered, that is, to what extent each person is predisposed towards himself and his environment. To this end, negative attitudes often apparent in the behaviour of people who have been systematically excluded from the normal work place have to be replaced by positive ones. Training and acquisition of skills are also very important, because in all processes dedicated to improving employment possibilities, conventional training systems have to be adapted. Work habits and skills must also be present. It has to be kept in mind as well that any organisational failure by this type of entity will be an impediment to its development. Faithful repetition of all these steps will lead to success in the companies' management of these activities.

Workers in insertion usually spend from 6 months to 3 years in the Social Insertion Entity, acquiring in this span of time a level of employability that will give them access to normal companies. This is for a very simple reason: these people are not meant to stay indefinitely in the insertion companies, but only long enough to achieve entrance status for the normal job market. Of course this does not mean that permanent contracts do not exist. Within the insertion philosophy in the so-called 'insertion itinerary', there are both long term and short term entities. The former usually hire individuals who

are at the end of their insertion itinerary, independently of where and when they started. On the other hand, the latter usually hire those who are at the beginning of their social-labour insertion itinerary, and whose only pre-requisite is a manifest desire to work and make all the necessary effort required for their individual itineraries<sup>2</sup>.

### 3.3. Data on the current situation in Spain: legal status and activities

Social entities in Spain are called social insertion companies. This type of social entity existed in practice long before receiving a legal status at national level<sup>3</sup> although it only has specific regulation at a regional level. What is common to all of them is that these organisations are sponsored by a non-profit entity or by a public organisation and also have a legal status as a co-operative, labour corporation, limited corporation or stock corporation (Calvo Pérez, 2005).

Their growth since the 1980s and especially since the mid 1990s has been considerable, according to data available for 2002. 147 Insertion Companies are included in the census for that year, of which 78% are transitory and 22% are definitive. They employ a total of 3,550 workers, of which 2,201 (22%) are under insertion, while the rest are specialised staff covering posts in management and social support. The main weight is distributed between Catalonia, Andalusia and Madrid with 28%, 17% and 12% of the total respectively. By virtue of their legal status, social companies are distributed almost half and half under some appropriate format for non-profit entities, and under the formula of Limited Societies, accounting for 46% each,

| Activity   | % of total |
|--|------------|
| Agriculture, livestock, gardening and forest regions.  | 5.97       |
| Graphic arts (serigraphs, infographs, editing ...)   | 7.46       |
| Furniture making, wood and carpentry industry.   | 5.22       |
| Recycling, recuperation and collection of paper, cardboard, clothing, oil, bulk refuse and other materials, and their second-hand sale.        | 32.09      |
| Fabrication of metal products and diverse industrial manufacturing.  | 3.73       |
| Construction (and related activities).   | 11.94      |
| Restaurants and hotel enterprises.   | 5.23       |
| Activities involving personal services, like cleaning, clothes washing, and social service activities such as domestic help and entertainment. | 16.42      |
| Transport and Messenger services.  | 2.24       |
| Multiple miscellaneous services, such as industrial servicing, computer repair, porter and security services.                                  | 5.22       |
| The textile industry.  | 4.48       |
| <b>Total</b>   | <b>100</b> |

**Table 1. Social insertion enterprises in Spain, 2002.**

Source: García Delgado (2004)

while the rest adopts the form of co-operatives.

Today, economic activity in social entities shows a clear tendency to be market-oriented. In fact, an ever more important part of income for this type of company is a result of different commercial activities developed on public and private markets. The fact is that these companies conduct a continuous economic activity, with production of goods and services which are one of the principal reasons for their existence. The main difference between these entities and normal companies lies in the fact that the former develop the supporting measures that contribute to the processes of insertion at the same time as they enter into the production of goods and services.

Moreover they adopt strict criteria on how they make use of the labour force, while investing very little in capital. The goods and services they sell do not need highly qualified workers. In fact, social companies do not survive by public subsidy alone, but also from the sale of goods and the rendering of services. Table 1 presents a detailed distribution of social enterprises according to their types of activity.

## 4. The Co-operative as a Social Insertion Enterprise

### 4.1. Introduction

Undoubtedly, co-operatives prove to be an effective instrument for the development of insertion companies since, in addition to developing productive market structures based on people instead of capital, these companies aim at the social insertion of a large part of the workers who take part in their activities. In this sense the co-operative is established as an efficient means to an end.

Centring on Spanish co-operative state and regional legislation, we are struck by the frequent use of different names that refer sometimes to one and the same type of co-operative and, at other times, are used to classify different types of co-operatives, when in fact they all fall within the generic concept of 'insertion companies'. Thus, for example, integration co-operatives, social initiative co-operatives, social interest co-operatives and social well-being co-operatives can all be classified under the generic formula of social insertion.

The use of such varied terminology, and the wide range of different regulations introduced into the many state and regional laws, is a result of the panorama of co-operative

legislation to be found in Spain.

The co-operatives mentioned can be called non-profit organisations but this term is of no consequence when considered as insertion companies, nor does it make them eligible for special tax incentives.

As regards taxation, non-profit co-operatives in Spanish territory, except in the Basque Country, are all treated in the same way as "profit seeking" co-operatives. In the Basque Country non-profit co-operatives receive the same taxation treatment as non-profit organisations such as foundations and public utility associations.

### 4.2. Spanish State Legislation. State Co-operative Law

The State Act 27/1999 (16 July) on Co-operative regulates co-operatives known as **social initiative co-operatives** in article 106.

It deals with any kind of **non-profit** co-operative whose social objective is to satisfy those social needs which the market does not cater for, whether they be services of assistance through sanitary, educational, cultural or another kind of social activity, or whether they conduct some type of economic activity dedicated to integrating people who suffer some kind of social or general exclusion.

It concerns co-operatives that usually adopt the set-up of a worker co-operative or a co-operative of consumers and users which, because of the social role they play, are classified as 'social initiatives'<sup>4</sup>.

On the other hand, this Act, in its First Additional Provision, establishes the requirements that a co-operative has to meet in order to be labelled '**non-profit**'. Any co-operative can do this. In the case of social initiative co-operatives, there must be no profit making goals. The above-mentioned requirements are:

1. It must be concerned with services of common interest or be publicly owned, or conduct economic activities that lead to job insertion by people who suffer from some kind of social exclusion.
2. Profits generated during a financial year may not be distributed among members.
3. Contributions, both obligatory and voluntary, made to the social capital by members, may not earn higher interest than the approved legal rate, which does not affect statutory rights under the terms established by law.

4. Seats on the Governing Board have to be unpaid except for reimbursement of expenses incurred in the line of duty.
5. Salaries for social workers, for partners, and in certain circumstances for subcontracted workers, may not exceed 150% of the amount stipulated in the collective agreement for the corresponding activity and professional category.

As can be seen, every 'social initiative' co-operative has to be a 'non-profit' one, although not every 'non-profit' co-operative will necessarily be a 'social initiative' one.

#### 4.3. Different figures in the regulations of different autonomous regions

##### a) Basque Country

The Basque Country Act 4/1993 (24 June) on Co-operatives regulates **social integration co-operatives**. These are the ones made up entirely, or have a majority, of the physically or psychologically handicapped, and may be based on collaboration to organise, channel and commercialise the products made by members, or be dedicated to providing goods and services for general or specialised consumption. These co-operatives may include public entities as partners.

Article 137.2 of this Act establishes that co-operative companies that contribute to promoting general interest in the Basque Country thanks to the work they do, will be considered **of public utility** by the Basque government. The three Basque regulations on taxation treatment of co-operatives define which co-operatives can be considered of public utility and social initiative, and define the requirements in each case.

**Public Utility Co-operatives** are those that:

1. Are classified as such by Decree 64/1999 (2 February).
2. Fulfil the following requirements:
  - In that in the case of profit, this may not be distributed among the members, but must instead be dedicated to fulfilling the company's objectives.
  - The posts held by Board members are voluntary, with no remuneration.
  - Associated members, people and companies may not be the main recipients of the activities carried out, nor be privileged or treated favourably in benefiting from the corresponding services.

**Social Initiative Co-operatives** are:

1. 'Non-profit entities' of whatever type, whose social objective is the administration of assistance programmes through sanitary, educational and cultural activities, or others of a social nature, or the development of any economic activity aimed at achieving job integration by people suffering some type of social exclusion, and in general, the meeting of needs not covered by the market
2. They are considered non-profit when the following requirements are fulfilled:
  - Any profit eventually made may not be distributed among members, but must be dedicated to the company's aims.
  - The Board members' responsibilities are carried out free of charge.
  - Members and associated people or entities are not entitled to be the main beneficiaries of the activities carried out, nor do they receive preferential treatment in accessing services.
  - Remuneration for collaborating members or workers from outside sources should not exceed 150% of the amounts established by the collective agreement applicable to salaried personnel in the sector and according to the activity or professional category in question.

##### b) Valencia

The Valencia Act 8/2003 (24 March) on co-operatives in article 98, regulates **social integration co-operatives**. They are co-operatives comprised of the physically or mentally handicapped or other groups with difficulties for social integration. They adopt the form of work-associated co-operatives or consumer co-operatives. A public entity responsible for the rendering of social services could participate as a member.

Under the heading 'fomenting co-operativism', article 114 includes **non-profit co-operatives**. These are co-operatives whose objectives, activity and economic criteria give witness to their social function. This social function is understood as one whose aim is to improve the quality of life and conditions of individuals.

In any case, non-profit co-operatives are those which are principally dedicated to the rendering and management of social services, as well as activities considered as educational, cultural, artistic, sport, leisure and within other areas of general interest. Non-profit

co-operatives can adopt the form of worker co-operatives, for services or social integration. To be qualified as non-profit, its statutes must state expressly:

1. Absence of profit seeking, and dedication to an activity of social interest.
2. Any eventual profits will not be shared out to stakeholders but instead dedicated to the consolidation and improvement of the co-operative's social function.
3. Voluntary contributions to social capital by members may not earn interest, which does not affect statutory rights under the terms established by law for obligatory contributions.
4. Members and co-operative workers may not perceive any type of returns, retribution or salary higher than 175% the figure for the average salary in the sector<sup>5</sup>.

### c) Andalusia

The Andalusia Act 2/1999 (31 March) on co-operatives, regulates **social interest co-operatives**. They are non profit co-operatives which pursue the promotion and full social and/or labour integration of all citizens.

Their activity must be based on the rendering of services for the eradication of problems related to infancy and childhood, and aid for the handicapped, senior citizens, those with sole responsibility for dependent family members, battered people, ethnic minorities, exiled refugees, ex-convicts, alcoholics, drug addicts, compulsive gamblers, the prevention of delinquency, and any other service destined for collective groups suffering from social ostracism or feeling excluded.

In number 4 of article 128, the requirements that must be met by a **non-profit co-operative** are enumerated:

1. The statutes must reflect it as such in the clause referring to social objective.
2. Voluntary contributions made to the social capital by members, may not earn higher interest than the approved legal rate, which does not affect statutory rights under the terms established by law.
3. The salary for co-operative worker-member and outsourced workers may not exceed 150% of the amount stipulated by collective agreement.
4. The Obligatory Reserve Fund may not be shared out among stakeholders.

On the other hand, it regulates **integration co-operatives**. These are worker co-operatives which bring together the physically and mentally

handicapped as well as other groups with special problems that prevent social integration. In these co-operatives, parents, tutors, and support personnel may take an active part as members. Integration Co-operatives may be labelled non-profit whenever they fulfil the requirements in part 4 above. They may also be labelled as social-interest co-operatives.

### d) Catalonia

Article 129 of the Catalonia Act 18/2002 (5 July) on co-operatives regulates the conditions for a non-profit co-operative and here it is stated that "for the purposes of public hiring, contracts with public organisations, tax allowances, subsidies and any other type of aid, these co-operatives will receive the same consideration as all other non-profit entities."

The requirements to be fulfilled are the following:

- a) Any funds left over, once obligatory payments have been made, are not returned to stakeholders, but are dedicated to an untouchable reserve fund for activities appropriate for this type of co-operative and from which any losses may be covered.
- b) Board members and accountants do not receive salaries.
- c) Contributions, both obligatory and voluntary, made to the social capital by members, may not earn higher interest than the approved legal rate, which does not affect statutory rights under the terms established by law.
- d) Remuneration for working members, work associates or outsourced personnel may not exceed 150% of the amount stipulated by collective agreement.

This article does not regulate integration co-operatives as a specific type of co-operative.

### e) Extremadura

The rules for **social welfare co-operatives** are found in article 153 of the Extremadura Act 2/1988 (26 March) on co-operatives. They secure social attention for members who belong to groups of the physically or mentally handicapped, minors or elderly people with family or economic disadvantages, an ethnic minority or any other socially excluded group, or provide them with goods and services necessary to cover their needs and support their development.

These co-operatives are bound by the norms regulating consumer and user co-operatives.

## 5. Taxation on Co-operatives as Insertion Enterprises in Spain

### 5.1. Overview of Spanish legislation

The fiscal regime for co-operative societies in Spain is basically regulated in State Act 20/1990 (19 December). This Act is applicable throughout the whole of the Spanish territory, except the Basque Country and Navarra which have their own regulations on the fiscal aspects of these entities.

The economic agreement between the Spanish State and the territories of Alava, Vizcaya and Guipúzcoa, as well as the economic agreement signed by the above-mentioned State with Navarra, have allowed these territories to elaborate their own norms on the fiscal regime for co-operative societies, as well as their own Tax Laws for companies.

Today, the following norms regulate the fiscal regime in these territories: Foral Norm 9/1997 (14 October), on the fiscal regime for co-operatives in Vizcaya; Foral Norm 16/1997, (9 June), on the fiscal regime for co-operatives in Alava; Foral Norm 2/1997 (22 May), on the fiscal regime for co-operatives in Guipúzcoa and Foral Norm 9/1994 (21 June), on the fiscal regime for co-operatives in Navarra<sup>6</sup>.

With respect to State legislation, the Ninth Additional Provision in the State Act 27/1999 on co-operatives establishes that the taxation regulation to be applied to non-profit co-operatives is that established by Law 20/1990, covering the fiscal regime of co-operative societies<sup>7</sup>.

This regulation separates non-profit co-operatives from all other non-profit entities. Taxation on non-profit entities, regulated in State Act 49/2002 (23 December), is totally different from that of non-profit co-operatives, not only with respect to taxes paid by the non-profit entity but also with respect to taxation on donations and amounts contributed to these entities.

To be able to evaluate taxation applied to the so-called non-profit co-operatives, one must be familiar not only with the idiosyncrasies of the fiscal norms involved but also with those pertaining to other non-profit entities, in particular, foundations and public utility associations.

### 5.2. Parallels between insertion co-operatives labelled as 'non-profit' and other non-profit entities

Of all non-profit entities, those to which the most favourable fiscal treatment is applied in Spanish

legislation are foundations and public utility associations. We go on to describe aspects or essential requirements that must be complied with by these groups<sup>8</sup>:

#### A) Foundations and public utility associations

1. They must pursue objectives of general interest.
2. To do so, they must dedicate at least 70% of the following income:
  - From economic activities
  - From the transmission of goods or rights
  - Income derived from any other concept once expenses incurred in obtaining that income have been deducted
3. The rest of the profits must be dedicated to increasing patrimony or reserves.
4. Activities may not consist of developing economic areas outside the objective or statutory activity. (The figure for business activity yields that are not exempt may not exceed 40%).
5. The founders, partners, sponsors, statutory representatives, members of government bodies and their spouses or relatives to the fourth degree may not be the main beneficiaries of the activities, nor benefit from special conditions in the use of their services.
6. The posts of sponsor, statutory representative and member of the governing body may not be remunerated. These persons may only be reimbursed for expenses that are within the limits established for this concept in the Act on Personal Income Tax.
7. In the case of closure, the patrimony has to be passed on to one of the entities considered as beneficiary of the patronage.
8. They must be inscribed in the corresponding registry.
9. They must comply with certain accounting obligations.
10. They must present their accounts to the Administration.
11. An economic report must be made yearly.

#### B) Non-profit co-operatives

With respect to non-profit co-operatives, they must comply with the requisites corresponding to the type of co-operative in question, as well as the additional requirements which are described as follows.

1. Profits may not be distributed among stakeholders.

2. Obligatory or voluntary contributions by members may not earn interest higher than the legal rate.
3. The positions on the board of directors are not remunerated, although expenses are reimbursed.
4. Salaries of worker members and outsourced workers may not exceed 150% of the figure established by collective agreement.

### 5.3. Special features of the co-operative fiscal regime in Spain

#### A) Fiscal classification for insertion co-operatives

As already indicated, the fiscal regime for co-operative societies as covered by Act 20/1990 will be applied to co-operatives that are insertion companies, under any of the formats regulated by regional laws (integration co-operatives, social initiative, general interest etc) whether they be non-profit or otherwise. This means that these co-operatives may be classified as being especially protected, protected or simply protected for purely taxation purposes. The final classification is directly related to the level of fiscal benefits that can be applied.

A serious problem has been created by this regulation: among the types of co-operatives

that can be especially protected, none of the following co-operatives is expressly included: integration co-operatives, social initiative co-operatives, social interest co-operatives, social welfare co-operatives, and not even non-profit co-operatives.

Actually any of the above co-operatives can adopt the format of work co-operative or consumer and user co-operative. Only in this way and to the extent to which certain requirements are fulfilled, may they acquire the status of especially protected co-operatives.

This loophole in fiscal legislation is surprising, especially taking into account the fact that the status of non-profit co-operative is quite different from that of co-operatives not considered as such. We can find co-operatives that contribute to achieving objectives of general interest through different activities, with just one fundamental characteristic: the prohibition of co-operative profit sharing and the delegation of these profits instead to funds that may not be shared out.

#### B) Corporation Tax

The fact that co-operatives that constitute insertion companies may be qualified as protected, especially protected or non-protected co-operatives, has a significant effect on

|                         | <b>Unprotected insertion co-operatives</b>   | <b>Protected insertion co-operatives</b>   | <b>Especially protected insertion co-operatives</b>  |
|-------------------------|--|--|--|
| <b>Donations</b>        | Donations received are taxed as income by Corporation Tax  | Donations received are taxed as income by Corporation Tax  | Donations received are taxed as income by Corporation Tax  |
| <b>Adjustment Norms</b> | <ul style="list-style-type: none"> <li>• Taxable base split into two, distinction between co-operative and extra -co-operative yields and classification of profits. There is some discrepancy between fiscal and mercantile qualification of yields.</li> <li>• Market value of operations with members. Some cases real value with a limit: cost. Allows co-operative tax base to be zero.</li> <li>• Deductible on tax base: 100% destined to Fund of Education and Promotion, and 50% dedicated to the Obligatory Reserve Fund</li> <li>• Negative quotas may be offset against the positive quotas obtained in the following 15 fiscal years</li> </ul> | The same as for protected insertion co-operatives  | The same as for protected insertion co-operatives  |
| <b>Fiscal Benefits</b>  |  | <ul style="list-style-type: none"> <li>• Depreciation: flexibility in the figures applied for the first three years.</li> <li>• Tax rate: 20% co-operative taxable income base, 35% extra-co-operative taxable base</li> </ul> | <ul style="list-style-type: none"> <li>• The same as for Protected insertion co-operatives</li> <li>• Tax credit: 50% of tributary quota</li> <li>• Tax credit: 90% tributary quota for worker co-operatives with 50 % or more disabled members</li> </ul> |

**Table 1: Corporation Tax**

Source: our own elaboration

| Non-protected insertion co-operatives   | Protected insertion co-operatives  | Especially protected insertion co-operatives   |
|---|--|--|
| <ul style="list-style-type: none"> <li>• Constitution, increase of capital, merger and split.<br/><b>Tax rate: 1%</b></li> <li>• Acquisition of goods and rights that are part of the Education Fund destined for these purposes.<br/><b>Tax rate 6% or 4%</b></li> </ul> | <ul style="list-style-type: none"> <li>• Constitution, increase in capital, merger and split.<br/><b>Exempt</b></li> <li>• Acquisition of goods and rights that are part of the Education Fund destined for these purposes.<br/><b>Exempt</b></li> </ul> | <ul style="list-style-type: none"> <li>• Constitution, increase in capital, merger and split.<br/><b>Exempt</b></li> <li>• Acquisition of goods and rights in pursuance of co-operative aims.<br/><b>Exempt</b></li> </ul> |

**Table 2: Differences in Patrimonial Transfer Tax and Corporation Operations Tax**

Source: our own elaboration

Corporation Tax, a tax levied on the entity's profits.

Those aspects of Corporation Tax on co-operatives that we would like to highlight are presented in the following table where we distinguish between the norms applied to different fiscal situations. When we refer to adjustment norms we mean that although they do not regulate fiscal benefits, they do contemplate specific aspects of the tax applicable to all co-operatives

We have considered unprotected insertion co-operatives, protected insertion co-operatives and especially protected insertion co-operatives, but we must bear in mind that we are referring to the different types of 'insertion co-operatives' studied above.

### C) Other taxes

The taxation treatment of co-operatives also has certain effects on other taxes under the Spanish tax system, in particular we mention Corporation Operations Tax which is levied, among other events, on the constitution and dissolution of companies, and also Patrimonial Transfer Tax which is levied on certain acquisitions of goods and rights by co-operatives, and Economic Activities Tax which is levied on the conducting of the business activity itself.

### 5.4. Characteristics of Taxation on Foundations and Public Utility Associations

As we have indicated previously, foundations and public utility associations receive special

taxation treatment, regulated by Act 30/1994 (24 November).

Corporation Tax grants generous exemption as regards donations, quotas, and income derived from certain projects and funding for financing projects that are exempt.

It is also important to mention tax benefits that a donor enjoys through Personal Income Tax, which encourages donations to these entities (see Table 5).

With respect to local taxes, partial exemption is applied to Real Estate Tax and total exemption to Economic Activity Tax and Appreciation of Urban Land Tax (see Table 6).

### 5.5. The specific case of the Basque Country

The Basque foral norms, unlike State legislation, opt for clear and outright promotion of public service and social interest co-operatives. If public utility co-operatives or, for example, social interest co-operatives comply with the requirements<sup>9</sup> set out in articles 40 and 41 of the Foral Norm that regulates the fiscal regime of co-operatives in Vizcaya, or in articles 41 and 42 of the Foral Norm that regulates the fiscal regime in the co-operatives in Guipúzcoa<sup>10</sup>, what will be applied as far as the Corporation Income Tax is concerned, is the fiscal regime of non-profit entities and fiscal incentives for patronage. This implies that these entities enjoy a declared exemption in Corporation Tax that affects a great deal of their activities.

The application of the Foral Norm on taxation of non-profit entities and on fiscal incentives for

| Non-protected insertion co-operatives  | Protected insertion co-operatives  | Especially protected insertion co-operatives   |
|--|--|--|
| <ul style="list-style-type: none"> <li>• Exempt during the first two tax years.</li> <li>• Exemption: societies with turnover under 1,000,000 Euros.</li> <li>• Gradual deduction during the following five fiscal years. (From 50% to 10%)</li> </ul> | <ul style="list-style-type: none"> <li>• Exempt during the first two tax years.</li> <li>• Exempt co-operatives with turnover under 1,000,000 Euros.</li> <li>• Indefinite deduction of 95% of the quota (specific for co-ops).</li> </ul> | <ul style="list-style-type: none"> <li>• Exempt during the first two tax years.</li> <li>• Exempt co-operatives with turnover under 1,000,000 Euros.</li> <li>• Indefinite deduction of 95% of the quota (specific for co-ops).</li> </ul> |

**Table 3: Differences that affect the Tax on Economic Activities**

Source: our own elaboration.

| Exempt incomes:  | Tax base   | Tax rate                                  |
|--|--|---|
| <ul style="list-style-type: none"> <li>• Donations to support the entity's objective</li> <li>• Member, collaborator and benefactor quotas</li> <li>• Subsidies, except those that finance non-exempt economic projects</li> <li>• Income from real estate or fixed assets</li> <li>• Income from acquisitions or transfers of any concept, of goods or rights</li> <li>• Income from any of the following economic activities that are considered exempt: <ul style="list-style-type: none"> <li>○ Economic activities concerning the rendering of services for the promotion and management of social action, such as social assistance and social inclusion, as in the following examples:</li> <li>○ Protection of children and young people <ul style="list-style-type: none"> <li>▪ Aid for the elderly</li> <li>▪ Aid for those at risk of suffering social exclusion or difficulties or mistreatment,</li> <li>▪ Aid for the handicapped</li> <li>▪ Aid for ethnic minorities</li> <li>▪ Aid for refugees and those seeking asylum</li> <li>▪ Aid for emigrants, immigrants and non-residents</li> <li>▪ Aid for sole caretakers with dependents</li> <li>▪ Family and community social action</li> <li>▪ Aid for ex-convicts</li> <li>▪ Social reinsertion and prevention of delinquency</li> <li>▪ Aid for alcoholics and drug addicts</li> <li>▪ Co-operation for development</li> <li>▪ Social inclusion for all those referred to above</li> </ul> </li> <li>○ Activities providing hospitalisation and social assistance services</li> <li>○ Economic projects for scientific research and technological development.</li> <li>○ Economic activities such as musical, theatre and cinema shows</li> <li>○ Activities using parks and protected areas</li> <li>○ Economic activities for teaching and professional training</li> <li>○ Economic activities concerned with organising courses and seminars</li> <li>○ Economic activities involved with the edition, publication and sale of books</li> <li>○ Economic activities providing opportunities to practice sport by different groups</li> <li>○ Economic activities to do with ones that are exempt</li> <li>○ Activities of little economic relevance, turnover of previous tax year under 20,000 euros</li> </ul> </li> </ul> | <ul style="list-style-type: none"> <li>• Only the income from non-exempt activities is included.</li> <li>• Expenses attributable to exempt income are not deductible</li> <li>• What is not deductible is the depreciation of patrimony not dedicated to economic activities subject to tax, or the proportional part of the depreciation if the item is partially affected by an economic activity</li> <li>• Profit related sums are not deductible.</li> </ul> | <p>Income that is not exempt pays 10%</p> |

**Table 4: Corporation tax on non-profit entities (Foundations and Public Utility Associations)**

Source: our own elaboration.

| Exemption   | Tax credit  |
|---|---|
| <ul style="list-style-type: none"> <li>• Capital gains that are a result of contributions or donations to non-profit entities.</li> </ul> | <ul style="list-style-type: none"> <li>• 35% of the sums donated</li> <li>• The base of the tax credit (amount donated) cannot exceed 10 per cent of the taxable base for the fiscal year.</li> </ul> |

**Table 5: Fiscal benefits in Corporation Tax and in the donor's Income Tax**

Source: our own elaboration.

Patronage corresponding to each territory also includes donations and contributions made by legal entities and collaboration agreements reached in favour of either of these two types of co-operatives, and local taxes. These co-operatives are exempt from Real Estate Tax, Economic Activity Tax and Urban Land Appreciation Tax.

So we find that the Basque legislation has taken the step to grant greater protection to this type of co-operative, applying the same fiscal benefits as granted to non-profit entities.

## 6. Conclusions

1. Under Spanish legislation, co-operatives enjoy a special fiscal regime that basically affects Corporation Tax, although these societies are also granted certain fiscal benefits under Company Operations Tax, Patrimony Transfer Tax and Economic Activities Tax.
2. There is no doubt that the special fiscal regime applied to co-operative societies takes into account their special characteristics and grants them more favourable treatment than shown to capitalist entities, through the application of fiscal benefits.
3. The fact that a co-operative constitutes an insertion company does not imply that it receives a different fiscal treatment from other co-operatives. Act 20/1990 on fiscal regime of co-operatives classifies co-operatives under three taxation groups: especially protected, protected and non-protected. An insertion co-operative could be in any of these three categories.
4. An insertion co-operative that is a non-profit co-operative, comes close to other types of non-profit entities (foundations and associations). These entities receive more favourable treatment than co-operatives under the Spanish fiscal system.
5. In the Basque Country, there is clear support for public utility and social initiative co-operatives, which fall under the fiscal regime for non-profit entities. Integration co-operatives can be public utility co-operatives as well as social initiative co-operatives. In the first case, if they are declared as such by the Basque government, and in the second case if they comply with certain requirements, among which is that of being non-profit.
6. To promote co-operatives as insertion companies, the Spanish legislator must continue to advance; on the one hand, mercantile legislation should redefine the form and requirements and, on the other hand, for taxation, the current fiscal benefits should be reconsidered.
7. In order to promote the creation of non-profit co-operatives as insertion companies, taxation treatment should become closer to that of non-profit entities.

**Dr Marta Montero is Principal Lecturer in Tax Law and Dr Alfonso C Morales is Principal Lecturer in Organisation Theory at the Faculty of Business Administration (ETEA) University of Cordoba (Spain).**

## Bibliography

- Borzaga, C (1996) "Paro de larga duración e iniciativas de inserción por la economía"; en Vidal, I (coord) *Inserción Social por el trabajo. Una visión internacional*; Ed CIES, Barcelona. pp39-56
- Borzaga, C and Defourny, J (dir) (2001) *The emergence of social enterprise*, Londres.
- Borzaga, C and Santuari, A (dir) (1998) *Social enterprises and new employment in Europe*, Universidad de Trento.
- Calvo Pérez, J, (2005) "En torno al régimen jurídico de las empresas de inserción social: cuestiones conflictivas", *Revista Vasca de Economía Social*, 2005, nº1, pp85-118.
- Carrión García de Parada, P (2001) "Régimen fiscal de las cooperativas", AAAA (Coord. J A García Sánchez), *Comentario a la Ley 27/1999, de 16 de julio*, Tomo I, Madrid: Colegios Notariales de España.
- Coqué, J y Pérez, E (2000) *Manual de creación y gestión de empresas de inserción social*; Ed Universidad de Oviedo.
- Davister, C, Defourny, J and Grégoire, O (2004) "Les entreprises sociales d'insertion dans l'Union Européenne: un aperçu general", *RECMA*, nº 293, julio.
- Defortuny, J, Favreau, L and Laville, J L (1997) *Inserción y nueva economía social*; Ed. CIRIEC, Valencia.
- Demoustier, D (2005) "Las empresas sociales: ¿nuevas formas de Economía Social en la creación de servicios y empleos? *CIRIEC-España, Revista de Economía Pública, Social y Cooperativa*, nº 52, agosto 2005, pp219-236.
- Draperi, J F and Jan, L M (2002) *L'émergence de l'entreprise sociale*, Fondation du Crédit Coopératif.

- Feedei (2003) *Identificación y diagnóstico integral de las empresas de inserción en España*, Ed Popular, Madrid.
- García Delgado, J L (dir) (2004) *Las cuentas de la economía social*, Thomson-Civitas.
- Laville, J L and Nyssens, M (2001) *L'entreprise sociale, éléments pour une approche théorique*, EMES, CRIDA.
- Lopez Aranguren, L M (2002) *Las Empresas de Inserción en España*; Consejo Económico y Social. Colección Estudios nº 127. Madrid.
- Montero Simó, M (2002) "Análisis de los elementos esenciales del régimen tributario de las sociedades cooperativas", *Crónica Tributaria*, nº 101, enero, pp49-67.
- Montero Simó, M (2005) *Análisis jurídico tributario de la sociedad cooperativa*, ETEA-Descléé, Bilbao.
- OCDE (1998) *Les entreprises sociales dans les pays membres de l'OCDE*, Servicio de Desarrollo Territorial.
- Paniagua Zurera, M (2005) *La sociedad cooperativa. Las sociedades mutuas y las entidades mutuales. Las sociedades laborales. La sociedad de garantía recíproca*, Marcial Pons, Madrid y Barcelona.
- Pradini, J (2003) "La economía social y las empresas de inserción", *La economía social y el tercer sector*, Escuela Libre Editorial, Madrid.
- EMES (2000) *L'émergence des entreprises sociales, Une nouvelle réponse à l'exclusion sociale en Europe*, Informes para la Comisión Europea, 1997-99
- VVAA (2006) *Dirección de entidades no lucrativas. Marco jurídico, Análisis estratégico y gestión*, (Coord J Jiménez Escobar y A C Morales Gutiérrez), Thomson-Civitas y ETEA, Navarra.

## Notes

- 1 In general, the groups of social organisations that intervene in insertion processes have a series of structures at their disposal enabling them to respond to all stages of an insertion itinerary. These structures include Refuge Services and Labour Assessment dedicated to developing basic habits for the holding of any job and also Workshops for Skills or Job Training. Factors that determine whether the Insertion Company will be involved for a longer or shorter period depend on the characteristics of the jobs or services offered by the organisation or the type of intervention it carries out.
- 2 The insertion strategy followed can lead to three different situations. In the first place are those who still carry out an essentially assisted or formative activity and who are still awaiting passage into productive activity (long term). Secondly come those who combine social action with a productive job. And finally come those Insertion Companies that only carry out a productive activity, with special emphasis on self-employment (short term). This last case includes the so-called ETT of *insertion and intermediate associations* where said companies decide to hire people in process of insertion to put them to work with other companies, entities or individuals. Although this modality is not frequent in our country, it is wide spread in France
- 3 Such recognition has been shown for the first time, although somewhat indirectly, in an additional disposition of the Law for Urgent Reform Measures of the Work Market for the Increase in Employment and the Improvement in its Conditions, the 9th of July, 2001, which considered "companies of labour promotion and insertion", in whatever legal form or economic activity, for which at least 30% of its jobs had to be dedicated to the employment of socially excluded individuals, to form and train them in carrying out normal labour activities, with the final objective of their full labour integration and access to normal employment
- 4 The exposition of the motives behind the Law highlights that the final objective of social initiative is labour integration. In this respect, please consult Paniagua Zurera (2005).
- 5 The reference to returns does not make sense because a non-profit co-operative may not share out returns to its members.
- 6 For the spatial area of application of these norms see Carrión García de Parada (2001:1005-1006).
- 7 With respect to the fiscal regime of cooperative societies in Spain, see Montero Simó (2005).
- 8 For information on the legal system in Spain concerning Foundations and Public Service Associations: Jimenez Escobara & Morales Gutiérrez (Eds) (2006: 85-180).
- 9 The requirements they have to meet, regulated in exactly the same way in both foral norms, are: 1st any profits made may not be shared out among the stakeholders but must instead be dedicated to the aims; 2nd the posts occupied on the Board of Directors are not remunerated: 3rd the stakeholders, persons or entities associated are not the principle beneficiaries of the activities rendered, nor do they partake of the services or special conditions for personal advantage. In the case of social initiative cooperatives there is a fourth requirement: salaries of worker members and hired workers may not exceed 150% of the salaries corresponding to the sector.
- 10 The content of this regime is similar to that of the Spanish State Law relative to non-profit entities and fiscal incentives for patronage.