

THEORETICAL FRAMEWORK

CIVIL LAW

Social enterprise (SE) – EU “operational definition” (EC & EMES network)

Four legal forms are especially analyzed:



“Legal speciality principle” : legal restrictions on the capacity of the legal entity (through activities or/and purposes)

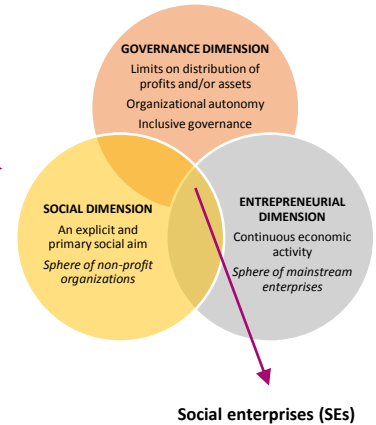
“key elements” of civil law – link between legal speciality principle and the three dimensions of EU definition

1. Entrepreneurial dimension/activity : engagement in continuous economic activity?
2. Social dimension/purpose : primary and explicit social purpose?
3. Governance dimension/purpose : existence of mechanisms to “lock in” the social goals of the organization?

TAX LAW

Attention drawn to the income taxation system for the operating SE :

- >>indirect taxation (value added tax – hereafter VAT, registration fees, inheritance taxes)
- >>incorporation and liquidation of the entity (except allocation of the liquidation bonus)



CURRENT SITUATION

- No special tax status for SEs:
- Corporation tax (CT) or Tax on legal entities (TLE)
- “one taxpayer, one tax” principle (>< mixed of/and partial liability for VAT)
- Only focus on the source of income
- Different regimes (i.a.)

	CT	TLP	TLP versus CT
TAX BASE	active AND passive income	ONLY passive income	LIMITATED BASE
RATES	33.99% (except reduced rates)	Specific and lower rate for each income	LOWER RATES

- Sometimes TLE heavier than CT (e.g. no imputability of withholding tax for TLE taxpayers)

LEGAL AND FISCAL FRAMEWORKS FOR SEs

- Legal recognition of SEs = essential condition for developing the “sector”.
- Definition of the identity of SEs allows policy makers to design and implement specific public policies (including tax measures)
- An enabling fiscal framework that takes into account the social mission of SEs is required (OECD 2013 & EU 2015)

WHAT RELATIONS ARE/SHOULD BE MAINTAINED BETWEEN TAX LAW AND CIVIL LAW ?

First part : what relations are maintained between tax law and civil law (de lege lata) ?

- clarify the links between civil law and tax law and the influence towards each other through an historical approach
- make possible the edification of proposals to clarify the current tax treatment

Second part: what relations should be maintained between tax law and civil law (de lege ferenda) ?

- propose a new model of taxation. Should we tax these entities ; if so, why, how and to achieve what purposes ?
- two opposed working assumptions :

TAX LAW SHOULD BE CONNECTED TO CIVIL LAW

By a functional comparative approach (Belgium – United Kingdom – France)

TAX LAW SHOULD BE DEVELOPED REGARDLESS OF CIVIL LAW

Through the European Union law VAT, EU terminology (e.g. economic activity)

TOMORROW, OPPORTUNITY TO CHANGE THE PARADIGM ?

SOURCE OF INCOME INPUTS



ALLOCATION OF INCOME OUTPUTS



REAL OPPORTUNITY?

- National constraints : equality and non-discrimination
- EU constraints : will the European Court of Justice accept that SEs are not comparable or that a different tax treatment can be justified on the difference on profit distribution ? (State Aid Law)