



TAXATION OF CO-OPERATIVE SOCIETIES

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WHAT SOCIETY IS?

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- Section 4 of the Co-operative Societies Act, 1912 defines cooperatives as “a society which has in its objectives the promotion of economic interest of its members in accordance with cooperative principles.”
- Co-operative society is a special type of business organisation different from other forms of organisation.
- It is a special form in which people voluntarily associate together on a basis of equality for the promotion of common interests.

WHAT SOCIETY IS?

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- Following characteristics emerge from the definition
 - Open membership
 - Voluntary Association
 - State Control
 - Source of Finance – usually from members themselves
 - Democratic Management
 - Limited interest in Capital
 - Distribution of surplus
 - Self help through mutual co-operation
 - Education of members

- Considering the above characteristics, let us evaluate provisions of Income Tax Act.

INCOME TAX ACT - SOCIETY

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- Co-operative Society as per Income Tax Act
Definition [S. 2(19)]
- Co-operative society means a co-operative society registered under the Co-operative Societies Act, 1912, or under any other law for the time being in force in any State for the registration of Co-operative societies

IT ACT – SOCIETY BASICS

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- Cooperative Societies are taxed as AOP S.2(31)(v) of the Act
- A Co-operative Society being an AOP is taxed like any other assessee
- Co-operative society can have income under any heads of income Except for Salary
- Section 27(iii) – Owner of a House property – A member of a Co-operative Society

IT ACT – SOCIETY BASICS

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- Section 2(24)(vii) : Insurance Business – profit to be computed as per r.w.s. 44 : First schedule – Rules
- Section 10(27) : Any income of a Co-operative Society formed for promoting the interests of the members of SC/ST or both.
- Section 36(1)(ia) : Other deduction – Premium paid by Federal Milk Co-operative Society on Cattle.
- Section 40(ba) : Disallowance - interest or remuneration to member - AOP/BOI – Other than Co-operative Society

UNIQUENESS OF SOCIETIES

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- Mutuality
- Issues for Housing Societies
- Ch VI A Deductions – S. 80P
- Specified Domestic Transactions
- Applicability of TDS/TCS provisions
- Other Provisions

MUTUALITY

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- “Mutuality” means that the contributors and the beneficiaries are identical. Since one cannot make profit by dealing with himself, there cannot be any taxable income wherever such concept applies.
- A mutual concern or association stands on the same principle. All the contributors to the common fund are entitled to participate in the surplus and all participants to the surplus are contributors in the case of a mutual concern.
- The concept of mutuality has been extended to defined groups of people who contribute to a common fund, controlled by the group, for a common benefit.

MUTUALITY

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- The doctrine of mutuality finds its origin in common law.
- One of the earliest modern judicial statements of the mutuality principle is by Lord Watson in the House of Lords, in 1889, in *Styles (Surveyor of Taxes) Vs. New York Life Insurance Co.* [1889] 2 TC 460, they held thus:
- “... when a number of individuals agree to contribute funds for a common purpose ... And stipulate that their contributions, so far as not required for that purpose, shall be repaid to them. I cannot conceive why they should be regarded as traders, or why contributions returned to them should be regarded as profits.”

MUTUALITY

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- House of Lords in *The Commissioners Of Inland Revenue Vs. The Cornish Mutual Assurance Co. Ltd.* [1926] 12 T.C. 841 (H.L.) wherein it was held that a mutual concern may be held to carry on a business or trade with its members, though the surplus arising from such trade is not taxable income or profit.

MUTUALITY

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- The High Court of Australia: *The Bohemians Club Vs. The Acting Federal Commissioner of Taxation* [1918] 24 CLR 334 “A man is not the source of his own income ... A man’s income consists of moneys derived from sources outside of himself. Contributions made by a person for expenditure in his business or otherwise for his own benefit cannot be regarded as his income...The contributions are, in substance, advances of capital for a common purpose, which are expected to be exhausted during the year for which they are paid. They are not income of the collective body of members any more than the calls paid by members of a company upon their shares are income of the company. If anything is left unexpended it is not income or profits, but savings, which the members may claim to have returned to them.”

MUTUALITY

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- **CIT vs. Bankipur Club Ltd. [1997] 226 ITR 97 (SC): Clubs realising amounts from** their members for supply of drinks, refreshments building rent or amounts by way of admission fees, periodical subscription, etc., on account of privileges, conveniences and amenities extended to them - No profit motive - Surplus receipt is not income as such clubs are mutual concerns.
- **CIT vs. Prabhukunj Co-op. Housing Society Ltd. [2015] 59 taxmann.com 104 (FB) (Guj): Where assessee-society received** contribution from outgoing members as premium on sale of plot, since said amount was to be expended for common amenities or for general benefit of members of society, or to be distributed amongst members in form of dividend or lease rent waiver, it could not be regarded as 'taxable income' in hands of assessee.

MUTUALITY

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- The identity of the contributors to the fund and the recipients from the fund;
- The treatment of the company, though incorporated, as a mere entity for the convenience of the members, in other words, as an instrument obedient to their mandate; and
- The impossibility that contributors should derive profits from contributions made by themselves to a fund which could only be expended or returned to themselves.

MUTUALITY

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- *Kanga & Palkhiwala explain this concept in “The Law and Practice of Income Tax” (8th Edn. Vol. I, 1990) at p. 113 as follows:*
- “...The contributors to the common fund and the participators in the surplus must be an identical body. That does not mean that each member should contribute to the common fund or that each member should participate in the surplus or get back from the surplus precisely what he has paid.” *The Madras, Andhra Pradesh and Kerala High Courts have held that the test of mutuality does not require that the contributors to the common fund should willy-nilly distribute the surplus amongst themselves : it is enough if they have a right of disposal over the surplus, and in exercise of that right they may agree that on winding up the surplus will be transferred to a similar association or used for some charitable objects....”*

HOUSING SOCIETIES

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- Admission Fees
- Transfer Fees
- Non Occupancy Charges
- Fees for Use of Common Areas
- Parking Charges
- Transfer Premium
- Delay Payment Charges
- Corpus Fund Received by Society
- Corpus Fund Received by Members
- Rent for Construction Period
- Others Income – Hoardings and Mobile Towers

S. 80P OF INCOME TAX ACT, 1961

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- Where, in the case of an assessee being a co-operative society, the gross total income includes any income referred to in sub-section (2), there shall be deducted, in accordance with and subject to the provisions of this section, the sums specified in sub-section (2), in computing the total income of the assessee. [S. 80P (1)]
- Accordingly, sub-section (2) gives deductions available as shown hereafter.
- Such co-operative societies having such income are eligible for deductions.
- The quantum of deductions are also given therein.

S. 80P OF INCOME TAX ACT, 1961

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- S. 80P of Income Tax Act, 1961:
 - Co-operative Credit Society [S. 80P (2)(a)(i)]
 - Cottage Industry [S. 80P(2)(a)(ii)]
 - Marketing Society marketing agricultural produce [S. 80P(2)(a)(iii)]
 - Supportive society [S. 80P(2)(a)(iv)]
 - Society processing of agricultural produce [S. 80P(2)(a)(v)]
 - Society providing collective disposal of the labour [S. 80P(2)(a)(vi)]
 - Society indulging in fishing or incidental activities [S. 80P(2)(a)(vii)]
 - Primary society supplying milk, etc. to federal society & others [S. 80P(2)(b)]
 - Consumers Co-operative society [S. 80P(2)(c)(i)]
 - Any Other Society [S. 80P(2)(c)(ii)]
 - Co-operative Bank [S. 80P(4)]

SPECIFIED DOMESTIC TRANSACTIONS

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Section	Tax Payers covered	Applicability of TP provisions on SDT where value exceeds RS.5 crores.
40A(2)	Substantial Interested Parties	Expenses or payment made or to be made.
80A(6)	Enterprise claiming profit linked deductions from total income under chapter VI-A	Intra Transfer of goods and services and within the closed connected entities.

SPECIFIED DOMESTIC TRANSACTIONS

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- Legislative intention behind insertion of Section 40A(2)
Reasonableness of expenses and criteria for determination
- Fair Market Value vs. Arm's Length Price
- Provisions of section 40A(2) are not applicable to a cooperative society. *[CIT vs. Manjara Shetkari Sahakari Sakhar Karkhana Ltd. (2008) 301 ITR 191 (Bom.)]*
- Sub-clause (vi) of section 40A(2)(b) makes a reference to 'any person who carries on a business or profession'. Therefore, in a case where the AOP carries on 'Business or Profession', payments made to such AOP, in whose business the taxpayer has substantial interest, may be covered within the ambit of sub-clause (vi) of section 40A(2)(b), and accordingly, domestic transfer pricing provisions may apply to such payments.

TDS / TCS PROVISIONS

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- All TDS/TCS provisions equally apply to Co-operative society including housing society as they apply to other Assessee
- Form 15G can be given when tax payable is NIL because S.197A(1A) applies to all persons other than Co. or Firm.
- No TDS u/s. 194A in case of interest paid by a cooperative society to its member or to other cooperative society [sub clause no. (v) of Sec. 194 A(3).
- W.e.f. 01.06.15 this exclusion shall not apply to a co-operative bank. Thus interest paid by a cooperative bank to its members shall be liable to TDS w.e.f. 01.06.15.
- Because of the above amendment the controversy gets settled indirectly because the amendment is prospective.

OTHER PROVISIONS

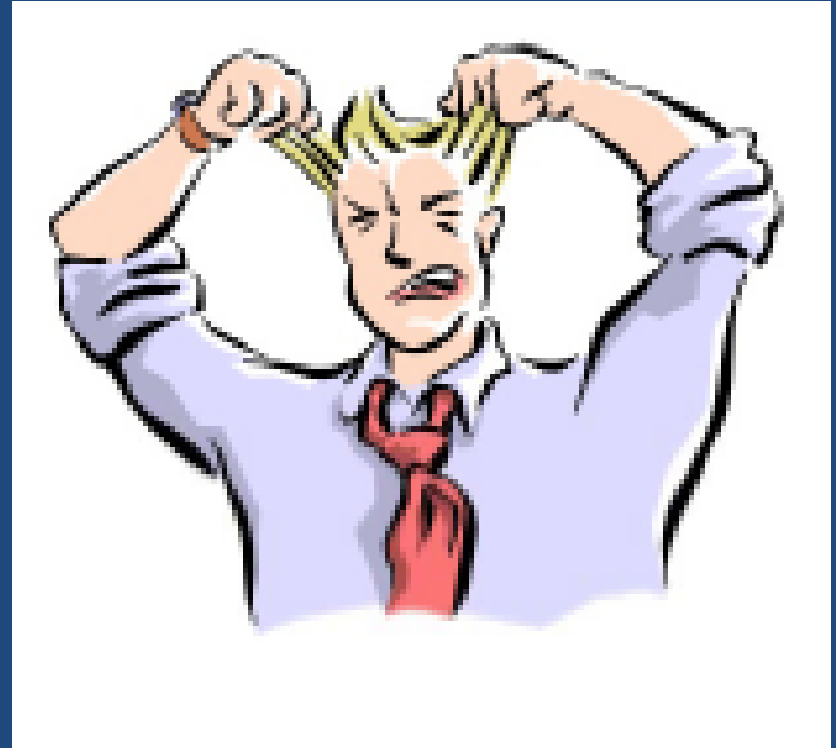
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- Other than S. 80P which is applicable only in case of a cooperative society, there are other incentives applicable to cooperative society (S. 80IA to 80IE) like any other category of person.
- In fact in S. 80IB, co-operative societies are entitled to extra deduction of 2 years as compared to other entities).
- Investment linked incentives u/s. 35AD are also available to co-operative societies – where 100% of the capital expenditure incurred in specified businesses are allowed as deduction.
- S. 115JEE- Alternate Minimum Tax (AMT) does not apply to deduction u/s. 80P.

Important Issues

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- Co-operative Banks are Co-operative Societies?
- Sale of FSI/TDR is taxable as Capital Gains? If yes, in whose income, members of Societies?
- Major Repairs – Can it be claimed as revenue expenses against income from Towers or Hoardings?
- Other issues...



Thank you

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