

## The reinforced fiscal derivation, the civil postulates of faithful representation of measuring of the economical facts object of accounting/correctness/ understandability and the civil and penalty legitimacy of the financial reporting

The text addresses the reinforced fiscal derivation related to non IAS adopter companies. This tax innovation has an impact on the tax aspects of the accounting data and, at least in theory, brings civil income closer to fiscal income. The book asked whether, on the one hand, the reinforced fiscal derivation would mean ending the fiscal interference of the balance sheet (which leads to the invalidity of the balance sheet) and, on the other hand, whether the application of the reinforced fiscal interference would guarantee the accuracy and understandability of the financial reporting. In addition, following a recent ruling by the Court of Cassation, the issue of the understandability of the financial statements was addressed, as well as the truthfulness of the reinforced derivation, from both a civil and a penalty standpoint.

**Maria Silvia Avi** is Full Professor of Business Administration at the Management Department of Ca' Foscari University, Venice. She is engaged in research activities at the field of corporate management, financial statements, accounting records and management control. She is a chartered accountant and auditor. The numerous publications produced during recent years have focused, in particular, on the management control of small and large companies, the accounting and legal aspects of the financial statements, the invalidity of the financial reporting and their use in a management and information tool within and outside the company.

€ 15,00



9788867742868

 Pearson

9788867742868

Maria Silvia Avi

# The reinforced fiscal derivation, the civil postulates of faithful representation of measuring of the economical facts object of accounting/correctness/ understandability and the civil and penalty legitimacy of the financial reporting

## The role of understandability in civil and penalty matters

Maria Silvia Avi

 Pearson

**The reinforced fiscal derivation, the civil postulates  
of faithful representation of measuring of the  
economical facts object  
of accounting/correctness/understandability  
and the civil and penalty legitimacy of the financial  
reporting**

**The role of understandability  
in civil and penalty matters**



**The reinforced fiscal derivation, the civil postulates of faithful representation of measuring of the economical facts object of accounting/correctness/understandability and the civil and penalty legitimacy of the financial reporting**

**The role of understandability in civil and penalty matters**

*edited by*  
Maria Silvia Avi

All rights reserved  
© 2019, Pearson Italia, Milan-Turin

First published: January 2019

ISBN 9788867742868

The publisher is available to those copyright holders with whom it was not possible to establish contact for the anthological passages, quotes, graphic, cartographic and photographic reproductions pertaining to the property of third parties included in this work, as well as for any unintentional omissions and/or errors of attribution in the references. Unauthorised reproduction by any means in whole or in part or for educational use is forbidden.

Photocopies for personal use of the reader may be made within a limit of 15% of each volume upon payment to the SIAE of the amount envisaged in art. 68, paragraphs 4 and 5 of Italian Law no. 633 of 22 April 1941.

Reproductions made for purposes of a professional, economic or commercial nature or for use other than personal use may be made following specific authorization issued by CLEARedi, Corso di Porta Romana 108, 20122 Milan, e-mail autorizzazioni@clearedi.org and website [www.clearedi.org](http://www.clearedi.org).

*Cover design*  
Giulia Boffi

*Editorial realization*  
Andrea Astolfi

*Printed by*  
Rotomail S.p.a., Vignate (MI)

**[www.pearson.it](http://www.pearson.it)**

# Contents

Introduction p. VII

## Chapter I

The reinforced derivation: a brief summary of the tax regulations p. 1

1.1 The reinforced derivation: introductory notions p. 1

1.2 Does the reinforced derivation ensure the tax payment of economically fair taxes? p. 35

## Chapter II

The reinforced tax derivation and the civil accounting postulates pursuant to Article 2423 of the Italian Civil Code. Does the reinforced derivation, with regard to the relationship between fiscal values and civil balance sheet data, guarantee the, faithful representation in measurement of the economic facts registered in the financial reporting? p. 37

2.1 Do the reinforced derivation imply the civil law accuracy and faithful representation in measurement of the economic facts' objects of the financial reporting ? The unresolved problem of tax interference in year-end measurement items p. 37

## Chapter III

Legitimacy of financial statements: faithful representation in measurement of the economic facts' objects of accounting, correctness and understandability. Brief considerations on the inter-relationship between financial reporting postulates p. 57

3.1 The reinforced derivation and financial reporting postulate, loyal, correctness and understandability. Introductory Considerations p. 57

3.2 The understandability and faithful representation in measurement of the economic facts' objects of Accounting/Correctness: interrelationships developed over time. Civil invalidity due to deficiencies in understandability p. 59

3.2.1 Meaning of the understandability postulate. p. 59

3.2.2 Judicial and business consequences of the violation of the understandability postulates and/or faithful representation in measurement of the economical facts objects of accounting and/or correctness p. 88

3.2.2.1. Historical evolution of the interconnection of understandability violation and precision/faithful representation in measurement of the economic facts' objects of accounting/ correctness: the past and the present. p. 88

## Chapter IV

The qualitative penalty false: penalty false financial reporting also when the civil financial reporting is based on a faithful representation in measurement of the economic facts' objects of accounting, and on true and view measurement, and it is correct. p. 105

4.1 The understandability and the qualitative penalty false. Demonstration that a financial reporting can be based on faithful representation in measurement of the economic facts' objects of accounting and true and fair view but can be a penalty false financial reporting (with jail as punishment). p. 105

References p. 119

# Introduction

Financial reporting is influenced by factors that have nothing to do with the way in which company transactions are accounted for. If all of them were to come from such modes, the balance sheets of companies worldwide would be equal or, at least, similar<sup>1</sup>. On the other hand, valuations and reclassification schemes differ considerably. In particular, the concept of true and fair view also depends on a series of environmental factors<sup>2</sup> that, varying from country to country, heavily influence the preparation of the financial reporting. In particular, it should be remembered that the most important factors impacting on financial reporting are<sup>3</sup>:

- financial system (i.e. the tendency for companies to go to banks or the stock exchange to draw the funding flows they need)<sup>4</sup>;
- legal system (enterprises within the area of civil law behave differently from enterprises within the area of common law)<sup>5</sup>;

---

<sup>1</sup> See Godfrey J.M., Chalmers K., (2007) *Globalisation of Accounting Standards*, Edgar Elgar; Haller, A. *Financial accounting developments in the European Union: past events and future prospects*, (2002). *European Accounting Review* vol 11 issue 1, pages 153-190;

<sup>2</sup> Per una visione internazionale see Hopwood, A.G., (2009). "Accounting and the environment", *Accounting, Organizations and Society*, Vol. 34, Issues 3-4, pages 433-439; Hopwood, A. G. (1973). *An accounting system and managerial behaviour*. Lexington Books;

<sup>3</sup> Per una visione internazionale su questo argomento si vedano: Alexander D., *A European true and fair view?*(1993). *European accounting review*, vol 2, issue n. 1.; Alexander, D. and H. R. Schwencke (1997). *Accounting changes in Norway: a description and analysis of the transition from a continental towards an anglo-saxon perspective on accounting*. 20th Annual Congress of the European Accounting Association. Graz, Austria. Alexander, D. and H. R. Schwencke, (2003). *Accounting change in Norway*, *European Accounting Review* vol. 12, issue 3, p. 549-566.; Benston, G. J., M. Bromwich, R.E. Litan, and A. Wagenhofer, (2006). *Worldwide financial reporting: The development and future of accounting standards*. Oxford University Press; Burchell S., C. Clubb, A. Hopwood, J. Hughes, J. Nahapiet, (1980). *The roles of accounting in organizations and society*, *Accounting, Organizations and Society*, Vol. 5, issue 1, Pages 5-27; Burchell S., C. Clubb A.G. Hopwood (1985). "Accounting in its social context: Towards a history of value added in the United Kingdom", *Accounting, Organizations and Society*, Vol. 10, issue 4, pages 381-413; Cristea, S. M. and Saccon, C., (2008) *Italy between applying national accounting standards and IAS/IFRS*, in *Romanian Accounting Profession's Congress* (Bucharest: CECCAR); Delvaile, P., Ebberts, G. and Saccon, C. (2005) *International financial reporting convergence: evidence from three continental European countries*, *Accounting in Europe*, 2(1), pp. 137-164;

<sup>4</sup> Per una visione internazionale see Hopwood, A.G., (2009). "The economic crisis and accounting: Implications for the research community", *Accounting, Organizations and Society*, Vol. 34, Issues 6-7, pages 797-802.

<sup>5</sup> Per una visione internazionale See Di Pietra R., McLeay S., Riccaboni A., (2001) "Regulating Accounting Within the Political and Legal System", *Contemporary Issues in Accounting Regulation*, Chapter 3, Pages 59-78, Springer;



- religious system (in some states, for religious reasons, interests cannot be included within the financial reporting because they are forbidden by theological norms);
- general culture within the country, which may be more or less inclined to disclose information about companies<sup>6</sup>.
- tax system, which generally has an important impact on the preparation of the financial statements, since there is often a contamination of tax items in financial reporting<sup>7</sup>.

---

<sup>6</sup> Per una visione internazionale see: Hopwood, A. G., (1976). *Accounting and human behavior*. Prentice Hall; Hopwood, A. G. and Peter Miller (1994). *Accounting as social and institutional practice*. Vol. 24. Cambridge University Press; Hopwood, A.G., (1999). "Situating the practice of management accounting in its cultural context: an introduction". *Accounting Organizations and Society*, Vol. 24, Issue 5-6, pages 377-378; Hopwood, A.G., (1983). "On trying to study accounting in the context in which operates", *Accounting, Organizations and Society*, Vol. 8, No. 213, pages. 287-305; Hopwood, A. G., (1990). "Ambiguity, Knowledge and Territorial Claims: Some Observations on the Doctrine of Substance Over Form", *British Accounting Review*, Vol. I, pages 79-87; Lewis A., Carrera S., Philip Jones J.C., (2009), "Individual, cognitive and cultural differences in tax compliance: UK and Italy compared", *Journal of Economic Psychology*, Vol. 30, Issue 3, pages 431-445;

<sup>7</sup> Per una visione internazionale See Anda E. O., Puiga X. (2005). *The Changing Relationship between Tax and Financial Reporting in Spain*, *Accounting in Europe*, Vol. 2, Issue 1, pages 195-207; Aisbitt, S. (2002) *Tax and accounting rules: some recent developments*, *European Business Review*, 14(2), pp. 92-97; Graham J.R., Raedy J.S., Shackelford D.A, (2012) "Research in accounting for income taxes", *Journal of Accounting and Economics*, vol. 53, issue 1- 2, pages 412-434; Haller, A., (1992). *The relationship of financial and tax accounting in Germany: A major reason for disharmony in Europe*, *The International Journal of Accounting*, Vol 27, issue 4, pages 310-323; Hanlon M., Heitzman S., (2010), "A Review of tax research", *Journal of Accounting and Economics*, vol. 50, issue 2-3, pages 127-178; Hoogendoorn, M. (1996). "Accounting and Taxation in Europe - A comparative overview", *European Accounting Review*, vol. 5, supplement; Lamb M., Lymer A., Freedman J., James S., edited by (2005). *Taxation, An Interdisciplinary Approach to Research*, Oxford University Press; Lamb M., C. Nobes, A. Roberts (1998). *International Variations in the Connections Between Tax and Financial Reporting*, *Accounting and Business Research*, vol. 28, Issue 3, pages 173-188; Nobes, C. W. (1979). *Fiscal harmonization and European integration: comments*, *European Law Review*, August; Nobes, C. and Schwencke, H. R. (2006) *Modelling the links between tax and financial reporting: a longitudinal examination of Norway over 30 years up to IFRS adoption*, *European Accounting Review*, vol. 15, Issue 1, pages 63-87; Gavana G., Guggiola G., Marenzi A., *Evolving Connection between tax and financial reporting in Italy*, *Accounting in Europe*, issue n. 10, 2013; Kleven H. J., Kreiner C.T., Saez E., (2016) "Why Can Modern Governments Tax So Much? An Agency Model of Firms as Fiscal Intermediaries", *Economica*, Vol. 83, Issue 330, Pages 219-246; Nobes, C.W. (1980). *Imputation systems of corporation tax in the EEC*, *Accounting and Business Research*, Spring, p- 221-231; Nobes, C.W. and H.R. Schwencke (2006). *Tax and financial reporting links: a longitudinal examination over 30 years up to IFRS adoption, using Norway as a case study*, *European Accounting Review*, vol. 15, issue 1, pp. 63-87; Rocchi F., (1996) "Accounting and Taxation in Italy", *European Accounting Review*, vol. 5, issue 1, pages 981-989; Shaviro D., (2008), "The Optimal Relationship Between Taxable Income and Financial Accounting Income: Analysis and a Proposal", New York University, Law And Economics working papers, Paper n. 106; Spengel, C. (2003) *International accounting standards, tax accounting and effective levels of companies tax burdens in the European Union*, *European Taxation*, July/August 2003, pp. 253-166; Schoen, W. (2004) *International accounting standards – a 'starting point' for a common European taxbase?* *European Taxation*, vol 44, issue 10, Pages. 426-440; Schoen W., (2005), "The Odd Couple: A Common Future for Financial and Tax Accounting?" *Tax Law Review*, Vol. 58, Issue 2, pages 111-148; Zareh Asatryan, Z., C. Castellon, T. Stratmann (2016). *Balanced Financial reporting Rules and Fiscal Outcomes: Evidence from Historical Constitutions*, Centre for European Economic Research, Discussion Paper N. 16-034. Nobes, C. W., M. Gee and A. Haller (2010), 'The Influence of Tax on IFRS Consolidated Statements', *Australian Accounting Review*, Vol. 7, No. 1, pages 97-122.

This work focuses on the last point highlighted in the list above. The true and fair view and the faithful representation in measurement of the economic facts' objects of accounting are heavily influenced by tax regulations in that fiscal legislation, in the various countries, imposes different behavior with respect in the relationship between items of financial reporting and items deriving from tax valuations useful, in theory, only to the determination of impaired income.

The analysis begins with an in-depth analysis of the so-called reinforced derivation, a legislative innovation introduced in 2016 which, for particular items of financial reporting, allows the use of statutory items in the tax declaration even if their amount coincides with that provided for by the tax regulations or by the TUIR.

The first question we asked ourselves was whether compliance with the reinforced drift would also unequivocally involve faithful re-presentation in measurement of the economic facts objects of accounting and true and fair view in financial reporting. The answer is no, because the items not included in the reinforced derivation (e.g. depreciation) heavily pollute the financial reporting. Therefore, even if the enhanced derivation has brought the taxable income closer to the operating income, it does not allow a perfect overlap of the two, mainly due to incorrect conduct by taxpayers.

The second question we have asked ourselves is whether a financial reporting in which there is a impeccable, faithful representation in measurement of the economical facts' objects of accounting, and true and fair view can certainly be said to be legitimate. Furthermore, in this case the answer is negative because the postulate of understandability has equal dignity with that of the faithful representation in measurement of the economic facts objects of accounting. Consequently, if a financial reporting is characterized by a true and fair view and by a faithful representation in measurement of the economic facts objects of accounting but presents shortcomings in understandability, the financial reporting is null and void.

The last question we answered was the impact of absence or gaps in understandability. Certainly, at the civil law level, after a very troubled evolution, it can be affirmed that understandability represents a postulate whose absence causes radical nullity of financial reporting.

The question that has been debated for years among scholars was whether this shortcoming could also be included in the penal sphere. The answer is positive in that, with a recent ruling by the Supreme Court of Cassation (i.e. the Court that issues the last level of judgment in Italy, in both civil and criminal environments), the existence of the false qualitative penalty was affirmed, i.e. the crime of a false penalty in financial reporting even when the document is

perfectly true and fair and presents a faithful representation in measurement of the economic facts' objects of accounting. The gaps or absence in understandability, provided that they visualize the conditions provided for by art. 2621 of the Italian Civil Code, provoke a penalty crime and false penalty in financial reporting with the possibility of imprisonment for the accused.

All this leads to the assertion that a faithful representation in measurement of the economic facts' objects of accounting and the true and fair view are not sufficient for the financial reporting to be valid and legitimate<sup>8</sup>, not even if connected to a correct application of the so-called reinforced derivation. The understandability identifies a postulate essential to the validity of the financial statements, the underestimation of which may lead the preparer of the financial statements to prison, provided that the circumstances required from the commission of the criminal offence provided for by art. 2621 c.c.. For further information about this issue, as well as the above issues, please refer to the following pages.

---

<sup>8</sup> See Nobes ,C.W., Aisbitt S. (2001). "The True and Fair Requirement in Recent National Implementations", Vol. 31, No. 2, pages 83-90.

# Chapter I

## The reinforced derivation: a brief summary of the tax regulations

### *SUMMARY:*

- 1.1 The reinforced derivation: introductory notions;
- 1.2 Does the reinforced derivation ensure the tax payment of economically fair taxes

### 1.1 The reinforced derivation: introductory notions

With the Legislative Decree. 28 February 2005, No 38, Article 4, paragraph 7 ter, the tax legislature amended Article 4, comma 7 ter has modified article 83 of the TUIR (text on Italian income taxes), providing for the so-called reinforced derivation for IAS adopter companies<sup>1</sup>. With the above mentioned amendment, in 2005, Article 83, was amended as follows:

---

<sup>1</sup> The strengthening of the derivation principle implies that changes to accounting rules are automatically reflected in the taxable amount. However, their content could conflict of the principles and values that typically underpin tax legislation. In addition, their frequency could be a source of uncertainty.

If, in the case as a reference to domestic accounting standards, these effects are attributable to the activities of the domestic legislator, and can therefore be controlled by him, in the case for a reference to international accounting standards. To remedy this, a few years after the change towards the single-track model, it has been established that the relevance of the new accounting standards (for which the rules relating to the latter refer to the first) is not immediate, but must pass through a double filter: a first, operating upstream, practical coordination with their civil code, and a second, directly concerning this calculation, practical to their coordination with tax regulations. In this way, a path has been traced for the re-conquest, by the regulations in question, of segments of discipline which, otherwise, would be entrusted, by virtue of the adhesion to the single-track model, to the international accounting standards. So, a path inevitably destined to bring back to the model of the double track”.. Zizzo, *Il principio di derivazione a 10 anni dall’introduzione dell’Ires*, in *Rassegna Tributaria*, 2014, n. 6, p. 1314. On reinforced derivation See, among others: Cerato “principio di derivazione rafforzata anche ai soggetti Oic “adopter””, in *Guida alla contabilità & bilancio*, Fascicolo: 4, 2017; Sebastianelli, Luzietti.,” *Ambito soggettivo di applicazione del principio di derivazione rafforzata*” in *Amministrazione & finanza*, volume: 33 - Fascicolo: 2, 2018; Salvadeo -D’Angelo,” *Principio di derivazione rafforzata nella determinazione del reddito dei soggetti IAS/IFRS*”, in *Bilancio e reddito d’impresa*, Volume: 2 - Fascicolo: 5, 2011; Fasolino-Albano, “ *La determinazione del reddito dei soggetti IAS ed il principio di derivazione rafforzata*”, in *Bilancio vigilanza e controllo*, Fascicolo: 4, 2011; Cerato , “ *principio di derivazione rafforzata anche ai soggetti Oic “adopter”*”, in *Guida alla contabilità & bilancio*, Fascicolo: 4, 2017; Cerato, “ *Principio di derivazione rafforzata e determinazione del reddito d’impresa (parte seconda)*”, in *Bilancio, vigilanza e controlli*, Fascicolo: 4, 2017; Ciani , “ *Bilancio e TUIR: deroghe di principio di ‘derivazione rafforzata’ alla luce del D.M. 3 agosto 2017*”, in *Bollettino tributario d’informazioni*, Volume: 84 - Fascicolo: 20, 2017; Faienza, *Il ‘sistema tripartito’ di determinazione del reddito ai fini IRES e la derivazione rafforzata per i soggetti OIC-adopter*”, in *Corriere tributario*, Volume: 40 - Fascicolo: 35, 2017.

## Art. 83 TUIR

“Comprehensive income is determined by making any increase or decrease resulting from the application of the criteria set out in the subsequent provisions of this section to the profit or loss resulting from the income statement for the financial year closed for the tax period [...]. In the case of activities benefiting from partial or total income tax relief schemes, the related tax losses are material to the same extent as positive results would be significant.

For parties that prepare their financial statements in accordance with the international accounting standards set out in Regulation (UE) no. 1606/2002 of the European Parliament and of the Council of 19 July 2002, also in the wording deriving from the procedure provided for in a 4, comma 7-ter, of Legislative Decree no. 38 of 28 February 2005, the criteria for qualification, temporal allocation and classification in the financial statements set out in those accounting standards apply, as well as an exception to the provisions of the subsequent articles of this section”<sup>2</sup>

The reinforced derivation provided for IAS adopters consists in the fact that, also as an exception to the tax regulations in force, the criteria for qualification, temporal allocation and classification in the financial statements envisaged by the international accounting standards have applied since 2005. For these companies, substance prevails over form as the IAS/IFRS standards base the structure of every other international standard on this fundamental principle. There are restrictions to this rule, which we will not go into in more detail here. The circumstance to be noted in a clear manner is that, in the period prior to 2017, for non-IAS adopters, the tax criteria established by the TUIR enjoyed a mandatory application that could also conflict with the principles set out in the Italian Civil Code and in the national accounting standards OIC<sup>3</sup>. For IAS companies, therefore, the substance prevailed over the form, not only in the financial statements but also in the tax area. For companies which, on the other hand, drew up their financial statements based on the Italian Civil Code and national OIC principles, in the financial statements, the substance prevailed over the form following a widespread interpretation of art. 2423a. However, this had no fiscal impact. From a tax point of view, the tax regulations laid down the principles,

---

<sup>2</sup> Art. 83 TUIR as amended by D. Lgs. 38/2005.

<sup>3</sup> Provasoli A., Mazzola P., Pozza L., (2007) “The role of National Standard Setters in the Standards Developing process: the Italian experience”, in Godfrey J.M., Chalmers K., Globalisation of Accounting Standards, Edgar Elgar.

also in conflict with the Code, that had to be applied when determining the IRES tax base.

Interesting, in this regard, to fully understand the meaning of this reinforced derivation, are the observations contained in the Circular of the Inland Revenue (in Italian language Agenzia delle Entrate) n. 7E of 28 February 2011. Section 3.1 of this Circular, which deals with this issue, explains the impact of the additional derivation provided for IAS adopters.

*Circular of the Inland Revenue 7E of 28 February 2011 on: the rules for determining the income of persons required to adopt IAS/IFRS - General Part - Legislative Decree No. 38 of 28 February 2005, Law No. 244 of 24 December 2007 and Decree of the Ministry of the Economy and Finance of 1 April 2009, No. 48.*

### 3.1 “The reinforced derivation principle “

The general principle of “reinforced derivation”, on which the new tax regulations are based, is contained in the current Article 83 of the TUIR, which, as a result of the changes introduced by Article 1, paragraph 58, letter a), of Law no. 244 of 2007, provides that for the purposes of determining business income “the criteria for qualification, temporal allocation and classification in the financial statements envisaged by said accounting standards shall apply, also as an exception to the provisions of the subsequent articles of this section”.

In particular, it should be noted that the provisions of the forementioned Law no. 244 of 2007 eliminated, in the text of the aforementioned Article 83 of the TUIR, the words “increased or decreased by the components that, as a result of the international accounting standards, are directly recognised in equity”.

The IAS Regulation confirmed this approach, reiterating how, pursuant to Article 83, paragraph 1, third sentence, of the TUIR, “for the purposes of applying Chapter II, Section I, of the Consolidated Income Tax Act, the income and balance sheet items represented in the financial statements based upon the criterion of the prevalence of substance over form envisaged by the IAS” are relevant for IAS adopters.

In particular, as highlighted in the explanatory report to the said regulation, the novelty of the reference to article 83 of the TUIR consists in assuming the financial statement representations inspired by the principle of the prevalence of the room over the form, which strongly pervades the entire accounting discipline provided for by the IAS, instead of the traditional reference to the contractual results.

Indeed, the principle of substance over form is a general principle that is not always perfectly defined: the Conceptual Framework IFRS merely states that transactions and other events must be “recognized and presented in accordance with their substance and economical reality and not only in accordance with their lawful form”; consequently, IAS/IFRS gives preference to economical substance over lawful form in cases where these two aspects conflict.

Thus, the aforementioned principle removes, in general, the representation of corporate facts according to their legal-formal nature (to which, instead, the previous fiscal discipline made exclusive reference) and gives way to a representation that - favoring the view of the reader-investor of the financial statements - highlights the substantial effects of each transaction in the light of the effective transfer of the related risks and benefits.

In other words, for IAS adopters, instead of the formal legal evidence of the equity and/or income situation, the representation of the transactions carried out according to their economic and financial substance is recorded for tax purposes.

With the amendments introduced by the 2008 Italian financial law, therefore, the tax structure envisaged by the TUIR for IAS adopters - recognizing the tax representation of company operations according to qualifications, time allocations and IAS compliant classifications and thus going beyond the previous legal and formal set up - significantly reduces the discrepancies between the profit in the financial statements and company income.

The new regulation thus abandons the tax structure outlined in Legislative Decree no. 38 of 2005 - which had maintained the management of the values (balance sheet and tax) in “double-track” and the tax relevance of the legal-formal representations of corporate transactions - and strengthens the direct dependence of tax income on the qualifications, classifications and temporal imputations of the IAS compliant financial reporting.

Precisely because this dependence is limited to the recognition of “qualifications”, “classifications” and “temporal charges”, it represents a “reinforced” (and not already “full”) derivation: in fact, evaluation phenomena, not expressly mentioned in the letter of Article 83, are generally excluded from this context, as well as, as will be said, some specific cases for which the tax legislator, with exceptions and/or additions to the aforementioned principle of enhanced derivation, wanted to provide for differentiated rules (sometimes maintaining the previous tax scheme).

The provisions of Article 15 of Decree Law No. 185 of 2008 (which is the subject of Circular No. 33 of July 10, 2009), also go in the same direction - to mitigate the “discrepancies” between financial reporting items and fiscal val-

ues. which introduced the possibility for IAS companies to realign, by a specific option in their tax returns, the differences between the civil and tax values of financial reporting items relating to transactions - carried out before the reinforced derivation rules came into force - that was qualified differently from a tax standpoint, classified and allocated over time (and, solely for the purposes of the aforesaid realignment, also differently valued) with respect to the qualifications, classifications and imputations over time (as well as, again solely for the purposes of the aforesaid realignment, to the valuations) resulting from the IAS-compliant financial statements (for such transactions, in the absence of a financial year of the realignment option, the different presentation of the financial statements with respect to qualifications, classifications, valuations and time-relief charges of a fiscal nature, has generated a “transitional regime”, with the consequent possible “ultrativity” of the previous rules).

The same article 2 of the IAS Regulation, after affirming the fiscal relevance to the principle of the prevalence of substance over form, consequently, states that “the provisions of article 109, paragraphs 1 and 2, of the TUIR are not applicable to these parties”.

The provision in question clearly introduces an exception to the provisions of Article 109 (1 and 2) of the TUIR, which refer to the tax significance of costs and revenues:

1. the requirements as to the certainty and determinability of the component’s income (paragraph 1);
2. the results from the negotiations, and in particular, the acquisition or transfer of ownership or other right real value of goods (paragraph 2).

The misapplication of the provisions of paragraphs 1 and 2 of article 109 is necessary, as highlighted in the explanatory report, “to overcome the application uncertainties generated by the reference to the criteria of certainty and objective determinability identified in a manner different from that provided for in the IAS/IFRS financial statements”.

This non-application had to be associated with the fiscal irrelevance of the recording of management events based on their contractual/legal nature, since in the financial statements these events are ordinarily recorded as the basis of the transfer of the relative risks and economic benefits and not based on the purchase or sale as the property.

For example, an assignment of a loan that is not eliminated in the financial statements because the transfer of “control” (in terms of the risks and rewards



associated with it) does not take place. In this case, the general criteria of fiscal competence pursuant to Article 109 (1) and (2) of the TUIR do not apply.

Therefore, concerning cases that arose after the entry into force of the enhanced derivation regime, the interpretative solutions adopted during the tax system based on Legislative Decree no. 38 of 2005 can no longer be recognized, where the tax relevance of the IAS compliant accounting treatment was not recognized and where tax relevance was given to the (different) legal-formal representation.

In other words, the principles (of a codicils matrix) of certainty and objective determinability, as well as of legal and formal recognition of the phenomena - which, based on the provisions of paragraphs 1 and 2 of Article 109 of the TUIR, constitute the applicative basis of the criteria for the temporal allocation of the TUIR - are not always compatible with the recognition criteria used for the IAS compliant financial statements, based in the principle of the prevalence of substance over form. Therefore, to the extent that the aforesaid principles of the code matrix differ from the “substantial representation” of company facts, the tax legislator had to provide for their misapplication for the IAS adopter subjects”<sup>4</sup>.

On the occasion of the Telefisco of February 2, 2017, to the question:

*Question:* “Can the principle of “ reinforced derivation “ typical of IAS adopters also be applied to entities that adopt national accounting standards or, for tax purposes, must the legal and formal representation of company transactions prevail (principle of legal derivation)? In this second case, a double civil-fiscal track is determined, and it may happen that a different tax regime between IAS entities and non-IAS entities is determined on the face of the identical phenomenon, treated in the equivalent way from an accounting point of view”

the Inland Revenue (in Italian Agenzia delle Entrate) gave this response:

*Response:* “The principle of “ reinforced derivation ”, on the basis of which the various qualifications, classifications and time allocations provided for by accounting principles with respect to the rules of the Consolidated Income Tax Act (TUIR), as provided for by art. 83 of the TUIR, as amended by art. 1, paragraph 58, of Law no. 244/2007, is reserved, by express regulatory provision,

---

<sup>4</sup> Inland Revenue(in Italian language Agenzia delle Entrate) Circular 7E of 28 February 2011, § 3.1 Reinforced Derivation.

only to entities that prepare their financial statements in accordance with IAS/IFRS international accounting standards. Therefore, it should be considered that any extension of this principle to ITA Gaap entities that prepare their financial statements in accordance with the rules introduced by Legislative Decree No. 231/2001. No. 139 of 2015 can only be achieved through a regulatory change. It is clear that this means that ITA Gaap companies need to manage a double civil/fiscal track and that, in the face of the same phenomenon accounted for in a similar way according to international and national standards, we arrive at different tax regimes”.

From the position of the Inland Revenue (in Italian language Agenzia delle Entrate) clearly, in order to be able to operate the reinforced derivation granted to the IAS adopter companies, to the companies that prepared the financial statements according to the civil law regulations and based on the national accounting principles OIC, a legislative intervention was necessarily necessary.

In fact, this intervention was carried out with Law Decree no. 244 of December 30, 2016, converted, with amendments, by Law no. 244 of December 30, 2016. 27.2.2017 n. 19.

The decree-law, known as Decreto Milleproroghe, 30.12.2016 n. 244, converted, with amendments, by the Law. 27.2.2017 n. 19, with regard to the relationship between the financial statements and tax provisions, introduced, as from 2016, the principle of “reinforced” derivation of taxable income for companies that prepare their financial statements based on OIC, except for micro-enterprises.

In other words, with article 13-bis, the methods of determination of the red-receipt provided for the IAS-adopter subjects are also applicable to the companies that draw up the financial statements based on the civil code integrated by the national accounting principles OIC. Only the micro-enterprises referred to in Article 2435-ter of the Italian Civil Code are excluded from the “reinforced derivation” principle, since these companies are subject to particular simplifications and, therefore, the legislator did not consider it necessary to extend the enhanced derivation to this type of company that already enjoys advantages, benefits and, above all, simplifications.

With art. 13-bis, comma 2, letter a), no. 1, of Law Decree no. 244 of 30.12.2016, converted, with amendments, by Law no. 244 of 30.12.2016. 27.2.2017 no. 19, this reinforced derivation was therefore extended to all companies that prepare their financial statements in accordance with the provisions of the Italian Civil Code and accounting principles, with the sole exception of micro-businesses.

Therefore, also for these companies, the standard based on which is now applicable is that the substance of the transactions, recorded in the financial statements, prevails over the legal form (except for the exception of leasing, for which the legal form continues to prevail over the substance).

For the sake of clarity, is reported the art. 83 TUIR as amended by art. 13-bis, paragraph 2, letter a), no. 1, of Law Decree no. 244 of 30.12.2016, converted, with amendments, by Law no. 244 of 30.12.2016. 27.2.2017 n. 19.

*Art. 83 TUIR after integration of art. 13-bis, paragraph 2, letter a), no. 1, of Law Decree no. 244 of 30.12.2016, converted, with amendments, by Law no. 244 of 30.12.2016. 27.2.2017 n. 19.*

“1. Comprehensive income is calculated by adding to the profit or loss resulting from the income statement for the financial year closed during the tax period [...] any increase or decrease resulting from the application of the criteria set out in the following provisions of this section. In the case of activities benefiting from partial or total de-taxation schemes, the related tax losses are significant to the same extent as positive results would be relevant. For parties that prepare their financial statements in accordance with the international accounting principles set out in Regulation (EC) no. 1606/2002 of the European Parliament and of the Council of 19 July 2002, also in the wording deriving from the procedure provided for in Article 4, paragraph 7-ter, of Legislative Decree no. of 28 February 2005. 38, **and for companies, other than micro-enterprises as per article 2435-ter of the Italian Civil Code, who draws up their financial statements in compliance with the provisions of the Italian Civil Code**, the qualification, temporal allocation and classification criteria provided for **by the respective accounting standards** shall apply, as well in derogation of the provisions of the subsequent articles of this section<sup>5</sup>

**1bis. For the purposes of comma 1, the provisions issued in implementation of comma 60 of the article 1 of the law 24 December 2007, no. 244, and of comma 7-quarter of the article 4 of the legislative decree 28 February 2005, no. 38 shall apply to the subjects, different from the micro-enterprises referred to**

---

<sup>5</sup> Words in bold have been inserted from the article 13-bis, DL 30.12.2016 n. 244, converted, with amendments, in L. 27.2.2017 n. 19.

**in article 2435-ter of the civil code, who draws up the financial statements in compliance with the provisions of the civil code<sup>6</sup>. “**

In operational terms, the amendment introduced to Article 83 TUIR by art. 13-bis, comma 2, letter a), no. 1, of Legislative Decree no. 244 of December 30, 2016, converted, with amendments, by Law 27.2.2017 n. 19 ensures that the formal and lawful evidence of certain items, previously relevant to tax matters, can be replaced by the economic substance applied for the preparation of the financial statements.

The consequence of this situation is a desirable replacement of the representation of facts according to their formal lawful nature with the more correct practice of representing events based on their substantial effects and, therefore, in the light of the effective transfer of the related risks and benefits. In theory, this should bring taxable income closer to financial reporting items as providers by the civil code and, consequently, we can only express a positive opinion about the change described above.

As regards the prevalence of substance over form, it is useful to remember the following.

Legislative Decree 139 of 18 August 2015 implemented EU Directive 34 of 2013 in Italy. Before illustrating what has been established by the transposition of this directive and, therefore, before highlighting how the principle of the prevalence of substance over form has been transfused into our civil legislation, it is appropriate to summarize the evolution that has brought the legislation to its current state.

Comparing Art. 2423 bis of the Italian Civil Code and the provisions of both the 2006 (and 2008) OIC reform project and EU Directive 34/13 seem to identify a differentiation. While, in fact, in the code, before the transposition of EU Directive 34/13, it was required to take into account the economical function of the assets and liabilities considered and the principle of the prevalence of the room over the form is absent, at least formally, in the OIC projects of 2006 (and 2008) and in EU Directive 34/13, on the contrary, this principle was highlighted and no mention was made to the economical function of the asset or liability considered.

---

<sup>6</sup> Comma inserted from the art. 13-bis, DL 30.12.2016 n. 244, converted, with amendments, in L. 27.2.2017 n. 19.

However, in the light of developments in legislation and national and international accounting standards, such a conclusion would be erroneous and misleading.

The legislative concept of the “economic function” of assets and liabilities was introduced in 2004 following the implementation of the corporate reform (Legislative Decree no. 344 of 12/12/2003, which came into force on 1/1/2004).

The imposition of the above principle in art. 2423 bis c.c., gave rise to interpretative doubts about the real pragmatic meaning of the terms used by the Legislator and, consequently, gave rise to different interpretations.

The OIC itself, in principle 1 (that expresses main effects of the reform of company law on the preparation of the financial statements, issued in October 2004), expressed doubts about the conceptual comprehensibility of the phrase “economical function of assets and liabilities” and, for this reason, the need was perceived to provide, within the scope for the principle itself, some considerations useful for the correct interpretation for the concept of “economical function of assets and liabilities”.

In the document OIC 1 principle 1 *The main effects of the reform of company law on the preparation of the financial statements* it was stressed that the legislator, using this expression - as it appeared from the accompanying report to the Legislative Decree. No. 6 - was intended to refer to the postulate of the prevalence of substance over form, a concept, however, explained in detail in the accounting standard OIC 11 Financial Statements. Purpose and postulates. In this way, therefore, the 2006 (and 2008) OIC had taken on board the indications inferable from Italian and international accounting principles which prescribed that, in the preparation of the financial statements, the substance of the transactions should be preferred to their legal form. In this respect, art. 6 of the delegated law 3 October 2001, No. 366 - Delegation to the Government for the reform of company law -, provided for the revision of the accounting discipline for some important transactions such as, for example, finance leases, repurchase agreements and derivative financial instruments, transactions which previously - as specified in the accompanying report - were accounted for according to the formal aspects of the underlying contracts. The will of the legislator of 2004, referring to modern corporate doctrine and international practice, was to provide that the representation in the financial statements of these transactions, and in general for all economical events, should be made according to the economical reality underlying the formal aspects.

The OIC, in providing interpretative elements to the principle of “economical function” mentioned in Article 2423 bis, comma 1, stressed that from a technical point of view, it would be preferable for the legislator, when exercising

the de-league, to make express reference to the already known principle of the prevalence of substance over form.

It should be noted that the principle of substance over form can have significant effects on the valuation criteria of balance sheet items with consequent effects on the economical components, as well as on the accounting criteria and representation of values. In fact, this principle, adequately linked to specific evaluation criteria, provides not only a useful general indication for the solution of interpretation issues that arise concerning the recognition of particularly structured and complex transactions (for example: the methods of recognition of derivative and other financial transactions) but also a general criterion intended to be applied, profitably, to other problems of controversial solution.

In this regard, OIC 1 *The main effects of the company law reform on the preparation of the financial statements* for the year referred to the accounting principle OIC 11 *Financial statements Purposes and postulates*, which stated that “for the financial statements to be useful to their users and to provide a true and fair presentation of management events, it is necessary to determine and understand the substantial aspects of each of these events and not only its formal aspects”.

Substance represents the necessary essence of the event or fact, i.e. its true nature. Operating events have unusual origins and present different problems. By way of example, many of these events are contracts that can be regulated by general or specific legislation. Some of these contracts are individual and independent, others are part of more complex transactions. For many contracts, the essence of the operation is easily intelligible. For others, the particularity or complexity of the terms requires interpretation in order to understand the true essence of the contract and avoid misleading conclusions. In many situations, there is agreement between the substance and the formal aspect of the contract; in other situations, this agreement does not occur. For each operation or fact and in any case for each business event, it is essential to know the economical substance of the same, whatever its origin (contractual, legislative, etc.). The identification of the economical substance of transactions is central to the whole process of establishing the financial reporting. Therefore, it is essential that, already at the stage of recording the transaction in the accounting records, all the elements relevant for the determination of the relative economic substance are known. This involves identifying not only the characteristics of the isolated event, but also those relating to events and operations related or correlated to it, the whole of which helps to determine the unity of the operation in its substantial aspects. The economical substance to the transaction thus identified represents, except for the cases indicated below, the prevalent element for accounting, val-

uation and presentation of the event in the financial statements, so that the latter can ensure understandability in the preparation and a true and fair view<sup>7</sup> of the equity and financial position and of the economical result for the year”.

The OIC provisions of 2006 (and 2008), in order to improve the re-drafting of the 2004 financial statements, concluded the analysis by stating that, following the explicit reference to the concept of “economical function” imposed by art. 2423 bis c.c., the application of the postulate of the prevalence of substance over form had, therefore, to be considered obligatory like any other postulate and an operating principles (provided, obviously, that this was not expressly in contrast with other specific regulations on the financial statements.) For the sake of clarity, it was proposed to replace the expression “economical function of the items” with the much more intelligible principle of the prevalence of substance over form.

In the OIC reform, the principle of substance over form therefore, finds a clear expression and is not subject to interpretation.

It should be noted that what was reported in the OIC reform project of 2006 (and 2008) reflected what was imposed by international accounting standards.

In fact, in the Conceptual Framework for Financial Reporting, since its first enactment in 1989, it has been pointed out that “in assessing whether an item meets the definition of an asset, liability or equity, attention needs to be given to its underlying substance and economic reality and not merely its legal form. Thus, for example, in the case of finance leases, the substance and economic reality are that the lessee acquires the economic benefits of the use of the leased asset for the major part of its useful life in return for entering into an obligation to pay for that right an amount approximating to the fair value of the asset and the related finance charge. Hence, the finance lease gives rise to items that satisfy the definition of an asset and a liability and are recognized as such in the lessee’s balance sheet”. This principle was also reaffirmed in the subsequent revision of the Framework. The 2010 Conceptual Framework for Financial Reporting, § 4.6 states that “ in assessing whether an item meets the definition of an asset, liability or equity, attention needs to be given to its underlying substance and economic reality and not merely its legal form”. Also in the Conceptual Framework in force in 2018, with regard to faithful representation, it should be noted that:

“2.12 Financial reports represent economic phenomena in words and numbers. To be useful, financial information must not only represent relevant phe-

---

<sup>7</sup> See Alexander D., Jermakowicz E., (2006). A true and fair view of the principles/rules debate, *Abacus*, Vol. 42, n. 2; Alexander, D., Nobes C. (2013), *Financial accounting: an international introduction*, Pearson.

nomena, but it must also faithfully represent the substance of the phenomena that it purports to represent. In many circumstances, the substance of an economic phenomenon and its legal form are the same. If they are not the same, providing information only about the legal form would not faithfully represent the economic phenomenon”.

As a result, the principle analyzed here identifies a concept that is now consolidated in both national and international standards.

In the light of the above developments, we understand the reasons that have also led to EU Directive 34/13 in its art. 6, lett. h), to provide that the recognition and presentation of items in financial reporting must take account of the substance of the transaction or contract in question.

From the above, clearly, even if, when transposing EU Directive 34/13, the national legislator had opted, as it really did, for the formula provided for by Article. 6, point h, there has been no substantive change in relation to what is currently provided for by the civil law and there has been no change where, under Article 6(1), the provisions of the civil law of the Member State in which the applicant is established are not applicable. 2423b(2) of the 2006 OIC reform project was converted into law.

In spite of the different literal formulations of the art. 2423 bis point 1, of Article 2423 ter point 2 of the 2006 (and 2008) OIC reform proposal and of the article 6 lett. h of EU Directive 34/13, the principle referred to above is the prevalence of substance over form. In this context, therefore, even when transposing EU Directive 34/13, there should not have been any change to what is already established by the provisions currently in force.

“A first element [ to understand the reinforced derivation, note of author.] from which to start is the statement of art. 2, comma 1, of the Ministerial Decree 48 of 2009, according to which “pursuant to Article 83 (1), third sentence, of TUIR, for the purposes of the application of Chapter II, Section I, of TUIR, the income statement and balance sheet items represented in the financial statements based on the criterion of the prevalence of substance over form envisaged by the IAS are relevant for IAS entities”. This provision, concerning IAS adopters, was intended to

Point out that the principle of enhanced derivation contained in Article 83 of the TUIR was intended to give tax relevance to the various explanations of the principle of substance over form contained in the IAS/IFRS system. It is considered that this specification applies today, *mutatis mutandis*, also to OIC undertakings, in the principle of reinforced derivation introduced by Article 13 bis of Decree Law no. 244 of 2016 is certainly functional to the fiscal implementation of the accounting representation criteria in accordance with the prin-



ciple of substance over form as identified by the Legislative Decree No. 139 of 2015 and the new OIC principles. Of course, as already mentioned, and as we will see better later, the cases of IAS companies are different and not always the same as those of OIC companies”<sup>8 9</sup>.

On August 3, 2017, the Ministry of Finance issued a Ministerial Decree with which it implemented art. 13 bis above.

In particular, in art. 2 of the Ministerial Decree August 3, 2017 MEF states:

“Article 2

(Compatible provisions for entities drawing up their financial statements on the basis of a civil code, other than micro-enterprises as referred to in Article 2435-ter c.c.)

---

<sup>8</sup> Circular Assonime, 21 Giugno 2017 n. 14, § 2.2.1.

<sup>9</sup> To complete this overall frame of reference, it seems correct to consider that the provisions of the IAS principles that deactivate the reinforced derivation principle also apply to OIC companies. In particular, we refer to the rules on equity securities and withholding or tax credits, the purpose of which is to ensure a general and uniform implementation of institutions that are intended to be applied across the board by all companies, avoiding duplications (e.g. the PEX system and the exemption of dividends). With regard to equity investments, the fair value system of transactions involving equity investments must be reconstructed in compliance with the legal-formal criteria (art. 3, comma 3, of Ministerial Decree no. 48 of 2009) with the sole exception of those carried out by the issuing company in relation to instruments representing its equity (e.g. purchase of treasury shares). Furthermore, the identification of securities of an equity nature must be carried out according to the criteria of art. 44, comma 2, letter a) of the TUIR and that is having regard to the fact that the remuneration is totally correlated to the profits made by the issuer (art. 5, paragraph 1, of the Ministerial Decree of 8.6.2011). As far as tax credits and withholdings are concerned, the identification of the subjects who are entitled to benefit from them is also linked to the legal status of the management acts, regardless of the financial reporting qualifications [...]. By virtue of these rules for the deactivation of the reinforced derivation principle, for example, it must be excluded that the accounting resubmission that is indicated in OIC 21 par. 58 according to which the shareholder who receives sums from his invested company should always record income as a dividend, whatever the actual reserve used, and then eventually record a write-down of the investment for the equity decrease suffered by the invested company.

In particular, par. 58 states verbatim that “the dividend is recorded as income regardless of the nature of the reserves subject to distribution. The participating company verifies that, following the distribution, the recoverable value of the equity investment has not decreased to the point where it is necessary to record an impairment loss”.

Senonché, ai fini fiscal il regime di detassazione dei dividendi è alternativo al sistema di eliminazione della doppia imposizione sugli utili societari basato sul riconoscimento di un credito di imposta sui dividendi. E siccome i crediti di imposta continuano ad essere riconosciuti in base all'impostazione giuridico formale è logico ritenere che anche il regime di detassazione dei dividendi debba seguire il medesimo criterio applicativo.

Ne consegue che anche ove si volesse ricondurre l'impostazione suggerita dall'OIC 21 alla sostanza economica del fenomeno così come individuata dai principi contabili nazionali, il provento rilevato dal socio potrà essere assoggettato al regime di detassazione dei dividendi solo laddove la società partecipata li abbia effettivamente conseguiti e li distribuisca ai soci (oppure qualora si renda applicabile la presunzione

di distribuzione di cui all'art. 47 comma 1 del TUIR). Viceversa, qualora la società restituisca apporti in assenza di riserve di utili disponibili ai fini fiscal si deve comunque ritenere che in luogo del dividendo si sia verificata una restituzione dei conferimenti con corrispondente riduzione del costo della partecipazione”. Circular Assonime cit., § 2.2.1.

1. For the companies referred to in comma 1-bis of Article 83 of TUIR, the provisions set out above shall apply:
  - a) to the Decree No 48 of the Minister for Economic Affairs and Finance of 1 April 2009, contained in the following articles:
    - 1) article 2, commi 1, 2 e 3;
    - 2) article 3:
      - i. commi 1, 3 e 4;
      - ii. comma 2, first period, also to the operations between the micro enterprises referred to in article 2435-ter of the civil code and subjects referred to in paragraph 1-bis of article 83 of the TUIR and, second period, to the operations between the subjects referred to in comma 1-bis of article 83 of TUIR
  - b) to the Decree 8 June 2011 of the Minister for Economic Affairs and Finance contained in the following articles:
    - 1) article 2, comma 2;
    - 2) article 3, comma 1, for real estate according to accounting principle OIC 16;
    - 3) article 5;
    - 4) article 7, commi 2, 3 e 4;
    - 5) article 9, for liabilities of uncertain maturity or amount that meet the requirements of OIC n. 31.”<sup>10</sup>

In the report accompanying the Ministerial Decree 3 August 2017, concerning art. 2, it should be noted that “Article 2, paragraph 1, letter a) lists the provisions of Ministerial Decree no. 48 of 1 April 2009 that are applicable “insofar as they are compatible” also for determining the IRES taxable base of new OIC pursuant to comma 1 bis of Article 83 of TUIR.

**In particular, the number 1), referring to article 2, commi 1, 2 and 3, is aimed at extending to New OIC principles the declination of the concept of reinforced derivation already provided for IAS/IFRS. To this end, the accounting qualification based on the principle of substance over form, as defined by the Italian Accounting Board in Italian accounting standards (OIC), is also rec-**

---

<sup>10</sup> Art. 2 D.M. Mef 3 Agosto 2017.

**ognized for tax purposes.** In this sense, the exception to the provisions of Article 109, commi 1 and 2) of TUIR, which, in assuming costs and revenues, mainly refer to the conditions of certainty and determinability of income components (paragraph 1), to the negotiation results and to the acquisition/passage of ownership of goods (paragraph 2), as well as to any other tax regulation that makes reference to rules of representation that do not comply with the aforementioned principle of substance over form, has also been extended to parties that apply the new OIC.

**On the other hand, tax provisions limiting the significance of depreciation, valuations and provisions remain unchanged. These are, in particular, provisions that provide for the tax/deduction of positive and negative components on a cash basis rather than on an accruals basis (interest on arrears, directors' remuneration, dividends, etc.) and those that do not allow or limit the deduction of costs because they are not inherent or that provide for the taxation of positive components divided over time for reasons of tax advisability (such as the pro-rata taxation of certain capital gains) or that provide for the exemption or exclusion of positive components.**<sup>11</sup>

In the report, concerning Ministerial Decree of 8 June 2011, it should also be noted that “number 5) (i.e. art. 5 of the Decree of 8 June 2011, note of author), finally, makes article 9 applicable, having regard to “liabilities of dubious maturity or amount that meet the requirements of OIC 31”. Therefore, the provisions of Article 107 of the TUIR apply to all items recorded as counterparties to liabilities of unsure maturity or amount that meet the requirements of OIC 31, even if they are negative income items classified on the basis of the nature of the expenses that generate the aforesaid liabilities (and not as provisions). In fact, it should be noted that OIC 12 (version December 2016), in paragraph 79, states that “provisions for risks and charges are recognized primarily in the income statement cost items of the relevant classes (8, C or O), with the “nature” classification of costs being the primary criterion”.<sup>12</sup>

Also the discounting charges provided for by the accounting rules take on tax importance as provisions. In this regard, it should be noted that the update to OIC 31 (December 2016) eliminated the provision that precluded the discounting of provisions for risks and charges, clarifying that the time horizon is one of the elements that can be taken into account in the estimate of those provisions

---

<sup>11</sup> Accompanying report of DM MEF Agosto, 3, 2017.

<sup>12</sup> Accompanying report of DM MEF Agosto, 3, 2017

for liabilities that have the characteristics of a long-term outlay and that derive from a certain legal obligation.

Article 3 is without prejudice to any behavior adopted in an inconsistent (or even consistent) manner with the provisions contained in Articles 1 and 2, in relation to the tax periods prior to the entry into force of this Decree, the deadlines for the payment of income taxes for which expired prior to that date.

With the so-called reinforced derivation, the civil law principle of the prevalence of substance over form takes on particular value. With regard to this principle, it should be noted that its introduction, when less explicit, dates back to the enactment of the Legislative Decree. 139/15 transposing EU Directive 34/13.

Following the enactment of Legislative Decree 139/15, art. 2423a has been amended as follows :

#### Art. 2423 bis Principles for the preparation of the financial statements

The following principles shall be observed in preparing financial statements

(1) the measurement of items shall be made prudently and on a going concern basis [...] <sup>13</sup>;

1-bis) the recognition and presentation of items is carried out taking into account the substance of the transaction or contract; <sup>14</sup>

(2) only profits realized as at the end of the financial year may be disclosed;

(3) account must be taken of income and charges for the financial year, regardless of the date of collection or payment;

4) account must be taken of risks and losses for the financial year, even if they become apparent after the end of the financial year;

(5) heterogeneous items within individual items should be assessed separately;

(6) the valuation criteria may not be changed from one financial year to the next.

Exceptions to the principle set out in point 6) of the previous paragraph are permitted in exceptional cases. The explanatory notes must illustrate the rea-

---

<sup>13</sup> The word “and taking account of the economic function of the asset or liability concerned” have been deleted from Article 6, comma 3, letter a), Legislative Decree 18.8.2015 n. 139, published in the Official Gazette 4.9.2015 n. 205. Pursuant to art. 12 comma. 1 of the Legislative Decree. 139/2015, the provision takes effect from 1.1.2016 and applies to financial statements covering financial years beginning on or after that date.

<sup>14</sup> Number inserted by art. 6, comma 3, letter b), Legislative Decree 18.8.2015 n. 139, published in the Official Gazette 4.9.2015 n. 205. Pursuant to art. 12 comma 1 of the Legislative Decree. 139/2015, this provision takes effect from 1.1.2016 and applies to financial statements covering financial years beginning on or after that date.

sons for the departure and indicate its influence in the representation of the balance sheet, financial position and economic result.

As it can therefore be seen, even formally, after the transposition of EU Directive 34/15, the principle of the prevalence of substance over form, explicitly and not applied applying formulas of dubious interpretation, must be used for the preparation of the financial statements.

The reinforced derivation introduced into our legislation, not only for IAS adopter companies, but also for companies that prepare their financial statements based on the Civil Code and accounting principles, with the exclusion of micro-enterprises, therefore, sees the principle of the prevalence of substance over form applied in the Civil Code. This principle is explained in a clear and intelligible way, without using phrases whose interpretation can be based on subjective evaluations.

It should be noted that the prevalence of substance over form determines, as a consequence, a necessary misapplication of the rules provided for in article 109, paragraphs 1 and 2 of the Tuir that refer:

- (a) the requirements of certainty and determinability of income components (comma 1);
- (b) the results of transactions, in particular, the acquisition or transfer of title or other right in rem over goods (comma 2).

The art. 109 TUIR imposes (1):

1. Revenues, expenses and other positive and negative components, for which the preceding provisions of this Section do not provide otherwise, shall form part of income in the relevant financial year; however, revenues, expenses and other components whose existence is not yet certain or whose amount may be determined objectively in the relevant financial year shall form part of income in the financial year in which such conditions occur.

2 For determining the exercise of competence:

(a) the consideration for the supplies shall be deemed to have been received and the costs of acquiring the goods shall be deemed to have been incurred on the date of delivery or dispatch of the movable goods and on the date of a conclusion of the agreement for the immovable property and the business, or on the date on which the transfer or creation of ownership or of other rights in rem occurs, whichever is the later. Reservation of title clauses are not taken into account. The lease with a transfer of title clause binding for both parties shall be treated as a sale with retention of title;

(b) the consideration for the provision of services is deemed to have been earned and the costs of the acquisition of the services are deemed to have been incurred on the date on which the services are completed or, in the case of services dependent on leasing, loan, insurance and other contracts from which periodic consideration is derived, at the date on which the consideration accrues;

(c) for companies and entities that have issued bonds or similar securities, the difference between the amounts due on maturity and those received in respect to the issue is deductible in each tax period for a portion determined in accordance with the amortization schedule of the loan.

3. I ricavi, gli altri proventi di ogni genere e le rimanenze concorrono a formare il reddito anche se non risultano imputati al conto economico.

3 bis. Capital losses realized under Article 101 on shares, units and financial instruments similar to shares, which do not satisfy the conditions of Article 87 shall not be taken into account up to the non-taxable amount of the dividends, or of their interim dividends, received in the thirty-six months preceding realization. This provision also applies to negative differences between the revenues of goods referred to in Article 85 (1) (c) and (d) and the related costs. (2)

3 ter. The provisions of comma 3-bis are applied concerning shares, quotas and financial instruments similar to the shares acquired in the thirty-six months prior to their realization, provided that they satisfy the requirements for exemption under letters c) and d) of comma 1 of Article 87. (2)

3 quater. This is without prejudice to the application of article 37-bis of Presidential Decree no. 600 of 29 September 1973, also concerning negative differentials of a financial nature deriving from transactions initiated during the tax period or in the previous one on shares, quotas and financial instruments similar to the shares referred to in comma 3-bis. (2)

3 quinquies. The commi 3-bis, 3-ter and 3-quater do not apply to entities that prepare financial statements in accordance with the international accounting standards set out in Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002. (3)

3 sexies. In order to misapply the provisions of commi 3-bis and 3-ter, the taxpayer shall refer the matter to the administration pursuant to Article 11, comma 2, of Law no. 212 of 27 July 2000, containing the taxpayer's Statute of Rights.(4)

4. Expenses and other negative components are not allowed as deductions if, and to the extent that they are not charged to the income statement for the year in question. Items recognized directly in equity in accordance to the accounting principles adopted by the Company are recognized in the income statement (5)

(6). The following shall, however, be deductible:

(a) those recognized in the profit and loss account for a prior period, if the deduction has been carried forward in accordance with the earlier rules in this Section requiring or permitting such a carry forward;

(b) those which, although not chargeable to the profit and loss account, are deductible by law. [...] (7) Expenses and charges specifically relating to revenues and other income which, although not charged to the income statement, form part of income, may be deducted if and to the extent that they are certain and precise.

5. Expenses and other negative components other than interest expense, except for tax, social contributions and charges of social utility, are deductible if, and to the extent that they relate to assets or assets from which income or other income is derived that contribute to forming income or does not contribute to it because it is excluded. If they refer indiscriminately to assets or assets that produce qualifying income and assets or assets that produce qualifying income, since they are exempt in determining income, they are deductible for the portion corresponding to the ratio between the amount of income and other income that forms part of or does not form part of the company's income, since they are excluded, and the total amount of all revenues and income. (8). The gains referred to in Article 87 shall not count for the purposes of applying the previous period. Without prejudice to the provisions of the preceding periods, expenses relating to hotel services and to the supply of food and beverages, other than those referred to in paragraph 3 of article 95, shall be deductible at the rate of 75%. (9)

6. [...] (10)

7. By way of derogation from comma 1, interest on arrears shall contribute to the formation of income in the financial year in which it is received or paid.

8. By way of derogation from comma 5, the cost incurred in acquiring usufruct rights or other similar rights in relation to a shareholding from which profits are derived, which are excluded pursuant to Article 89 shall not be deductible.

9. Not every type of remuneration due is deductible: (a) securities, securities, securities howsoever denominated, referred to in Article 44, to the extent that they directly or indirectly entail participation in the profits or losses for the offeree company or of other companies belonging to the same group or of the business in relation to which the securities are issued;

b) with regard to contracts of association in participation and those referred to in Article 2554 of the Civil Code where a contribution other than that of works, and services is envisaged.

## **ADDITIONS AND AMENDMENTS TO ART. 109 TUIR**

(1) This Article has been replaced by art. 1, Legislative Decree no. 12.12.2003 No 344, in force since 1.1.2004.

(2) comma inserted by Article 5-quinquies, paragraph 1, of Decree-Law No. 203 of 30.9.2005, converted, with amendments, by Law No. 4 of 30.9.2005 2.12.2005 n. 248. The provisions apply to capital losses and negative differences realized as from 1.1.2006.

(3) comma inserted by Article 1, paragraph 58, point (h), L. 24.12.2007 n. 244. Pursuant to paragraph 61 below, the provision is applicable as from the tax year following the one in progress as at 31.12.2007.

For the previous tax periods, the effects on the determined nation of the tax produced by the conduct adopted on the basis of the correct application of the international accounting standards, provided that they are consistent with those which would have derived from the application of the provisions introduced by paragraph 58, are not affected.

(4) comma inserted by Article 7, paragraph 11, Legislative Decree no. 24.9.2015 n. 156, published in the Official Gazette of the Italian Republic 7.10.2015 No. 233, S.O. n. 55.

(5) The words “adopted by the company” have been replaced by the previous ‘international’ ones by Article 13-bis, comma 2, letter d), of Law Decree no. 244 of 30 December 2016, converted, with amendments, by Law no. 27.2.2017 n. 19. Pursuant to the following paragraph 5, the provision is effective with regard to the income statement and balance sheet items recognized in the financial statements as from the financial year following the current one as on 31 December 2015. The income statement and balance sheet effects on the financial reporting of the above financial year and of following financial years of transactions that otherwise qualify, are classified, valued and allocated on a time accrual basis for tax purposes, compared with the qualifications, classifications, valuations and imputations over time resulting from the financial statements for the present financial year on December 31, 2015, continued to be subject to the tax rules applicable previously. For the transitional period, see comma 7 below.

(6) Period inserted by art. 11, comma 1, letter d), no. 1), Legislative Decree 28.2.2005 n. 38. Pursuant to art. 13 below, the provisions also apply to the following items charged directly to equity in the first year of application of the international accounting standards.

(7) Periods deleted from Article 1, comma 33, lett. (q), no. 1, L. 24.12.2007 n. 244. Pursuant to comma 34 below, the provision is effective from the tax period



subsequent to that in progress as at Dec. 31, 2007, without prejudice to the provisional application of the provisions of the deleted periods, in the text previously in force to the amendments made by the Law. 24.12.2007 no. 244, for the recovery of the surpluses resulting at the end of the tax period in progress as at 31.12.2007. The taxpayer has the right; however, to eliminate the constraint of availability imposed on the reserves in suspension, but without any effect on the tax values of the assets and other elements, subjecting them in whole or in part to a substitute tax on the rate of 1%; the temporary tax must be paid in a single installment within the term of payment of the income tax relating to the tax period in progress as on 31 December 2007. Amortization, depreciation, provisions and other value adjustments charged to the income statement as from the financial year in which, as a result of the amendment made by comma 33, letter q), no. 1, the off-balance sheet deductions are eliminated, may be disallowed by the tax authorities if they are not consistent with the accounting behavior systematically adopted in previous years, without prejudice to the possibility for the company to demonstrate the economic justification of these components as the basis of correct accounting principles.

Previous text: “Depreciation of tangible and intangible assets, other value adjustments, provisions, expenses relating to development studies and research and the differences between the finance lease instalments referred to in article 102, comma 7, and the sum of the depreciation of assets acquired under finance leases and the interest payable deriving from the relative contracts charged to the income statement are deductible if their total amount is indicated in a specific proportion of the income tax return, the civil and tax values of the assets, the expenses referred to in article 108, comma 1, and the provisions. In the event of a distribution, equity reserves and net income for the year, even if earned after the tax period to which the deduction refers, contribute to forming income if and to the extent that the amount of the remaining equity reserves other than the legal reserve and of the remaining retained earnings is lower than the excess of the amortization, value adjustments and provisions deducted compared to those charged to the income statement, net of the delayed tax provision related to the amounts deducted. The portion of reserves and distributed net income that contributes to forming income in accordance with the previous period is increased by the corresponding deferred taxes. The amount of the surplus is reduced by depreciation, capital gains or losses, value adjustments relating to the same assets and provisions, as well as equity reserves and distributed net income, which contributed to the formation of income”. In the event of a distribution, equity reserves and net income for the year, even if earned after the tax period to which the deduction refers, contribute to forming

income if and to the extent that the amount of the remaining equity reserves other than the legal reserve and of the remaining retained earnings is lower than the excess of the amortization, value adjustments and provisions deducted compared to those charged to the income statement, net of the deferred tax provision related to the amounts deducted. The portion of reserves and distributed net income that contributes to forming income in accordance with the previous period is increased by the corresponding deferred taxes. The amount of the surplus is reduced by depreciation, capital gains or losses, value adjustments relating to the same assets and provisions, as well as equity reserves and distributed net income, which contributed to the formation of income”.

(8) The words “for the part corresponding to the ratio between the amount of revenues and other income which contribute to form the income of the business or which do not contribute to it because they are excluded and the total amount of all revenues and income” have been replaced by the previous words “for the part corresponding to the ratio referred to in paragraphs 1, 2 and 3 of article 96”. by art. 1, comma 33, lett. (q), no. 2, L. 24.12.2007 n. 244. Pursuant to paragraph 34 below, the provision is applicable as from the tax year following the one in progress as at 31.12.2007.

(9) Period inserted by art. 83, comma 28-quater, lett. a), DL 25.6.2008 no. 112 converted with amendments by L. 6.8.2008 No 133, in force since 22.8.2008. Pursuant to paragraph 28-quinquies below, the provisions are in force starting from the tax period following the one in progress as at 31.12.2008.

(10) Paragraph repealed by Article 1, comma 33, lett. (q), no. 3, L. 24.12.2007 n. 244. Pursuant to paragraph 34 below, the provision is applicable as from the tax year following the one in progress as on 31.12.2007.

Previous text: “If during the financial year the interest and income referred to in article 96 (3) have been earned, and they exceed the amount of interest expense, up to the amount of this excess the expenses and other negative components referred to in the second sentence of the previous paragraph shall not be deductible and, for the purposes of the ratio provided for by the said article 96, no account shall be taken of an amount corresponding to that not allowed as a deduction”<sup>15</sup>.

From what has been said above about the concept of reinforced derivation, clearly paragraphs 1 and 2 of art. 109 may not be applied to the purposes of

---

<sup>15</sup> Art. 109 TUIR.

determining the IRES taxable base if the event under review has been recognized in the financial statements based on its truthfulness and correctness and, consequently, bearing in mind the operating principle imposed by art. 2423 bis, of the prevalence of the substance over the form.

It is to be noted, however, as the art. 13 bis of Legislative Decree no. 244 of 30 December 2016, converted into law on 27 February 2017 no. 19, provides only for some amendments to the articles of TUIR.<sup>16</sup>

---

<sup>16</sup> Art. 13 bis - Coordination of IRES and IRAP regulations with Legislative Decree no. 139 of 2015  
(1) Related documents

1. For the persons referred to in article 83 (1-bis) of TUIR referred to in presidential decree n. 917 of 22 December 1986, as introduced by number 2) of letter a) of COMMA 2 of this article, in relation to the tax period in which the income and balance sheet items recorded in the financial statements as from the financial year following the current one on 31 December 2015 is to be declared, the time limit referred to in article 2 (2) of the regulations referred to in presidential decree n. 2 of 22 July 1998, shall apply. 322, for the submission of tax and IRAP declarations, is extended by fifteen days in order to facilitate the first application of the provisions introduced by Legislative Decree no. 139 of 18 August 2015 and the coordination provision contained in the following paragraphs.

2. The consolidated text on income taxes provided for by Presidential Decree No 917 of 22 December 1986 shall be amended as follows

(a) Article 83:

1) in comma 1, after the words: “legislative decree n. 38 of 28 February 2005” the following shall be inserted: “and for parties, other than micro-enterprises referred to in article 2435-ter of the civil code, that prepares financial statements in compliance with the provisions of the civil code,” and the words: “those accounting standards” shall be replaced by the following: “their accounting standards”;

2. the following is added after subparagraph 1:

“1-bis. For the purposes of paragraph 1, the provisions issued in implementation of paragraph 60 of Article 1 of Law No. 244 of 24 December 2007 and paragraph 7-quater of Article 4 of Legislative Decree No. 38 of 28 February 2005 shall apply to entities other than micro-enterprises referred to in Article 2435-ter of the Italian Civil Code that prepares financial statements in compliance with the provisions of the Italian Civil Code, insofar as they are compatible;

b) in article 96 (2), after the words: “finance leases of capital goods” the following shall be inserted: “, as well as extraordinary positive and negative components resulting from transfers of businesses or branches of businesses”;

(c) Article 108:

(1) comma 1 is replaced by the following

“1. Expenditure relating to more than one financial year shall be deductible up to the limit of the proportion attributable to each financial year;

2. the first sentence of subparagraph 2 is deleted;

(3) comma 3 is replaced by the following

“3. The depreciation of assets acquired as a result of studies and research is calculated on their cost less the amount already deducted. Article 88 (3) shall apply to contrived butts paid under the law by the State or other public bodies for the costs of studies and research”;

(4) in comma 4, the words ‘1, 2 and 3’ are replaced by the words ‘1 and 2’;

(d) in the introductory part of Article 109(4), the word ‘international’ shall be replaced by ‘adopted by the undertaking’;

(e) at the end of Article 110(9), the following period shall be added: ‘Alternative exchange rates provided by independent international operators used by the undertaking in accounting for foreign currency transactions shall be applicable, provided that the relevant quotation is made available through verifiable public sources of information’;

(f) Article 112:

1) comma 1 shall be repealed;

Consequently, not all statutory components are deductible for tax purposes because they are recognized in the income statement and represent substance over form.

---

2. in comma 2, the words “off-balance-sheet transactions in progress” shall be replaced by the words “derivative financial instruments”;

3) in comma 3-bis, after the words: “19 July 2002,” the following shall be inserted: “and for parties, other than micro-enterprises as per article 2435-ter of the Italian Civil Code, who draws up their financial statements in compliance with the provisions of the Italian Civil Code,”;

4) in comma 4, the words: “the operations referred to in paragraph 1 are carried out” shall be replaced by: “the derivative financial instruments referred to in paragraph 2 are recorded in the financial statements”;

5) in comma 5, the words: “the operations referred to in paragraph 2 are carried out” shall be replaced by: “the derivative financial instruments referred to in paragraph 2 are recorded in the financial statements”;

(6) comma 6 is replaced by the following

“6. For the purposes of this article, the derivative financial instrument is considered a hedging instrument based on the correct application of the accounting principles adopted by the company”;

(7) the heading is replaced by the following: ‘Financial derivatives’.

3. In article 5 (1) of legislative decree n. 446 of 15 December 1997, after the words: “with the exclusion of the items under numbers 9), 10), letters c) and d), 12) and 13)” the following are inserted: “, as well as the positive and negative components of an extraordinary nature deriving from the transfer of a business or a branch of a business”.

4. The reference in current tax legislation to the positive or negative components referred to in letters A) and B) of Article 2425 of the Italian Civil Code shall be understood as referring to the same components assumed net of the positive and negative components of an extraordinary nature deriving from transfers of a company or business unit.

5. The provisions of the preceding paragraphs shall be effective with regard to the income and balance sheet components recognized in the financial statements as from the financial year following the one going one as on 31 December 2015. The income statement and balance sheet effects on the financial statements of the above financial year and of subsequent financial years of transactions that otherwise qualify, are classified, valued and allocated on a time accrual basis for tax purposes, compared with the qualifications, classifications, valuations and imputations over time resulting from the financial statements for the current financial year on December 31, 2015, continued to be subject to the tax rules applicable previously. By way of derogation from the previous period:

a) the valuation of derivative financial instruments other than those recorded on the bi-balance sheet for hedging purposes as per paragraph 6 of article 112 of the consolidated text referred to in presidential decree no. 917 of 22 December 1986, in existence during the current financial year as at 31 December 2015, but not recorded in the relative financial statements, as this is relevant for determining income at the time of realization;

b) to the valuation of derivative financial instruments other than those recorded in the financial statements for hedging purposes as per paragraph 6 of article 112 of TUIR as per presidential decree no. 917 of 22 December 1986, already recorded in the financial statements in the current financial year as at 31 December 2015, article 112 of the said shall apply, in the text in force before the date of entry into force of the law converting this decree.

6. The provisions of paragraph 5 shall also apply to the purposes of determining the taxable amount pursuant to Legislative Decree No. 446 of 15 December 1997.

7. In the first financial year of application of the accounting principles as per article 9-bis, paragraph 1, letter a), of legislative decree no. 38 of 28 February 2005, updated pursuant to paragraph 3 of article 12 of legislative decree no. 139 of 18 August 2015:

a) the provisions of article 109 (4) of the Consolidated Law referred to in Presidential Decree no. 917 of 22 December 1986 shall also apply to the components charged directly to equity;

**From the careful reading of art. 13 bis mentioned above, it is clear, for example, how, in the tax field, the rules regarding the maximum deductible limits of depreciation and provisions and the rule of the taxation of certain components of income has remained in force.**

---

b) the components charged directly to shareholders' equity form part of the taxable base pursuant to Article 5 of Legislative Decree No. 446 of 15 December 1997, if, based on the criteria applicable in previous years, they would have been classified in the items pursuant to letters A) and B) of Article 2425 of the Italian Civil Code relevant for the purposes of the same Article 5;

c) the restoration and elimination, respectively, of costs already charged to the income statement of previous years, and of costs recorded and no longer capitalizable do not count towards the determination of income or tax value recognized; the deductibility of the latter as the basis of the criteria applicable in earlier years remains unaffected;

d) the elimination from liabilities in the balance sheet of liabilities and provisions for provisions, considered to have been deducted as a result of the application of the provisions of the consolidated text referred to in Presidential Decree no. 917 of 22 December 1986, does not affect the determination of income; this does not affect the non-deductibility of the charges against which these provision were set up, nor the nonexempt nature of the relative contingency in the event of their non-occurrence;

(e) the provisions of lett. (c) and (d) shall apply, *mutatis mutandis*, also for the purposes of determining the nonexempt amount pursuant to Legislative Decree No 446 of 15 December 1997.

8. The provisions of comma 5 to 7 shall also apply in the event of changes in accounting standards pursuant to comma 3 of Article 12 of Legislative Decree No. 139 of 18 August 2015, and in the event of a change in the disclosure requirements for financial statements as a result of changes in the size of the company.

9. For entities that prepare their financial statements in accordance with international accounting standards, the provisions contained in article 108, comma 3, last sentence, of the consolidated text referred to in Presidential Decree no. 917 of 22 December 1986, in the text in force before the date of entry into force of the law converting this decree, shall continue to apply in relation to expenses incurred until the current financial year on 31 December 2015.

10. In Article 4 of Legislative Decree No. 38 of 28 February 2005, the following shall be added after comma 7-quater:

“7-quinquies. The Minister of Economy and Finance shall, if necessary, within one hundred and fifty days of the date of approval or update of the accounting standards referred to in comma 1 of Article 9-bis, issue any coordination provisions for the determination of the taxable base of IRES and IRAP”.

11. By decree of the Minister of Economy and Finance, to be issued within sixty days from the date of entry into force of the law converting this decree, provisions are adopted for the revision of the decree of the Minister of Economy and Finance of 14 March 2012, containing “Provisions implementing Article 1 of Decree-Law No. 6 of December 2011”. 201, concerning Aid for Economic Growth (ACE)”, published in the Official Gazette no. 66 of 19 March 2012, in order to coordinate the regulations contained therein for entities that apply international accounting standards with those provided for entities that apply the provisions of this article. One or more decrees issued by the Minister for the Economy and Finance contain provisions for revising the provisions issued to implement paragraph 60 of article 1 of Law no. 244 of 24 December 2007, in compliance with the criteria indicated therein, as well as paragraph 7-quater of article 4 of Legislative Decree no. 38 of 28 February 2005.

12. The costs arising from comma 2, letter c), estimated at 18 million euros for the year 2017, 4.1 million euros for the year 2018, 2.8 million euros for the year 2019 and 0.6 million euros for the year 2020, are covered by a corresponding reduction in the Fund for structural interventions of economic policy, as per Article 10, paragraph 5, of Decree-Law No. 282 of 29 November 2004, converted, with amendments, by Law No. 307 of 27 December 2004. The Minister for the Economy and Finance is authorized to make any necessary financial reporting changes by means of decrees.

13. The Fund for structural interventions of economic policy, referred to in Article 10(5) of Decree-Law No 282 of 29 November 2004, converted, with amendments, into Law No 307 of 27 December 2004, was increased by EUR 1.7 million in 2021. The relative cost shall be covered by the corresponding use of the higher revenues deriving from the measures referred to in comma 2, letter c).

Therefore, the enhanced derivation is not transformed into an uncritical recognition of statutory values but essentially subdivides between amounts in the comparisons of which this rule must be applied and accounts that, despite being recorded in the income statement and represent the substance of the transaction, are not recognized by the tax legislator who, for these amounts provides to the application of the rules contained in the various articles of TUIR.

In brief, we can thus summarize the situation in which the reinforced derivation for certain values and the determination of other income components as the basis of tax regulations coexist.

To provide an overview of the complex situation that arose after the partial introduction of the reinforced derivation for companies that prepare their financial statements according to civil standards and accounting principles OIC, we present a table, particularly clear and exhaustive, structured by Bono M. and Spagnol E..<sup>17</sup>

<b>Article TUIR</b>	<b>Title Article TUIR</b>	<b>Derogation ex art. 83 TUIR (after introduction of reinforced derivation)</b>
Art. 86	Gain on disposal of investment	tax rule not derogatedtemporal division of the gain on disposal of investment
	Gain on own equity	reinforced derivation no income phenomena occur
	Gain on lease back	reinforced derivationtemporal imputation
Art. 87	Exempt gain on disposal of investment	tax rule not derogatedexemption
Art. 88	Contribution	tax rule not derogatedCash and and temporal imputation
Art. 89	Dividends	tax rule not derogatedCassa
Art. 92	changes in inventories	tax rule not derogatedValutazione
Art. 93	works supplies and services with a duration of more than one year	tax rule not derogatedValutazione
Art. 94	Securities	tax rule not derogatedValutazione
Art. 95	Remuneration to administrator	tax rule not derogatedCash
Art. 96	Interest	a) prevista un'espressa modifica della norma con riferimento alla determinazione del ROL b) derivazione rafforzata: l'interesse rileva in base alle qualificazioni di bilancio
Art. 100	social charges	tax rule not derogatedCriteri forfetari
Art. 101 comma 5	losses on receivables	tax rule not derogatedCancellazione del credito(la norma fiscale prevede comunque la derivazione)

<sup>17</sup> Bono- Spagnol, Riflessi fiscali del D. Lgs. 139/15, in Schede aggiornamento Eutekne, n. 3, 2017 pag. 484.

*The reinforced derivation: a brief summary of the tax regulations*

<b>Article TUIR</b>	<b>Title Article TUIR</b>	<b>Derogation ex art. 83 TUIR (after introduction of reinforced derivation)</b>
Art. 102	Depreciation	a) reinforced derivation The qualification and classification of financial reporting are recorded for the purposes of determining the recognition cost. b) the maximum limit of deductible depreciation, the valuation methods and the flat-rate limit on maintenance costs have not been waived c) the flat-rate limit for the deduction of terminal equipment costs for public electronic communications services laid down in Article 2(1) of the Sixth Directive has been waived. 1 comma, section 1, letter gg) of the electronic communications code as per Legislative Decree no. 231/2001. 1 August 2003 no. 259 (telephone costs)
	Leasing	tax rule not derogated
Art. 103	Amortization	Non derogato il limite massimo della quota di ammortamento deducibile
Art 105	Provisions for pensions and social security	tax rule not derogated
Art. 106	Write-down of receivables	a) tax rule not derogated – Deduzione svalutazione forfetaria b) reinforced derivation – Cost of initial recognition of the receivable and basis for the calculation of the write-down
Art. 107	Other provisions	tax rule not derogated
Art. 108	Expenditure relating to more than one year	a) tax rule not derogated, but amended by Art. 13 bis Decree-Law 244/16 converted, which provides for full derivation from the financial statements b) tax rule not derogated: entertainment expenses
Art. 109 1 e 2 comma	Certainty and objective-determinability- Time competence	reinforced derivation – Competence
Art. 109 7 comma	Interest on arrears	tax rule not derogatedCash

A particularly efficacious summary of the characteristics and effects of the enhanced derivation for adopter UCITS is provided in the document CNDCEC - The Foundation of Chartered Accountants of August 8, 2017, periodic report, Taxation, Document “The taxation of businesses OIC Adopter”. This document summarizes the peculiarities of the reinforced derivation described in detail above. To facilitate understanding about the problem, it is deemed appropriate to include what is written into the CNDC document as concise, clear and exhaustive:

“The new Article 83, comma 1, of the TUIR (as amended by Article 83, of the Consolidated Act on Income Tax) states that 13-bis of Decree-Law 30 December 2016, No. 244, converted with amendments by Law February 27, 2017, no. 19), provides “for entities, other than micro-enterprises referred to in Article 2435-

ter of the Italian Civil Code, that prepares their financial statements in compliance with the provisions of the Italian Civil Code” the principle of enhanced derivation according to which for the purposes of determining business income “the criteria of qualification, temporal allocation and classification in the financial statements provided for by the respective accounting standards shall apply, also as an exception to the provisions of the subsequent articles of this section”.

For the practical decoding of this principle, the subsequent comma 1-bis of the cited article 83 refers, insofar as they are compatible, to the implementing provisions contained in the next regulatory provisions:

- D.M. April 1, 2009, No. 48 (First IAS Decree) and
- D.M. June 8, 2011 (in accordance with IAS Decree).

It is also recalled that, based on the literal content of art. 83 of the TUIR, merely evaluative phenomena that are not relevant for tax purposes are not included in the reinforced derivation <sup>18</sup>.

Below is a brief summary of the regulatory framework relating to the determination of ordinary income (without taking account of extraordinary operations), in the light of the decree of the Minister of Economy and Finance of August 3, 2017 (at the time of going to press, still in the process of publication in the Official Gazette) which amended and supplemented the two IAS decrees in order to make them also applicable to adopter OIC entities, other than micro-enterprises, in implementation of the provisions of paragraph 11 of Article. 13-bis of Decree-Law n. 244/2016.

The Ministerial Decree August 3, 2017 consists of 3 articles:

- the first contains amendments to the Ministerial Decree. 8 June 2011;
- the second identifies the provisions of the two IAS decrees (Ministerial Decree no. 48/2009 and Ministerial Decree of 8 June 2011) that are applicable to adopter OIC, other than micro-enterprises;
- the third party inserts a safeguard clause that saves the effects in the determination of the taxable base not consistent with the new decree, concerning the tax periods prior to the current one on the date of entry into force of the Ministerial Decree. for which the time limit for payment of the balance of direct taxes has already expired.

---

<sup>18</sup> In this sense, see circular Revenue Agency 28 febbraio 2011, n. 7/E, par. 3.3.



For a complete picture, appropriate clarifications are now awaited from the Revenue Agency.

## 1. Qualification, temporal imputation and classification

The concepts of qualification, temporal allocation and financial reporting classification (so-called “Qu.I.C.”) are outlined by the Revenue Agency<sup>19</sup> 1. Qualification, temporal imputation and classification as follows:

### **QUALIFICATION:**

To qualify is to identify:

- \*the legal-contractual framework to which the specific transaction must be linked on the basis of its representation in the financial statements (e.g. purchase with deferred payment);
- whether the transaction generates income or capital flows (e.g. purchase and sale of treasury shares);
- \*whether the transaction is not recorded in the IAS financial statements (now also OIC adopter), but can be considered as having been carried out for tax purposes from a legal and formal point of view (e.g. sale with significant collateralization).

### CLASSIFICATION

To classify is to identify:

- \*the specific type or class of income/charges (Income Statement) of each transaction, as qualified in the IAS representation (now also OIC adopter) (e.g. provisions for restoration and remediation);
- \*the specific type or class of assets/liabilities (Balance Sheet) of each transaction, as qualified in the IAS representation (now also OIC adopter) (e.g. classification of assets and financial instruments).

### TEMPORAL IMPUTATION

Time imputing means identifying:

- \*the economic maturity, which could be different from the formal legal maturity (e.g. activation revenues);

---

<sup>19</sup> For more details, see circ. n. 7/E/2011, Revenue Agency par. 3.2.

\*the tax period in which the fiscally significant income components form part of the taxable base (charges relating to more than one financial year as per art. 108, comma 3, of the Consolidated Income Tax Act).

The phenomenon of “time attributions” concerns the correct identification of the tax period in which the fiscally significant income components must contribute to form the taxable base.

2. D.M. 1 April 2009, No 48

Art. 2, comma 1, of the Ministerial Decree No. 48/2009 (First IAS Decree) provides that:

\* for the purposes of determining taxable income for IRES (Chapter II, Section I, of the TUIR), the income and balance sheet items represented in the financial statements are relevant, based on the criterion of substance over form laid down by the IAS (and now also by the OIC);

\* the provisions of Article 4 are not applicable. 109, paragraph 1 (requirements of certainty and determinability of income components) and paragraph 2 (determination of the financial year in question).

Art. 2, paragraph 2, of the Ministerial Decree n. 48/2009 provide for some limitations to the former paragraph 1 in that the provisions of the TUIR “which provide for quantitative limits to the deduction of negative components or their exclusion or their distribution over more than one tax period, as well as those that partially or totally exempt or exclude positive components, however, denominated, from the formation of taxable income or allow their distribution over several tax rates, and those that establish the importance of positive or negative components in the financial year, respectively, of their receipt or payment”.

In summary, the aforementioned paragraph 2, as interpreted by the Revenue Agency Circular no. 7/E/2011, states that the provisions of TUIR that provide for this continue to apply:

<b>D.M. N. 48/2009, ART. 2, COMMA 2</b>	<b>Tax case</b>
Quantitative limits on the deduction of negative components	<ul style="list-style-type: none"> <li>• Limitations on the deduction of amortization and depreciation rates for tangible and intangible assets (articles 102, 102-bis and 103 of the TUIR)</li> <li>• Limitations on the deductibility of social utility costs (Article 100 of the TUIR)</li> <li>• Limits on writedowns of receivables and provisions for credit risks (Article 106 of the Consolidated Income Tax Act)</li> <li>• Limits to the deductibility of entertainment expenses (art. 108 of the Consolidated Income Tax Act)</li> <li>• Non-deductibility, to the extent of 25 per cent, of expenses relating to hotel services and the supply of food and beverages (art. 109, paragraph 5, of the Consolidated Income Tax Act)</li> </ul>
Exclusion of negative components from income	Prohibition of deductions for provisions other than those expressly considered deductible for IRES purposes (art. 107, comma 4, of the TUIR)

<b>D.M. N. 48/2009, ART. 2, COMMA 2</b>	<b>Tax case</b>
Breakdown of negative components into several tax periods	Expenditure relating to more than one financial year within the meaning of Article 108, comma 1, of the TUIR, following the new wording introduced by art. 13-bis of Decree-Law n. 244/2016
Exemption or exclusion of positive income components from the tax base	<ul style="list-style-type: none"> <li>• Prohibition of deductions for provisions (so-called PEX) other than those expressly considered deductible for IRES purposes (art. 107, comma 4, of the TUIR) 87 TUIR</li> <li>• Exclusion, up to 95%, of the dividends referred to in art. 89 TUIR</li> <li>• Irrelevance of the higher values recorded in relation to shares, quotas and financial instruments similar to shares considered as financial fixed assets (Article 85, comma 3, and Article 110 of the TUIR.)</li> </ul>
Breakdown of positive components into several tax periods	Gains on disposal of investment realized pursuant to art. 86(commma 4) of the TUIR
Relevance of positive or negative components according to the cash principle	<ul style="list-style-type: none"> <li>• Compensation of Administrators of Companies and Entities Pursuant to Article 24 of the Italian Civil Code 73, comma 1, of the TUIR (art. 95, paragraph 5, of the TUIR)</li> <li>• Distributed profits</li> <li>• Interest on arrears (Article 109), comma 7, del TUIR)</li> </ul>

Art. 2, comma 3, of the Ministerial Decree No 48/2009 provides that the limits laid down in Article 4(1)(c) of that directive shall 106, paragraphs 1 and 3, of the Consolidated Income Tax Act do not apply to differences arising from the initial recognition of the receivables provided for therein (see Circular of the Revenue Agency no. 7/E/2011, paragraph 4.1).

#### 4. D.M. 8 June 2011

The Ministerial Decree June 8, 2011 (in accordance with IAS Decree)<sup>9</sup> is aimed at providing IAS adopters with additional coordination provisions in the application to the TUIR rules governing the determination of taxable income. As indicated in the explanatory report, the decree in question continues the coordination process begun with the Ministerial Decree. April 1, 2009, no. 48 in light of the criteria indicated in comma s 60 of art. 1 of L. 24 December 2007, no. 244, now also referred to by paragraph 2 of art. 83 of TUIR.

The following table shows the list of articles of the Ministerial Decree. June 8, 2011 highlighting those that the Ministerial Decree 3 August 2017 deemed applicable to adopter OIC entities”..<sup>20</sup>

<sup>20</sup> CNDCEC - Foundation of Chartered Accountants of 8 August 2017, periodic reports, Taxation, Document “The taxation of companies OIC Adopter”, pages 14-17.

Table taken from CNDCEC - Foundation of Chartered Accountants of 8 August 2017, periodic reports, Taxation, Document “The taxation of companies OIC Adopter”.

## Art Description

<b>1</b>	Definitions and scope <b>Not relevant for the purposes at hand</b>
<b>2</b>	Determination of IRAP tax base and recognition in the income statement <b>Partially relevant concerning comma 2</b> The relevant part concerns IRAP since art. 2, comma 2, provides that the items fiscally relevant for IRAP purposes recognised directly to shareholders' equity form part of the taxable base of the regional tax at the time of recognition in the income statement. If these components never have to be charged to the income statement, the tax significance is determined according to the provisions applicable to components of the same nature that are charged to the income statement.
<b>3</b>	. Classification of properties used for business purposes pursuant to art. 43 TUIR <b>Partially relevant concerning comma 1</b> For the properties covered by the accounting principle OIC 16, the relevant part concerns art. 3, paragraph 1, which states that property classified in accordance to the accounting standard is considered instrumental only if it meets the requirements of art. TUIR 43. Otherwise, they are to be considered as real estate to which art. 90 of TUIR.
<b>4</b>	Reclassification of financial assets <b>Not applicable</b>
<b>5</b>	Financial instruments <b>Fully applicable</b> Art. 5 establishes that regardless of the qualification and classification adopted in the financial statements, they are considered: *equate with the shares the financial instruments that meet the requirements set out in letter c) *of paragraph 2 of art. 44 of the TUIR, with remuneration consisting entirely of participation in the economic results of the issuing company or of other companies belonging to the same group or of the business in relation to which the financial instruments were issued; *financial instruments that meet the requirements set out in letter c) of comma 2 of art. 44 of the TUIR, i.e. the interest-bearing bonds issued by companies engaged in the sale of motor vehicles on installment terms and the mass securities which contain an unconditional obligation to pay at maturity a sum not less than that indicated therein and which do not attribute to the holders any right of direct or indirect participation in the management of the issuing company or of the business in relation to which they are issued, nor any right of control over the management itself. It should be noted that the new paragraph 4-bis regulates the tax effects deriving from the recording of non-interest bearing intercompany loans or loans at rates "significantly" different from market rates with the application of the amortized cost. In particular, it is established that in the case of financing transactions between parties between whom there is a controlling relationship as per art. 2359 of the Italian Civil Code, only the positive and negative components charged to the income statement under the loan agreement are relevant for tax purposes, when components deriving from the process of discounting at market rates, required by the amortized cost criterion, are recognized in the balance sheet. In particular, it is established that in the case of financing transactions between parties between whom there is a controlling relationship as per art. 2359 of the Italian Civil Code, only the positive and negative components charged to the income statement under the loan agreement are relevant for tax purposes, when components deriving from the process of discounting at market rates, required by the amortised cost criterion, are recognised in the balance sheet
<b>6</b>	Share-based payment transaction for services provided by employees <b>Not applicable</b>
<b>7</b>	Hedging transactions <b>Partially relevant concerning paragraphs 2, 3 and 4</b> Art. 7 is relevant almost entirely concerning comma 2 (financial instruments for hedging purposes), 3 (cash flow hedge assumptions) and 4 (hedging relationship resulting from a deed of certain date before or concurrent with the negotiation of the hedging instrument).

---

<b>8</b>	Assets transferable free of charge <b>Not applicable</b>
<b>9</b>	Provisions <b>Partially applicable</b> Art. 9 is applicable for liabilities of uncertain maturity or amount that meet the requirements of OIC 31
<b>10</b>	Amortization of intangible assets with an indefinite useful life <b>Not applicable</b>
<b>11</b>	compatibility rules for the regulation of voluntary realignment and revaluation of book values <b>Not applicable</b>
<b>12</b>	The provisions of this Decree take effect <b>Not relevant to the purposes at hand.</b>

---

To conclude this brief summary of the reinforced derivation, it must be underlined how this legislative innovation has, certainly, brought civil income closer to fiscal income. From this point of view, the tax interferences, with specific reference to the items subject to enhanced derivation, were eliminated.

After this brief excursus on the meaning of reinforced derivation', it is possible to answer the question posed by paragraph 1.2 of the book, i.e. whether the reinforced derivation guarantees the tax payment of economically fair taxes.

Certainly, the reinforced derivation brought tax income closer to that-it's economically produced by companies deductible from the civil financial reporting. From a superficial analysis, it could, therefore, be deduced that the reinforced derivation allows the payment of fair taxes on the income truthfully produced by the companies, unlike in the previous period in which the presence of tax provisions that were based on principles profoundly different from those that were economically acceptable and can be found in the postulates of the financial statements governed by the Civil Code, laid the foundations for a "reversal" of the tax principles in the Civil Income Statement in order to obtain the maximum tax advantage. This circumstance, however, prevented one from being able to say that the taxes were calculated from the income truthfully achieved by the companies as calculated, in substance, based on tax principles whose objective is not to determine the "real income produced by the companies" but to limit the taxpayer's freedom as much as possible when determining the taxable income.

If the analysis could stop there, the question asked earlier would have to be answered to the affirmative. In reality, this is not the case. For a more detailed explanation about the reasons behind this statement, the reader is referred to the next paragraph.

## 1.2 Does the reinforced derivation ensure the tax payment of economically fair taxes?

As noted above, the reinforced derivation has certainly allowed a substantial approximation between taxable income and the economically profit generated by the companies. If we were to answer the question posed by the title of this paragraph, a superficial analysis of the matter could lead to a positive response. In fact, as we have already pointed out, the situation is different.

Of course, we are not dealing here with situations in which false or fraudulent objective items are included in the financial reporting. In that situation, the lack of overlap between taxable income and the profit for the statutory financial year which is economically correct is not linked to the legislation but to unlawful conduct on the part of the taxpayer.

The analysis, therefore, focuses on the situation where in a company, all objective data, and therefore true by definition, are legal and reflect what happened during the administrative period considered.

If these data are lawful and true, does the reinforced derivation guarantee the payment of economically fair taxes? Clearly, a positive response would mean that, automatically, the application of the reinforced derivation would mean, in the presence of true objective values, the determination of taxable income identical to that economically produced by the companies.

To this question the answer, unfortunately, is negative even if, apparently, from what has been written above, one could be deceived.

The reason given for this is that the reinforced derivation does not involve all financial reporting items. Certain cost and revenue items are not excluded from the application of the reinforced derivation principle. For these accounts, the fiscally relevant value differs, or better, may differ, from the amount recorded in the income statement pursuant to articles 2425 and 2425 bis of the Italian Civil Code.

If such a hypothesis were to arise, the definition of the “equitable” taxes determined on the income “really” produced by the undertaking would presuppose that the tax burden was determined on the basis of the economically truthful values in the statutory accounts. However, for some issues that we will analyze later in the next chapter, this does not happen. For specific items, in fact, the enhanced derivation cannot be applied and, for these income components, the value deductible for tax purposes is that indicated by the provisions of the TUIR whose objective, as we have already pointed out, is not to determine the economically correct income achieved by the company but to limit

the taxpayer's discretion as far as possible when determining the relevant costs for tax purposes. The limits imposed by tax regulations prevent the deduction of the cost that identifies the productive factor that has entered the company, but only concern the identification of maximum values to which importance must be given when determining the taxes for which it is responsible.

This brief discussion makes us understand how the reinforced derivation, in itself, brings the taxable income closer to the economically correct one, but does not identify the instrument capable of guaranteeing the perfect equality between the two incomes. Therefore, the answer of the question asked about the title of the paragraph must be negative. For a detailed and structured explanation of the reasons for this unfavorable response, reference should be made to the next section, in which the problem of tax interference will be discussed; although this has decreased with the increased derivation, it has not been eliminated due to the limits in the application of this tax law.

## Chapter II

The reinforced tax derivation and the civil accounting postulates pursuant to Article 2423 of the Italian Civil Code. Does the reinforced derivation, with regard to the relationship between fiscal values and civil balance sheet data, guarantee the, faithful representation in measurement of the economic facts registered in the financial reporting?

SUMMARY: 2.1 Do the reinforced derivation imply the civil law accuracy and a faithful representation in measurement of the economic facts' objects of the financial reporting ? The unresolved problem of tax interference in year-end measurement items.

2.1 Do the reinforced derivation imply the civil law accuracy and faithful representation in measurement of the economic facts' objects of the financial reporting ? The unresolved problem of tax interference in year-end measurement items

The serious problem that remains unresolved is the “tax contaminations” of the financial statements, in general, still appear to be strongly linked to all the provisions that are not derogated from by the rules on reinforced derivation and, consequently, are not susceptible to such regulations (of particular interest are the limits on the deductibility of amortization, depreciation and provisions for risks and charges, and the allowance for doubtful accounts).

It follows that, while the reinforced derivation applied to all companies, including companies' civil law and OIC adopter, has reduced, albeit to a very limited extent, the “tax contamination” of the financial reporting, the problem of tax interference has remained almost intact as, in most cases, it is related to sub-



jective assessments that, for tax purposes, are deductible within maximum limits not subject to a derogation linked to the reinforced derivation.

And from what results from field research <sup>21</sup>, the practice of carrying out year-end valuations (e.g. depreciation, amortization, inventories, miscellaneous provisions, etc.) based on tax regulations is very widespread in order to avoid losing the possibility of deducting a portion of costs for tax purposes which, potentially, from an income point of view, might not have to be recorded in the financial reporting due to the lack of an economic justification for the negative income component and to duplicate the administrative work of companies.

As it is well known, the legitimacy of the financial reporting is guaranteed by compliance with the postulates imposed by art. 2423 Italian Civil Code.

The presence of untrue items in the balance sheet and/or income statement, therefore, renders the resolution approving the financial reporting invalid and, specifically, causes it to be radically null as it identifies a clear flaw in its content.

The lack of “really economic substance” in the items of the financial statements may also be caused by the improper transposition, in the civil law, of the tax valuation criteria regarding subjective accounting items (estimates and conjectures).

The legal consequences deriving from the presence of fiscal interference in the financial statements have for a long time been the privileged subject of studies and research, since the fiscal contamination of the income statement and balance sheet identifies practices that are very widespread in Italian companies.

A recent ruling by the Court of Cassation, the Italian Supreme Court of Justice, both civil and penal (Court of Cassation, October 17, 2014, no. 22016, hereinafter, in the summonses in the notes Cass.) It has shed new light on the problems connected with the fiscal contamination of the financial reporting or, rather, has reiterated what has already been expressed in the past by many scholars. According to the Supreme Court, in fact, the presence of fiscal interference in the financial statements unequivocally identifies a cause for nullity of the resolution approving the financial statements for the year.

---

<sup>21</sup> In the following pages we will report some results of the analyses carried out among companies that demonstrate the presence of fiscal interference in the financial statements. For a complete analysis, the reader is referred to the results of the latest field research carried out in: M.S. Avi, The “tax-true and fiscally-fair” principle in Italian financial reporting”, in *Academy Accounting and Financial Studies Journal*, vol. 21, issue 3, 2017.

Of particular interest, therefore, is the study on this issue, interpreted from the perspective of an evolution whose doctrinal prodromes were identifiable with the '60s.

In the period prior to 1/1/2004, art. 2426, comma 2 of the Italian Civil Code (introduced by art. 2 bis, comma 2 of Decree Law no. 416 of 29 June 1994) allowed the recording in the financial statements of value adjustments and provisions deriving from the exclusive application of tax regulations.

This rule made the so-called “fiscal interference” in the financial reporting legally legitimate. The above provision was supplemented by the obligation to explain in the attached report (in Italian Language *Nota Integrativa*) “the reasons for the value adjustments and provisions made exclusively in application of tax regulations and the related amounts, specifically highlighted with respect to the total amount of adjustments and provisions resulting from the specific items in the income statement” (art. 2427 no. 14 of the Italian Civil Code).

The simultaneous application of articles 2426 of the Italian Civil Code and 2427 no. 14 of the Italian Civil Code involved the preparation of a legitimate but “anomalous” financial statement, as it was marked by the respect of the truthfulness at a global level, but also by the simultaneous absence of such postulate within the single accounting documents constituting the financial statement (income statement and balance sheet).

The possibility of legitimately recording fiscal income components without an “economic” substance in the income statement/balance sheet (pursuant to Article 2426 of the Italian Civil Code), accompanied by the obligation to illustrate the reasons for these adjustments in the attached report (*nota integrativa*), in fact, prevented the principle of “economic truthfulness” of the data contained in the balance sheet and income statement from being considered as rejected, but at the same time allowed compliance with the postulate of truthfulness of the financial reporting to be confirmed, of which the attached report (pursuant to art. 2423 of the Italian Civil Code) are a constituent part.<sup>22</sup>

---

<sup>22</sup> On this topic, see, among others: Colombo G. E., *Il bilancio di esercizio: strutture e valutazioni*, Utet, Torino, 1992; Colombo G.E., *Relazione di sintesi, da Il progetto italiano di attuazione della IV Direttiva CEE*, a cura di A. Jorio, Giuffrè, Milano, 1988; Falsitta, *Il problema delle interrelazioni fra normativa di diritto commerciale e di diritto tributario*, in *Impresa, ambiente e P.A.*, marzo, I, 1977; Falsitta G., *Convergenze e divergenze tra diritto commerciale e diritto tributario*, in *Giurisprudenza commerciale, società e fallimento*, marzo-aprile, I, 1980; Falsitta G., *Il bilancio di esercizio delle imprese. Interrelazioni fra diritto civile e tributario*, Giuffrè, Milano, 1985; Colombo G. E. – Portale G. B., *Trattato delle società per azioni – Vol. VII*, Utet, Torino, 1995; Falsitta, in *La dichiarazione tributaria e il bilancio di esercizio*, *Trattato di diritto tributario*, Cedam, Padova, 1994, Colombo G.E., *Disciplina del Bilancio e norme tributarie: integrazione*,

The Legislative Decree. 17/1/2003 no. 6, which regulates the so-called reform of company law (which came into force on 1/1/2004), repealed the last comma of art. 2426 of the Italian Civil Code and Article 2426, No. 14 of the Italian Civil Code 2427, and thus put an end to the civil law legitimization of the fiscal interferences.

Following the entry into force of the reform, every value recorded in the income statement and balance sheet had therefore, to be “economically truthful” with the consequence that, unlike what could have happened in the previous period, the assumption of truthfulness had to or, rather, should have been respected both by the financial statements as a whole and by the individual accounting documents constituting the financial statements themselves.

Starting from 1/1/2004, following the entry into force of the Legislative Decree. 12/12/2003 no. 344, the tax deductibility of the costs provided for by the tax law that was not charged or only partially recorded in the income statement was guaranteed by the compilation of the EC framework of Unico (Italian tax declaration), which served as the link between the civil financial statements and the income tax declaration.

The system that provided for the recording of “economically truthful” values in the profit and loss account/ balance sheet with the simultaneous possibility of tax deduction of any tax surplus not recorded in the financial statements was dismantled as from the come into force of Law 24/12/2007 n. 244. This regulation eliminated the possibility of deducting costs not recorded in the income statement (except those deductible by a legal provision) and, consequently, made the deduction of negative income components not recorded in the civil financial statements inadmissible.

The current situation is therefore characterized by two principles which, theoretically at least, have no osmosis points:

- 1) each income and equity/financial component recorded in the civil financial reporting must (or, rather, should) be characterized by the postulates of truthfulness and correctness imposed by art. 2423 c.c.;

---

autonomia o inquinamento, in *Rivista delle società*, n. 6, 1980 C. Feliziani, in *Appendice fiscale al bilancio. Problemi applicativi e soluzioni operative*, *Il Fisco*, n. 12/1994; M.S. Avi, in *Falso e Invalidità di bilancio*, Cedam, Padova, 2001; A. Monti, in *Reddito civile e reddito fiscale. Gli effetti fiscali dell’attuazione della IV Direttiva in materia di bilancio*, Cedam, Padova, 1994; A. Gaetano, in *Considerazioni sull’“appendice fiscale” al conto economico previsto dallo Schema di Legge Delegata per l’attuazione della IV direttiva CEE*, *Rivista italiana di ragioneria e di economia aziendale*, n. 9-10/1990, M. Gatto, in *L’appendice fiscale non serve più*, *Il Fisco*, n. 3/1995; Falsitta G., *Vicende, problemi e prospettive delle codificazioni tributarie in Italia*, in *Rivista Diritto tributario*, n. 3, 2002.

(2) costs not recognized in profit or loss are not relevant for tax purposes (unless otherwise required by law). The deductibility of any tax surpluses with respect to the value recorded in the financial statements can therefore be claimed in a period subsequent to the financial year in which it accrues. If such a hypothesis occurs, the taxable value is higher than the income determined according to correct economic and business principles.

When illustrated above, it shows a clear theoretical separation between values recorded in the financial reporting and amounts deductible for tax purposes. The former must or, rather, should derive from an economic valuation of the accounting item, while the latter base their *raison d'être* on limiting the discretion of the taxpayer<sup>23</sup>.

Convergence between the two sets of rules is one of the wishes expressed, but in reality, it seems to be technically impracticable because of the objective discrepancy that can be identified between the aims of the two sets of rules.

The taxation of unrealized income and income resulting only from “accounting artifices” has always been stigmatized by theorists and practitioners. The complete overlap between taxable income and “economically correct and truthful” income can never be achieved, however, due to the fear that any potential discretion of the tax rules could be used by the taxpayer for purposes of evasion and/or avoidance. The imposition of strict limits on the tax deductibility of costs, even in the context of a process of an approximation between fiscal and civil law, will prevent the realization of a concrete correspondence between the tax base and wealth determined through the application of civil and accounting standards<sup>24</sup>.

---

<sup>23</sup> On this topic, see, among others, fra gli altri: R. Lugano e M. Nessi, in *Le principali novità nella determinazione del reddito d'impresa introdotte dalla legge finanziaria 2008*, *Rivista dei Dottori Commercialisti*, n. 3/2008; R. Lupi, in *Reddito fiscale e bilancio civilistico: a sorpresa tornano gli inquinamenti*, *Corriere Tributario*, n. 40/2007; M. Procopio, in *Il reddito d'impresa e la sua progressiva armonizzazione con il principio di dipendenza, Diritto e pratica tributaria*, n. 6/2007; M. Damiani, in *Una Finanziaria 2008 in salsa agrodolce. Quale approdo finale?*, *Corriere Tributario*, n. 41/2007; M. Damiani e C. Ricci, in *Inquinamento n fiscale del bilancio e potere di sindacato del Fisco sulle valutazioni civilistiche*, *Corriere Tributario*, n. 11/2008; veda I. Scafati, *Semplificazione delle modalità di calcolo del reddito d'impresa*, *Corriere Tributario*, n. 43/2007; C. Attardi, in *Abrogazione delle deduzioni extracontabili e riallineamento dei valori civili e fiscali*, *Il Fisco*, n. 20/2008; R. Rizzardi, *La tassazione delle imprese nella finanziaria 2008*, *Rivista dei Dottori Commercialisti*, n. 1/2008; F. Roscini Vitali, *Finanziaria 2008: fiscalità differita, aliquote IRES e quadro EC*, *Guida alla contabilità & bilancio*, n. 1/2008.

<sup>24</sup> In this regard, it should be noted that, following the issue of the Decree Law 91/2014 converted L. 11/8/2014 no. 116, and the consequent inclusion of articles 9 bis and 9 ter in Legislative Decree. 38/2005, the OIC's functions have been legally officially. In particular, art. a) issue domestic accounting standards, inspired by best operating practice, for the preparation of financial statements in accordance with the provisions of the Italian Civil Code;

Despite the fact that the relationship between tax provisions, and civil law rules have been characterized by an evolution implemented with different operating methods, it must be stressed that every regulatory change has regularly been marked by a presupposition that has never been waived, which can be summarized as follows: every accounting element, at least in theory, has always had to and must still be susceptible to a double evaluation, i.e. economic//business/civilistic and fiscal.

As previously mentioned, the interrelationship between these values has been the subject of different regulations on several occasions, and is periodically subject to profound variations.

Despite the evolution that has taken place in this matter, it must, however, be stressed that the law and most of the doctrines have never questioned the need to compare the economic value with the tax value, reiterating the prohibition of automatically considering fiscal values as civil proper amounts.

This statement, therefore, obliges a duplicate quantification of every item of financial reporting: the fiscally deductible amount, relevant at the time of the tax declaration, must be contrasted with the “true and correct” value to be recorded in the financial statements.

This double calculation has a significant impact on business costs. The quantification of the tax amounts and the “economic” values of each “subjective” accounting element (estimates and conjectures) and the consequent management of tax recoveries involve a large amount of administrative work that has a considerable impact on company costs. The coordination and management of this duality of values (fiscal and economic) therefore, have a direct impact in the economy of businesses.

The theoretical correspondence between tax values and economically correct amounts would lead to a clear simplification of administrative work with a consequent reduction in company costs.

---

b) provides support to the activities of Parliament and of Governmental Bodies in the field of accounting regulations and expresses opinions, when required by specific legal provisions or at the request of other public institutions;

c) participate throughout the process of preparing international accounting standards adopted in Europe, maintaining relations with the International Accounting Standards Board (IASB), with the European Financial Reporting Advisory Group (EFRAG) and with the accounting bodies of other countries. Concerning the activities referred to in a), b) and c), the following shall be co-ordered with the domestic authorities with accounting responsibilities.

However, this does not justify a hypothetical uncritical ‘import’ of tax values into the balance sheet, since such behavior would inexorably lead to untrue and incorrect financial statements being drawn up.

Despite all this is known to most companies, in many entrepreneurial realities of our country are identifiable financial statements characterized by a fiscal-true, i.e. a “truthfulness” influenced by tax assessments. The application in the civil sector of the evaluation criteria identified by the tax legislator appears to be a widespread practice.

This accounting behavior causes the so-called “fiscal interference in the financial reporting”, a phrase which in itself implies a negative judgement on the osmosis between civil standards and fiscal provisions. At the semantic level, in fact, “interference” is associated with undue “intrusions” by a subject in a field not within his competence.

In the case analyzed here, undue interference is implemented by tax legislation, which “improperly” and “inappropriately” influences the preparation of a document - the annual financial reporting - whose objective is not to identify the taxable income, but to highlight correctly, truthfully and with understandability the economical, financial and asset situation of companies.

In this respect, the injustice of a regulatory system which imposes the payment of a tax calculated in part on lorries without economical substance cannot be overlooked. This unfairness does not, however, justify, at least from a legal viewpoint, the application of fiscal principles in the civil field and therefore, do not legitimize fiscal interference in the financial reporting.

The widespread practice of drawing up financial statements marked by the presence of fiscal contamination deriving from the application of tax valuation rules in the civil code field must therefore be considered illegitimate.

In order to provide a complete view about the reality, it should be noted that the application of tax valuation criteria in the civil sector is, in most cases, in the full awareness of implementing incorrect accounting behavior. However, there are cases in which the party responsible for quantifying year-end valuations implements so-called tax interference in the belief that it adopts a legally permissible principle. In such a circumstance, widespread, especially in small businesses, the implementation of a policy of fiscal contamination of the financial reporting takes place, albeit voluntarily, in terms that we could define “unaware” that is, in the mistaken belief that this corresponds to the dictates of the law governing the civil financial reporting.

If the financial statements are characterized by the presence of fiscal interferences, i.e. fiscal values without economical content, there are three types of con-

sequences, one of which was the subject of a significant ruling by the Court of Cassation of 2014 (ruling of the Court of Cassation of 17 October 2014 no. 22016):

1) *consequence of an informational nature towards the outside*: the financial reporting drawn up based on fiscal values does not reflect the economical and financial faithful representation in measurement of the economic facts objects of accounting occurred in the company. External communication is therefore distorted with the consequence that users (e.g. social creditors, shareholders, workers, credit lenders, etc.), for whom the financial reporting represents the only element of information of the company, have data available that cannot illustrate the reality of the economical entity to which they refer. The ultimate consequence is therefore, that parties outside the company are forced to take decisions on the basis of values that do not reflect the business reality in which these users are interested.

2) *Internal management consequences*: in most cases, the general accounting values represent the information source from which the data used for management control purposes also draw lifeblood. The determination of product costs/returns quantified based on fiscal values that are not economic in content potentially involves making incorrect management decisions because they are based on untruthful information assumptions<sup>25</sup>.

Hoping that the reader will forgive this analogy, this behavior reminds those who submit the financial reporting to a thorough analysis in the full knowledge that the financial reporting itself is false. The activation of a decision-making process based on data without any really economic content can lead to management decisions that are contrary to maximizing management efficiency and effectiveness, which inevitably also has a negative impact on the company's profitability.

3) *Legal consequences*: on several occasions we have highlighted<sup>26</sup> that the inclusion in the financial reporting of values that are not economical in nature entails non-compliance with the postulate of truthfulness imposed by art. 2423 c.c.

---

<sup>25</sup> M. S. Avi, L'impatto sul controllo di gestione delle "eliminate" interferenze fiscali, *Contabilità finanza e controllo*, n. 5/2007

<sup>26</sup> M.S. Avi, *Come evitare le invalidità di bilancio*, Il sole 24 ore, Milano, 2007.

Part of the doctrine has always highlighted how the recording in the accounts and therefore, in the balance sheet of values without economical content fulfils the conditions that lead to consider the balance sheet invalid, *rectius*, the resolution approving the latter.

An false financial statement is an unlawful financial statement and the related resolution approving it, as it is connected with defects of content, must be considered null and void (Articles 2379 of the Italian Civil Code, 2423 bis of the Italian Civil Code) and therefore, challengeable by anyone who has a legitimate interest in acting (Article 100 of the Italian Code of Civil Procedure).

The recognition of an false value is, obviously, illicit regardless of the fact that such recognition results in an over or under valuation of the income.

In fact, disability occurs both when a negative income component that does not exist in the income statement is included among costs (e.g. the recognition of a tax cost that is higher than the economically true value), and when an expense is not recognized and should be recorded in the financial statements (e.g. the recognition in the accounts of a cost lower than the true value of the productive factor). The first type of behavior is generally implemented to reduce taxable income, while the second hypothesis is implemented by those who perceive the need to carry out “window dressing” operations aimed at highlighting a more favourable company situation than the one that actually exists, even in the awareness that this result into an increase in taxable income.

The analysis of the reasons leading toward the adoption of such illegitimate accounting conduct has no civil law relevance.

In fact, it does not seem possible to “scale” the reason for which an existing cost is not recorded or a non-existent value is recorded in the accounts. At most, the “justifications” for incorrect detection can be taken into account when addressing the penal relevance of invalidity. In the context of false Accounting (penal relevance), the motivation aspect is of legal importance; this is not the case, however, concerning civil law illegality.

An untrue financial statement is an illicit financial reporting and the resolution approving such a document is null and void as it violates the right to information now unanimously recognized by third parties external to companies.

If one agrees with the above statements, it is impossible to invalidate the financial reporting contaminated by fiscal interference.

If, on the one hand, the recognition of a considerable non-existent cost or the failure to record a substantial “real” cost constitutes, without a shadow of a doubt, causes of invalidity of the financial reporting, on the other hand, it is not clear how a document in which the situations described above following the “import” in the income statement and balance sheet of fiscal values that



have nothing to do with “economically correct” book values could be considered valid and therefore, truthful, is presented in exactly the same way as the “import” in the income statement and balance sheet of fiscal values that have nothing to do with “economically correct” book values.

In this respect, the technical problems that companies undoubtedly have to face in order to calculate their income and assets truthfully and correctly cannot be ignored. The management of tax data is in itself articulated and, inevitably, the coexistence of these values with accounting masters of different amounts, as “civilly truthful”, represents a further cause of an increase in accounting complexity. However, this problem cannot be solved, since each step taken to simplify the keeping of accounts by fiscal contamination of financial reporting results in behavior censured by legislation. Truthfulness and correctness, in fact, require a prior economic evaluation of costs and revenues, in the absence of which no data can be included in a financial reporting characterized by the confirmations of legitimacy.

At this point, however, we must ask ourselves whether the inclusion in the financial reporting of subjective values (estimates and assumptions) deductible for tax purposes automatically and unequivocally causes the nullity of the shareholders’ meeting resolution. The answer on this question is not unequivocal.

If the tax amount is the same as the economic substance of the item, the financial reporting is true and, consequently, perfectly legitimate. In this case, however, the legitimacy of financial reporting does not derive from the fact that it is considered legally acceptable, pursuant to Article 2423 of the Italian Civil Code, to record tax items in the balance sheet and income statement, but rather from the circumstance that, merely by coincidence, these values correspond to the economically correct quantification of the event to be reflected in the financial statements.

If, on the other hand, the tax item does not identify the value determined in accordance with statutory criteria, its inclusion in the financial reporting system creates the conditions for which the resolution approving the financial reporting can be considered null and void.

The uncritical import in financial reporting of fiscal values entails the nullity of the approval resolution for the unlawfulness of the object, provided that, obviously, these amounts do not correspond in economic terms to the reality that the balance sheet, the income statement and the explanatory notes have the task of illustrating. In such a case, the mere consideration of the equality between the fiscal cost and the economically right cost is not relevant for a possible illegality of the financial reporting. The legitimacy of financial reporting is guaran-

ted only if the data recorded in the balance sheet and income statement (as well as in the explanatory notes) are true and correct. Any other consideration seems irrelevant, both theoretical and pragmatic.

The coincidence between fiscal values and economic data does not, therefore, imply the automatic unlawfulness of the financial statements, unless this situation highlights the non-application of the postulates of truthfulness and correctness imposed by art. 2423 d.c. It is therefore, the recording of values that have no economic content and are sufficiently significant to render financial reporting null and void and not the confirmation of a mere coincidence between amounts that are deductible for tax purposes and costs charged to the income statement.

Fiscal interference was the subject of a significant ruling by the Supreme Court in 2014 (Supreme Court of Cassation, October 17, 2014, no. 22016).

Sentence no. 22016/2014 concerns amortization and depreciation and, more specifically, addresses the issue of the identifiable relationship between amortization provided for by tax legislation and amortization recorded in the financial reporting.

However, the general principles set out in the decision apply to all income components. For this reason, the above decision is undoubtedly destined to become a leading case.

This judgment sets out four fundamental principles:

*a) amounts in financial reporting shall reflect the economic content of the recognized production item.*

The Supreme Court states, in fact, that “to the criteria of evaluation dictated by art. 2426 above, and therefore, also n. 2) which concerns the case in question, must be recognized as mandatory because they guarantee the function, proper to the financial statements, of transparency to ensure legibility and controllability by shareholders and third parties (Court of Cassation no. 23976/2004 and Court of Cassation no. 4874/2006).

Indeed, in the absence of specific provisions of a different sign, the statutory provisions for the preparation of financial reporting are still well-founded also for the purposes of tax determinations.

On the contrary, it is not well grounded to rely on the provisions of Article 67 (now art. 102, paragraph 2) of the Consolidated Income Tax Act, which recognizes the deductibility of depreciation as a negative component of income, to the extent indicated in the specific table prepared by the Ministry of Finance,

and allows taxpayers who, in certain years, have declared depreciation lower than the maximum allowed to recover the non-benefit of the higher depreciation in subsequent years, provided that the limits allowed for each of these years are not exceeded.

This provision does not release the entrepreneur required to prepare the financial report from the obligation to calculate the actual depreciation on the assets attributable to each financial year, for the purposes of the correct preparation of the financial report itself, in accordance with the provisions of articles 2423 et seq. of the Italian Civil Code”.

*b) the taxpayer cannot be given highest discretion as to the determination of tax-deductible depreciation.*

In fact, in the aforementioned sentence, it is pointed out that “in matters of income tax, having taken into account the determination of business income, and in particular, the deduction of amortization costs, the taxpayer cannot be granted full bodied discretion in determining, at the time of the declaration, the annual amortization quotas of the assets, varying them from year to year.

Depreciation can only be in line with the systematic criterion laid down by art. 2426 n. 2) c.c. based on an amortization plan indicating the value to be depreciated (difference between the cost of the fixed asset and its presumed residual value at the end of the period of useful life), the residual possibility of utilization and criteria in the allocation of the value to be depreciated, which tend to consist of the straight-line method - which is the ordinary allocation method - or decreasing instalments.

The use of reduced depreciation rates only for the first years of use of the assets does not therefore, appear to comply with the obligation incumbent on the entrepreneur to determine, in a unitary manner, the effective extent of the depreciation rate of the assets attributable to each year, in application of the more general obligation of truth and understandability of the preparation of the financial reporting in the year.

Depreciation rates cannot be determined and varied in an arbitrary manner by the company, but must be related, in a uniform manner, to the normal period of use of the capital goods, in that art. 67 (now 102) TUIR does not introduce an exception to the provisions of the Italian Civil Code on the preparation of financial statements, which are also intended to apply to fiscal determinations”.

*c) any change in the valuation criteria applied when preparing the financial reporting must be adequately justified and illustrated in the explanatory notes, otherwise the resolution approving the financial statements shall be declared null.*

The obligation to give adequate reasons in the notes to the financial statements for any changes to the valuation criteria adopted when preparing the financial reporting is imposed by art. 2423 U.C. c.c. In sentence no. 22016/2014, the Supreme Court points out that failure to comply with this principle renders the financial reporting invalid and, consequently, causes its approval resolution to be null and void.

The Court of Cassation reaffirms that “the change of the allocation criterion, in contrast, as already mentioned, with the provisions of art. 2426 of the Italian Civil Code and with the principle of systematic and uniform depreciation codified therein, is not based on a valid economic reason and has not found any justification in the notes to the financial statements.

As mentioned above, the taxpayer has not provided any justification for this change in the depreciation charge in the

notes to the financial statements and this omitted indication implies a violation that is not merely formal, but directly contrary to the obligation of truth and understandability in the preparation of the financial reporting[...]. It follows that the adoption, in the preparation of the financial statements, of a valuation criterion for an asset different from that used for previous years, in violation of the principle of continuity of accounting values established by art. 2423-bis of the Italian Civil Code and without the explanatory notes giving the adequate reasons for the derogation requested, renders the financial statements null and void”.

*d) the inclusion in the income statement and/or balance sheet of tax values with no economical content renders the resolution approving the financial statements null, in that the presence of fiscal interference in the aforementioned documents implies failure to comply with the postulates of truthfulness and correctness imposed by art. 2423 c.c..*

The Court of Cassation establishes the illegitimacy of the recording of purely fiscal values in the financial reporting for the year, underlining that “the criteria in the allocation of the value to be depreciated must [...] ensure a rational and systematic allocation of the value of the assets over their estimated useful life, so that any changes in the criteria for the depreciation of the coefficients applied must be justified as the basis of a valid economical reason and specifically motivated in the explanatory notes. In the present case, in the tax periods prior to that in question, the taxpayer applied depreciation coefficients equal to 50% of those established by tax legislation to its capital goods, while as from 1999 it applied the coefficients established by that legislation to those goods to a maximum extent.

The change of the allocation criterion, in contrast, as already highlighted, with the provisions of art. 2426 of the Italian Civil Code and with the principle of systematic and uniform depreciation codified therein, is not based on a valid economic reason and has not found any justification in the notes to the financial statements.

The use of reduced depreciation rates only for the first years of use of the assets does not therefore, appear to comply with the obligation incumbent on the entrepreneur to determine, in a unitary manner, the effective extent of the depreciation rate of the assets attributable to each year, in application of the more general obligation of truth and understandability of the preparation of the financial reporting during the year.

Depreciation rates cannot be determined and varied in an arbitrary manner by the company, but must be related, in a uniform manner, to the normal period of use of the capital goods, in that art. 67 (now 102) TUIR does not introduce an exception to the provisions of the Italian Civil Code on the preparation of financial statements, which are also intended to apply to the purposes of tax determinations [...]. The change in the valuation criteria and, in particular, in the criterion in the allocation of the values to be depreciated must therefore be made only in extraordinary cases and such peculiarities obviously based on events affecting the residual possibility of economic use of the asset, must be justified in the notes to the financial statements, pursuant to art. 2423-bis u.c.

The obligation of continuity in the application of the valuation criteria therefore, places an explicit limit on the technical discretion of the editors in order to allow the reconstruction of the company's dynamics through the comparative reading of the financial reporting during the year and the accounting in their annual succession and to eliminate the use of the so-called "financial reporting". "financial reporting policies" in order to conceal the actual results of the year through an artificial change in the evaluation criteria.

In particular, uncommon circumstances, justifying a change in valuation criteria and an exception to the continuity principle, cannot be considered as those related to any needs within the company in terms of optimizing the tax burden on taxable income".

As a result of the above, the Court of Cassation declared null and void the resolution approving the financial reporting, which was marked by the presence of tax income components without any really economical content and, therefore, in turn marked by the lack of adequate explanation, in the notes to the financial statements, of the economical reasons that had led to an arbitrary change in the depreciation rates recorded in the financial statements.

The sentence of the Court of Cassation no. 22016/2014 represent a turning point in the issue of fiscal interference in financial reporting during the year. It seems unthinkable to assume that such a decision will not lead to major changes to the procedures for drawing up the financial statements.

The question that remains unresolved, however, is the following: will the sentence of the Supreme Court lead to the recognition in financial reporting of economically correct values not affected by tax legislation, or will the fiscal items continue to be “imported” in the civil sphere by applying accounting methods that circumvent the technical problems of legitimacy highlighted in the sentence?

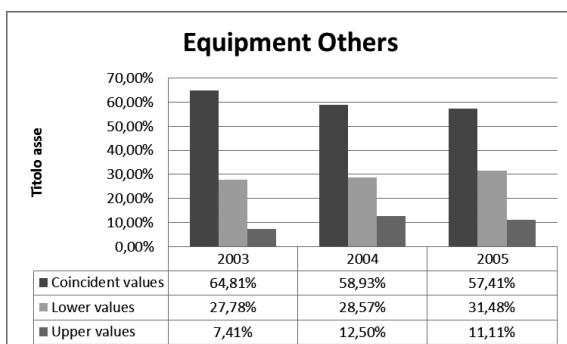
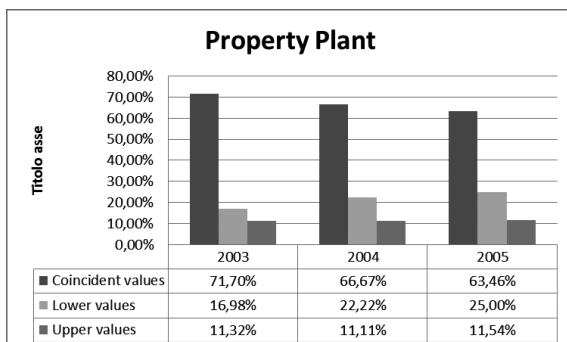
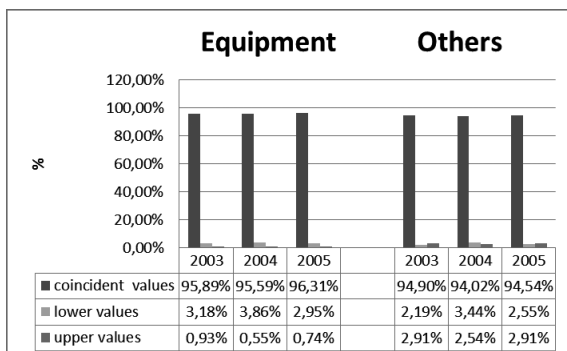
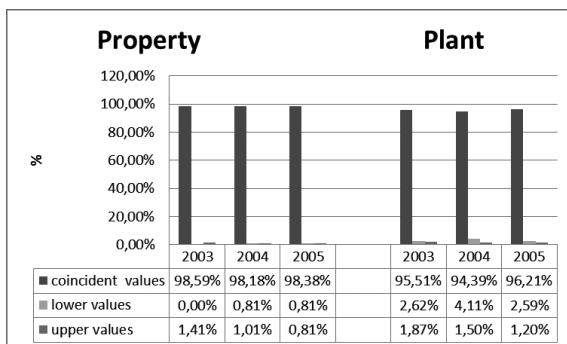
This question can be answered by analyzing the accounting behavior that companies will adopt in the coming years.

One observation may, nevertheless, be anticipated. If, in the future too, there continues to be an almost perfect coincidence between tax-deductible values and amounts recognised in the financial statements, the doubt that fiscal interference has not been eliminated but, on the contrary, has been the subject of ‘new lifeblood’ will be legitimate.

Time will determine the real impact of the above ruling on fiscal interference, which has undoubtedly characterized the financial reportings of recent decades, being able to “modify” and “reinvent” itself whenever the legislator has decided to make changes to the legislation on this complex and delicate issue.

Currently, however, fiscal interference in the civil field is fully documented by field research. In different studies carried out from 2003 to the present, it is noted that, with regard to the statutory determination of closing inventories and amortization and the different provisions present in the financial statements, there is a clear trend towards a coincidence between the values fiscally deductible, and the amounts included in the financial statements by the companies analysed. This overlap between tax data and economically correct values, if repeated for all provisions and protracted over time, indirectly proves that the values included in the financial reporting are not the result of an informed economic-business analysis and of the Italian civil and accounting principles (OIC), but rather represent the mere transposition into the financial reporting of the values fiscally allowed as a deduction. As an example, we can report an emblematic case identified in a research carried out in 2003-2004-2005.

The question on the questionnaire was as follows:  
How did the depreciation of tangible assets - property, plant, and equipment - presented in the profit and loss account compare to tax-deductible values? Were they coincident, lower or upper values? (article 102 TUIR)



2003-2004-2005 Large Companies: 56 questionnaires

From an analysis of the above data, it is immediately clear that the feeling presented in the previous pages regarding the tendency of companies to implement fiscal interference in financial reporting was correct. Let us now analyse the results from the responses in the cluster on depreciation of tangible assets. The material costs immobilized analyzed were:

- Property Plant
- Equipment Others.

As can be seen from the values deriving from the analysis of the questionnaires, the percentage of companies that indicated a perfect coincidence between legally /OIC values and tax amounts of maximum deductibility was clearly higher than in the cases where the companies showed a divergence between the value recorded in the income statement and the maximum deductible tax item (lower or higher value).

In SMEs, in an almost abnormal way, the perfect coincidence between the two values was close to 100%. In societies defined as large, the phenomenon seemed a little more mitigated even if the identity between amounts always exceeded 50%. Interestingly, in companies which, according to our parameters, were described as “large companies”, there was a change between 2003 and 2004. In fact, from 2003 to 2004, the coincidence between the values recorded in the income statement and the maximum data of tax deductibility decreased by 6 percentage points. This was clearly due to the reform carried out in 2003. As a result, some of the large companies analyzed through the questionnaire had applied the law correctly, releasing the financial reporting from fiscal contamination. It should be noted, however, that in 2004 and 2005, the coincidence between the two civil and fiscal values still exceeded 55%, demonstrating that, even in large companies, the fiscal contamination was present. Even after the 2003 reform, the number of large companies was still high, noting “by chance” the convergence between financial reporting values and maximum amounts deductible for tax purposes. As already pointed out, the data concerning the so-called large companies derive from only 57 questionnaires and therefore cannot be considered significant in order to express a complete opinion on the behaviour of this type of company. The trend highlighted, however, even by such a small number of companies, can be considered an interesting starting point for further and more in-depth analysis. And, in any case, the values expressed by the questionnaires of these last companies have their own validity about the



present trend of these companies, even though they are aware of the irrelevance, statistic and/or structural, of the analyzed “sample”.

In SMEs, the situation differed substantially in the sense that in these companies, there was no change in the trend of the percentage that, from 2003 to 2005, identified the perfect identity between legally values (Civil Code/OIC) and tax amounts of maximum deductibility. This was indicative of what was happening on the accounting field of balance sheet valuations for SMEs. What in the previous pages and volumes from this series appeared as a simple sensation, in the light of these data becomes almost certain: with regard, specifically to the depreciation of tangible assets, the values entered by SMEs identified the tax-deductible amounts. It should be noted that for plant, machinery and equipment, the percentage of coincidence between statutory values and tax amounts of maximum deductibility for the 2005 financial year even exceeded that for 2003.

From an analysis on these data, it would not seem that, in 2003, a double reform was issued, which modified, at the base, the ratio between values recorded in financial reporting and fiscally relevant data.

Of course, as we will repeat for each subsequent item, it cannot be excluded a priori that the maximum tax deductibility value also identified the economically correct amount. However, the constancy of the identity between these two amounts makes us understand how almost certain the importation in financial reporting of the maximum tax-deductible value was. It is therefore considered unfeasible to assume that there would be a systematic and random co-existence between the two values, civil and fiscal.

In conclusion, it can therefore be stated, without fear of being denied, that the tax provisions, at least as far as amortization/depreciation is concerned, in the period 2003-2005 had a strong influence in the determination of the values to be recorded in the financial reporting, and this is because it is considered practically impossible to envisage the systematic coincidence of the random economic-technical amortization/depreciation with the limit of deductibility established by the fiscal regulations.

These results are also reflected, in line with the trend, for other provisions and for closing inventories, both in the 2003-2005 research and in research carried out in subsequent years up to now.

In the latest research, which will be published in 2020 at the end of 2018-2020 research, it is noted that the trend highlighted above and found in the 2003-2005 research, is still widespread although, there are some companies that begin to indicate differentiated amounts, especially for the alleged losses on

loans. However, this item is closely linked to the economical crisis that has hit world economies since 2008 and, therefore, it is almost normal that this item shows a divergence between the economically correct value and the amount deductible for tax purposes since the latter figure is, at the current state of the global economical situation, unable to reflect the real losses presumed on receivables. Leaving this item aside, for the other subjective items of financial reporting, however, there is still a very strong influence of the tax values which, in the majority of cases, are still included in the financial statements. For a more detailed analysis of these researches, the reader is referred to the texts that will be published in 2020 at the end of the research 2018-2020.

Without giving other specific examples as we have illustrated in the previous pages regarding the 2003-2005 research, it is possible to affirm that, in spite of today, the recording of fiscal values in financial reporting is so prevalent that it can be affirmed, without fear of being denied because the results are verified in the field, that in spite of today the contamination of financial reporting by fiscal interferences, despite the reinforced derivation, is extensive and very deep-rooted in the Italian financial statements and this with regard to the subjective items not covered by the law on the reinforced derivation.

In conclusion to these considerations on tax interference in the presence of a reinforced derivation it can be stated that the tax contamination is still well present in the practice followed by companies. Consequently, even though the reinforced derivation brought the taxable income closer to the economically correct income identified in the Italian Civil Code, it is impossible to state that the enhanced derivation, as far as the ratio between book values and tax data is concerned, guarantees the veracity of the financial statements. The wide diffusion of the practice of importing in the income statement and balance sheet subjective values of a fiscal nature that have nothing to do with the economic and business reality that should be reflected by the financial reporting, leads, very often, the financial statements are invalid because they are made illegitimate by the presence of untrue values from a civil point of view.

The reinforced derivation therefore, represented a major step towards bringing the taxable income and the civil income closer together but, for the time being, it has not achieved its overall objective of making the two values superimposable. As long as it is impossible to consider the amount of subjective values deriving from depreciation and other provisions and of other items excluded, at least, for the time being, from the enhanced derivation as deductible for tax purposes, the financial statements will always be influenced by the presence of tax amounts with no economic value. And this, as we have already had occa-

sioned to point out, both because companies do not wish to carry out double administrative work aimed at keeping in mind dual values, fiscal and civil, and because companies, understandably, are reluctant to give up the deductibility of amounts that, in theory, could tax deductible by the name of the truthfulness of the financial statements. Even if, in reality, this entails the risk of appeal because the complete balance sheet, income statement, explanatory notes and cash flow statement, if not totally composed of true values, identify documents that invalidate the entire financial reporting.

## Chapter III

Legitimacy of financial statements: faithful representation in measurement of the economic facts' objects of accounting, correctness and understandability. Brief considerations on the inter-relationship between financial reporting postulates

SUMMARY: 3.1 The reinforced derivation and financial reporting postulate, loyal, correctness and understandability. Introductory Considerations; 3.2 The understandability and faithful representation in measurement of the economic facts' objects of Accounting/ Correctness: interrelationships developed over time. Civil invalidity due to deficiencies in understandability; 3.2.1 Meaning of the understandability postulate; 3.2.2 Judicial and business consequences of the violation of the understandability postulates and/or faithful representation in measurement of the economical facts objects of accounting and/or correctness; 3.2.2.1. Historical evolution of the interconnection of understandability violation and precision/faithful representation in measurement of the economic facts' objects of accounting/ correctness: the past and the present.

### 3.1 The reinforced derivation and financial reporting postulate, loyal, correctness and understandability. Introductory Considerations

With regard to the problem connected to the impact of the reinforced derivation on the faithful representation in measurement of the economic facts' objects of accounting, and correctness of financial reporting which, in theory, due to this new fiscal principle, should guarantee the absence of fiscal contamination of the income statement from the presence of economically unjustified fiscal values, we have already given the answer in the considerations set out above.

The reinforced derivation does not guarantee the faithful representation in measurement of the economic facts' objects of accounting, and correctness of financial reporting but, in this specific case, as we have already pointed out, the reason is not a gap and/or impediment in the law but a widespread practice among companies to directly enter depreciation and amortization and tax deductible provisions in the income statement.

Therefore, the reinforced derivation and the tax legislation currently in force would in theory allow the preparation of a correct and truthful financial reporting and, therefore, civilly valid. However, this only happens in a few cases, not for legal reasons but because of the incorrect behaviour of companies with regard to the allocation of values not subject to reinforced derivation, values which, in theory, should be economically justified but which, in reality, are often mere amounts deductible for tax purposes.

After having underlined that, for a distorted practice applied by the companies, the reinforced derivation does not guarantee the faithful representation in measurement of the economic facts' objects of accounting. As the latter is very frequently contaminated by tax values that have not been governed by the above-designation regulations, the question arises as to whether this regulation concerning the civil validity of certain specific tax values is also connected to the understandability postulate.

The answer to that question is no. The reinforced derivation, in fact, concerns the content and amount of the values recorded in financial reporting and does not address, in any way, the problems of the formal structure of the income statement, the balance sheet, the notes to the financial statements and the cash flow statement. Therefore, understandability is not addressed by the reinforced derivation and, consequently, remains a postulate outside the issue of fiscal interference in the financial statements.

To conclude these considerations it is necessary to underline that, obviously, the faithful representation in measurement of the economic facts' objects of accounting, financial reporting is connected not only to the problem of fiscal interference but is also connected to all issues concerning the faithful representation in measurement of the economic facts' objects of accounting, the data included in the documents making up the financial reporting. At this point, however, in order to give a complete, albeit concise, picture of the issue of the legitimacy of financial reporting, one must ask oneself if a financial reporting with faithful representation in measurement of the economical facts' objects of Accounting is correct and, therefore, devoid of any tax contamination and/or recognition of incorrect amounts and accordingly does not reflect the econom-

ical reality that financial reporting should guarantee, it can be said, certainly, legitimate and valid.

The answer is negative because, in addition to faithful representation in measurement of the economic facts' objects of accounting and correctness there is another postulate that may invalidate the financial statements. In fact, understandability, pursuant to art. 2423 of the Italian Civil Code, identifies a financial reporting postulate of equal dignity to the faithful representation in measurement of the economic facts' objects of accounting, and correctness. If a financial reporting is true and correct but not clear, the resolution approving the financial reporting would be null and void and therefore the financial reporting subject to the resolution would be illegitimate.

The second question to be asked is whether understandability only has civil consequences or whether, on the contrary, it can also have impacts in the criminal field.

For further information on these two issues, the reader is referred to the following paragraphs.

## 3.2 La understandability e la faithful representation in measurement of the economic facts' objects of accounting. /correttezza: interrelazioni sviluppatasi nel tempo. Invalidità civilistica dovuta a lacune della understandability

### 3.2.1 Meaning of the understandability postulate

Understandability identifies a postulate of financial reports imposed by art. 2423 d.c.. This provision states that financial reporting must be prepared with understandability and must give a true and fair view of the company's financial position and results of operations for the year.

From the letter of the cited norm it is understood that the understandability postulate represents not only a principle that the economic-company doctrine has always deepened and wished for to be applied when drawing up the financial statements, but also a real legal obligation whose failure to comply causes the invalidity of the resolution approving the financial statements.

It is evident that, also to analyze the judicial consequences of the non-application of this postulate, it is necessary, as a preventive measure, to fully and cor-

rectly understand what is to be understood by the term “understandability”. The national accounting standards OIC have always dealt with this issue in a very concise manner. In principle no. 11 Purpose and postulates of the financial statements, issued in 2005, the OIC limits itself to stating that the following observations can be made regarding the understandability of financial reporting:

“Financial reporting must be understandable and must therefore be analytical and be accompanied by the notes to the financial statements that facilitate understanding and intelligibility of the key accounting symbols. However, the information provided must not be excessive or superfluous.

Some elements that characterize the understandability of financial reporting are:

- (a) separate disclosure of individual components of income and capital, classified in homogeneous items and without netting;
- (b) the clear identification of ordinary items from extraordinary items of income for the period;
- (c) the separate classification of ‘typical’ operating expenses and income from other operating expenses and income.

The problem was then completed by the principle OIC 11 of 2005 by the following principle:

“Significance and relevance of economic facts for the purposes of their presentation in the financial statements

Financial reporting must only present information that has a significant and relevant effect on the financial reporting data of the recipients’ decision-making process. The principle of significance is also reflected in numerous regulations on the preparation and content of financial statements.

The financial reporting process involves estimates or forecasts. Therefore, the correctness of the financial reporting data does not refer only to the arithmetical accuracy, but also to the economic correctness, to the reasonableness, that is to say to the reliable result that is obtained from the prudent and honest application of the valuation procedures adopted in the drafting of the financial reporting. Errors, simplifications and rounding are technically unavoidable and are limited by the concept of materiality, i.e. they must not be of such a magnitude as to have a material effect on financial reporting data and their significance for the recipients.

Therefore the principle OIC 11 Financial reporting. The objectives and postulates stressed that the information provided should not be excessive or superfluous.

The OIC 11 Purpose and postulates of exercise principle, which came into force in 2018, does not even address the problem of understandability. In principle OIC no. 11 of 2018 there is in fact no longer any reference to the understandability assumption. In fact, the new principle is limited, with regard to the form of the financial statements, to establishing that the information must be significant (principle of materiality).

In particular, the principle states:

#### *4.6 Relevance<sup>27</sup>*

31. Information is considered material when its omission or incorrect indication could reasonably influence the decisions taken by the primary recipients of the information on financial reporting based on the company's financial reporting. The relevance of the individual elements that make up the financial reporting items is judged in the overall context of the financial statements.

32. The primary recipients of financial reporting information are the individuals who provide the company with financial resources: investors, lenders and other creditors. The concept of materiality is pervasive in the process of establishing the financial reporting.

34. Both qualitative and quantitative elements are taken into account to quantify relevance.

35. Quantitative factors take into account the magnitude of the economic effects of the transaction, or of another event, compared to the amounts in the financial statements. Identifying the values of financial reporting which are used as a reference to determine relevance is a valuation process that can vary from case to case. In any case, preference must be given to those elements of financial reporting that are of the greatest interest to primary recipients of financial statements.

36. Qualitative factors in themselves transcend quantitative aspects since they concern specific characteristics of the transaction or event whose importance is such that it can reasonably influence the economic decisions of the primary recipients of the company's financial reporting.

37. The Comma 4 of Article 2423 of the Civil Code provides that it is not necessary to comply with the obligations of disclosure, evaluation, presentation and information when their compliance has irrelevant effects in order to give a true and fair presentation. The obligations concerning the regular keeping of

---

<sup>27</sup> On the relevance and materiality principle, the reader is also referred to the following pages.



accounting records remain unchanged. The companies illustrate in the explanatory notes the criteria by which they have implemented this provision.

38. Therefore, the legal assumption of the obligation to provide specific information about the attach report (in Italian language: nota integrativa) notes to the financial statements is represented by the conscious decision to derogate from a legally rule in so far as the effects of the derogation are immaterial. The preparer of the financial statements, in reporting in the notes to the financial statements on his accounting policies and, in particular, on the concrete method of applying the accounting principles to its business reality, must also highlight the implementation methods relating to the options for derogation provided for in comma 4 of Article 2423 of the Italian Civil Code.

39. National accounting standards provide, by way of example but not limited to, some cases in which it is possible to derogate from an accounting rule, provided that the disparagement has no significant effect. For example, a company required to apply the amortized cost method may elect not to use it for receivables or payables due in less than 12 months or not to discount a receivable or payable if the interest rate that can be inferred from the terms for the contract is not materially different from the market interest rate.

Anche i principi internazionali IAS/IFRS fanno un diretto riferimento alla rilevanza. In particolare, nel Conceptual Framework IFRS si stabilisce due principi inter-relati:

“ **Fundamental qualitative characteristics**

2.5 The fundamental qualitative characteristics are relevance and faithful representation.

*Relevance*

2.6 Relevant financial information is capable of making a difference in the decisions made by users. Information may be capable of making a difference in a decision even if some users choose not to take advantage of it or are already aware of it from other sources.

2.7 Financial information is capable of making a difference in decisions if it has predictive value, confirmatory value or both.

2.8 Financial information has predictive value if it can be used as an input to processes employed by users to predict future outcomes. Financial information Throughout the *Conceptual Framework*, the terms ‘qualitative characteristics’ and ‘cost constraint’ refer to the qualitative characteristics of, and the cost constraint on, useful financial information need not be a prediction or forecast to

have predictive value. Financial information with predictive value is employed by users in making their own predictions.

2.9 Financial information has confirmatory value if it provides feedback about (confirms or changes) previous evaluations.

2.10 The predictive value and confirmatory value of financial information are interrelated. Information that has predictive value often also has confirmatory value. For example, revenue information for the current year, which can be used as the basis for predicting revenues in future years, can also be compared with revenue predictions for the current year that were made in past years. The results of those comparisons can help a user to correct and improve the processes that were used to make those previous predictions.

### *Materiality*

2.11 Information is material if omitting it or misstating it could influence decisions that the primary users of general purpose financial reports (see paragraph 1.5) make on the basis of those reports, which provide financial information about a specific reporting entity. In other words, materiality is an entity-specific aspect of relevance based on the nature or magnitude, or both, of the items to which the information relates in the context of an individual entity's financial report. Consequently, the Board cannot specify a uniform quantitative threshold for materiality or predetermine what could be material in a particular situation.”

As it can be seen from the above, both the national OIC standards and the international IAS/IFRS consider the relevance of information intended for external use to be a fundamental element into the problem of the correct preparation of financial reporting, since an unnecessary overabundance of elements of knowledge can render the effectiveness of the communication null.

Apart from the above provisions, no reference is made by the new standard OIC 11 Purposes and postulates of financial reporting to the understandability of the latter.

In order to investigate this postulate, it is necessary, therefore, to refer to what is stated by the economic and business doctrine on the intelligibility and comprehensibility of the income statement, balance sheet, notes and cash flow statement.

The consequences of a presence of gaps in understandability, pursuant to Article 2423 of the Italian Civil Code, require an in-depth analysis of this postulates, even if national principles glisten on the subject in question.

The relevance, not only theoretical and academic, but pragmatic and relevant in judicial matters obliges us to deepen the concept of understandability in a more analytical way.

From the above, clearly this postulates refers to a problem of form and not of substance. Clear' communication does not mean correct and truthful information, but only an intelligible flow of information from the recipients.

Information is clear, therefore, when the user is able to fully understand the message addressed to him.

In this regard, we would like to recall how, at the end of the 1960s, studies on communication were the subject of a real scientific revolution, in the Kuhnian sense of the term. In 1979 Watzlavich, together with a number of his colleagues, after carrying out an in-depth analysis of the subject in question, came to the conclusion that one cannot fail to communicate<sup>28</sup>. This assertion created a profound fracture with respect to the studies developed previously; in fact, the definitions of communication formalized in the '40s and '50s, while leaving a remarkable evolutionary process to transpire, had never emphasized, in a specific way, this particular aspect of human behavior.

Watzlavich<sup>29</sup> instead, analyzed the consequences of what could be defined as the passive behavior" of an individual and came to affirm that every subject, regardless of whether or not the goal is set to send messages to third parties, simply because of adopting or not to adopt a certain behavior, communicates with the outside world. From Watzlavich's axiom derives the need to formulate, on the part of everyone, a real communication strategy because only by acting in this way can subjects program, and thus keep somehow under control, the messages that voluntarily or involuntarily, continuously, send to the outside world<sup>30</sup>.

It is understandable that such statements, being of considerable importance in every field to human activity, acquire a particular importance even though in the business world, "whatever the company does or doesn't do, it brings a tile to the mosaic of its image in the general public ... If an image policy is not explicitly and rationally programmed (therefore) that does not form an image, it

---

<sup>28</sup> For an overview of this evolutionary process see Damascelli, *La comunicazione nelle imprese*.

<sup>29</sup> Watzlavich Bravin Jackons, *Pragmatica della comunicazione*.

<sup>30</sup> "Nevertheless, the other consequence that comes from Watzlavich's axiom and is full of meanings in the business world and that since it is impossible not to communicate, it is always needed to pose the problem of disclosing it is therefore, necessary to formulate strategies, define objectives, plan communication activities». Damascelli, *La comunicazione nelle imprese*, p. 17

will simply be chaotic and uncoordinated and that is, ultimately, will be a bad image”<sup>31</sup>.

It is in the interest of the company itself, therefore, to plan its communication activities since, only in this way does the company avoid the danger of sending unfavorable messages to third parties, perhaps unwittingly. As highlighted in the previous pages, the main instrument of corporate communication is financial reporting, a document in relation to which all the general considerations that can be carried out regarding any reticent and/or passive behavior of the company not specifically connected to economic and financial communication and balance sheet are valid.

In the opinion of the writer, the postulate of understandability, also understood in purely civil terms, cannot prescind from some basic considerations regarding the so-called intelligibility of the financial statements.

The assessment of compliance with the understandability postulate of financial reporting cannot ignore two specific considerations:

(a) information means sending messages to the outside world by appropriate means <sup>32</sup>

(b) informing also means not losing sight of the actual reception capacity of the user to whom the message is sent.

In the area of corporate reporting, the problem of correctly receiving the message contained in the financial reporting is particularly important since accounting is not only a semiotic system<sup>33</sup> which, being composed of signs is in itself complex to interpret, but, moreover, is also a system marked by particular characteristics that make it even more difficult for the work of those who must understand the messages contained in such a document.

The main problems that a subject has to face at the moment in which he prepares to understand that set of signs that is the financial reporting are therefore connected with the interpretation of the symbology contained within the document <sup>34</sup>.

---

<sup>31</sup> Damascelli, last cited work. p. 54.

<sup>32</sup> “The completeness of the message depends only on the type of language used in relation to the recipient of the message: not only on the vehicle used but also on the location physically identified, which receives it”. Vigano, *Il bil. delle imprese banc.*, p. 32

<sup>33</sup> “Financial reporting is an accounting structure and is therefore part of a semiotic system capable of “communication” through the intersubjectivity of its signs.”. MAZZA, *La chiarezza del bil. d’es.*, in AA.VV., *Il bil d’es. e amm. delle imprese*, p. 461.

<sup>34</sup> “Financial reporting should not be read but understood.” Corticelli, *Consideraz. sulle val. di bil.*, in AA.VV., *Studi in onore di Onida*, p. 99.

These problems can essentially be traced back to three unusual situations:

- 1) in financial reporting, expressions are often used that are also specific to the common language. This circumstance, if, on the one hand, it can sometimes simplify the task of who has to interpret those signs, on the other hand, it can, instead, create notable problems in that, in many cases it happens that the accounting symbology - even if using voices proper to the spoken language - uses such terms with meanings that are furthermore, profoundly unconventional from the meanings in which they are received in the common language. In such a situation, it may happen that the interpreter is led to attribute to the accounting symbol the usually accepted meaning in usual language, with the possibility of falling into misunderstandings, even macroscopic, of interpretation;
- 2) many accounting terms do not find an immediate correspondent in the familiar language. In other words, whoever has to understand the financial statements is faced with - in addition to phrases that could deceive him, since their accounting meaning is different from that normally attributed to those terms in habitual language - also with purely technical-accounting entries that, not being directly translatable into the common language, are, in practice, incomprehensible to a non-expert reader<sup>35</sup>.
- 3) lastly, it often happens that identical symbols designate distinctive objects or, vice versa, that unusual signs refer to identical phenomena. If we add to this the observation that distinct authors, on the one hand, can attribute heterogeneous meanings to the same voices and, on the other hand, it is conceivable that they assign equal meanings to different terms, we can understand how the work of those who have to interpret financial reporting data can become difficult and complex.

The three above cases do not represent an exhaustive list of all the possible causes of difficulties that a non-expert reader encounters when he is preparing to interpret a financial reporting. Such considerations must, however, be kept in mind when judging, in economic-business and strictly legal terms, the observance of the understandability postulate imposed by art. 2423 c.c.(Italian Civil Code).

---

<sup>35</sup> "This designation refers to those symbols whose reduction in common language would involve the use of explanations that, in practice, would be nothing more than theoretical-practical exhibitions of accounting...". Amodeo, *Il bil. delle S.p.A come strum. di inf.*, in *Riv. dott. comm.*, 1970, p. 882.

Bearing these brief observations in mind, however, it can be understood that financial reporting can often be, in whole or in part, incomprehensible to a large number of subjects who find themselves in the need to analyze the public financial reporting of a given company<sup>36</sup>. This is a problem that particularly affects people who are not competent in this area, although it should be noted that it is not impossible to find -in some financial statements - items difficult to interpret, even for those who are experts in accounting.

The understandability postulate must be interpreted as the basis of all the above observations, since it is unique with the complex problem as the problem of the intelligibility of a document made up of symbols in mind that we can arrive at attributing to this principle the right connotation to the concept of intelligibility.

Therefore, if, on the one hand, the financial reporting, often representing the sole instrument of information from the outside, must, without doubt, also be understood by non-experts, on the other, it is impossible to ignore the consideration that accounting language is a form of communication characterized by an interpretative problem inherent to the language itself.

In relation with the degree of intelligibility that it would be desirable to find in public financial reportings, there is, however, unanimity among scholars. While, in fact, some authors believe that the accounting language cannot prescind from an inevitable technicality<sup>37</sup>, other academics claim, on the contrary, that there is a possibility that the drafting of the document in question may instead take place by abstracting - at least in part and as far as possible - too technical a symbology. Often, adopting such behavior, the authors of this second doctrinal current point out, means clashing with the opinion of those who believe that the items of financial reporting should be as synthetic as possible. This

---

<sup>36</sup> In this respect, it should be noted that Zappa's assertion in *Reddito d'impresa* is relevant. "And of course it happens very often that some accounts know how to interpret each other, without knowing too many accounting forms, even if the phenomenon that those accounts detect is ignored... But how public management manifests itself to those who ignore the structure of companies, to those who do not perceive the many processes of survey and yet consistent paths, and does not know how to grasp the various reasons?..." Zappa, *Il red. d'impresa*, p. 50. Anthony also claimed that reader would discover that the task of learning accounting and essentially the same as learning a new language." Anthony, *Cont. per la dir.*, p. 36.

<sup>37</sup> "However, it should be noted that the company's financial reporting schedules are the result of ... the collection, processing ... of data from various in-training flows, all of which can be carried out using accounting and sometimes statistical procedures. Consequently, reading a balance sheet, however clear it may be, requires at least elementary knowledge of the "accounting grammar": the technique must ensure that it is easier to read the balance sheet, but on the other hand, any misunderstanding that may arise from the claim of reading a balance sheet without any knowledge about the meaning of e.g. technical terms must be avoided." Amaduzzi, *I bil. d'es. delle imprese*, p. 52.

“necessary” conciseness, therefore, does not have such a relevance as to justify a substantial decrease in the informative capacity of financial reporting and, consequently, some scholars have affirmed that a greater specification, even if apparently contrasting with the ancient canons of accounting aesthetics, should be, in any case, chosen to ensure a better understanding of those indications. According to some scholars, this thesis would be implicitly accepted also by the Italian legislator since the financial reporting, by law, is considered an instrument of information directed to a group of users in relation to whom one cannot, a priori, suppose a particular receptivity. Furthermore, the legislature does not refer to any specific accounting techniques, which would prove, in a further way, the acceptance of the argument put forward by the doctrinal current to which they adhere.

The various authors which have dealt with this subject have therefore expressed differing opinions about the degree of “accounting technicality” that should characterize the stage of preparation of the financial statements. Nevertheless, the doctrine essentially agrees about the need for financial reporting to become an information tool that is comprehensible and accessible to an increasing number of subjects.

In the opinion of the writer, the understandability assumption necessarily implies that the reader of the document is provided with a minimum of knowledge in the accounting field as financial reporting adopts a technical language, unavoidable as it is inherent in the document itself, whose understanding cannot prescind from a knowledge, even minimal, which, inevitably, must distinguish those who are preparing to read and interpret the data contained therein.

We fully agree, therefore, with Salafia when it points out that “understandability consists in a way that allows the understanding of the accounting document by the recipients provided with media accounting culture” and with Quatraro Fumagalli D’Amora <sup>38</sup> when they emphasize that “the understandability desired by the legislator is not that which could demand e.g. an analyst of financial statements but that, (lower as long as) sufficient to provide the recipient of it (partner or third party of normal accounting culture) the representation of the equity, economic and financial situation of the company”<sup>39</sup>.

---

<sup>38</sup> Salafia, “Caratteri generali del bilancio e principi di redazione” in *Le società*, p. 1611 e Id. “Il bilancio di esercizio verid. e corret. Dell’informazione” in *Le soc.* 1998, p. 880. A similar expression is contained in the sentence of the Court of Milan 30 settembre 1985, in *le soc.*1986, p. 60.

<sup>39</sup> Quatraro Fumagalli D’Amora, *Del ass. e cons.*, p. 374.

Take, for example, the problem of the titles of the accounts used in the financial reporting. There are a number of examples of accounts that can be understood by anyone and therefore, also by people who do not have "accounting knowledge". Accounts receivable from customers, cash, bank receivables, payables to suppliers, payables to the state, etc., can as well be understood by those who do not have any competence in this matter as they do not involve any technical skill.

There are, however, a number of such items which, on the contrary, can only be understood by those with a minimum of accounting culture. These include accounts receivable for prepaid taxes, payables for deferred taxes, revaluation reserves, valuation reserves pursuant to Article 2426 IV of the Italian Civil Code, treasury shares, other intangible assets, etc. Clearly an understanding of these items presupposes a knowledge, even if not that of a great expert, of accounting matters. Another example is the case where, in the notes to the financial statements, reference is made to the fact that qualified shareholdings have been valued by applying the equity method. Again, the information provided is only clear to a person with basic accounting knowledge. Certainly, this phrase is obscure to parties who do not have any knowledge of the financial statements and accounting. However, not for this reason can financial reporting be described as "unclear".

In conclusion, therefore, "understandability does not mean that financial reporting can be understood by anyone, even outside of an accounting culture: it does mean that it must be easily read by people with an average accounting culture"<sup>40 41</sup>.

When greater intelligibility is desired of the financial reporting, reference is made, of course, not so much - or rather not only - to a better understandability of the individual items included in the balance sheet and in the income statement, as to a higher comprehensibility of the document understood in a global sense, and therefore unitary. This is since the individual items of the financial statements, even though they have their own "individuality", are part of a larger system, a circumstance which prevents the interpretation of a specific income

---

<sup>40</sup> In a "specular" manner, the Court of Cassation points out that "it is necessary to reaffirm that the identification of the correct criteria for the preparation of financial reporting ... must constitute the natural professional background of those who agree to hold the office of director or statutory auditor in a company. Given a certain degree of technical complexity to the problems involved in the drafting of financial reporting, this is normal and cannot, in itself, integrate the extremes of those "special difficulties" referred to in art. 2236 Civil Code" Cass.15 febbraio 2005, n. 3032.

<sup>41</sup> Quatraro D'Amora, *Il bil. d'es. e cons.. Problematiche civ., penali e trib.m.*, vol. I, p. 22.



and/or capital item separately from all the other components of the financial reporting itself.

It is also clear that understandability must concern all the components of financial reporting: the balance sheet, the income statement and the attach report (in Italian Language *nota integrativa*) notes to the financial statements and cash flow statement.

To conclude, it is necessary to highlight a final observation of the relationship between the amount of information supplied externally and the receptivity of the same by users. Clearly informing does not mean, at all, “submerging” the potential user for the information with a considerable mass of news as it is known that the best method for not informing is substantially to inform too.

In fact, the intelligibility of a financial reporting containing a quantity of information disproportionate to the real needs of the user is, undoubtedly, less higher than that of a document in which, even though less data is collected, an attempt has been made - in preparing the “grid” of the information to be supplied - to take into account the real cognitive needs of the users. The communicative capacity of financial reporting (as well as that of any other informative document) therefore, increases, not when the quantity of information provided increases, but rather - as is also stated on the document. n. 11 OIC Financial reporting - Purposes and postulates - of 2018 when the two principles of relevance and selectivity are correctly applied, concepts that, in reality, should always be taken into account when aiming to communicate effectively with the outside world.

To assess compliance with the understandability assumption imposed by art. 2423 of the Italian Civil Code, if, on the one hand, it is necessary to take into account the above-mentioned observations, on the other hand, it is equally obligatory for consider the statutory rules issued in order to regulate the form which, by law, must distinguish financial reporting.

With regard to the technical structure that must necessarily characterize the parts of the financial statements, a distinction must be made between the problems relating to the four documents that construct up the financial (balance sheet, income statement, attach report and cash flow statement).

Articles 2424 and 2425 of the Italian Civil Code identifies two structural schemes that companies must observe when drawing up their financial statements. Since understandability identifies a characteristic connected to the comprehensibility and intelligibility of the message contained within the document

subject to disclosure, clearly compliance with the above articles is a fundamental condition for the understandability postulate to be considered observed<sup>42</sup>.

As regards the attach report (in Italian language *nota integrativa*) to balance sheet and income statement in particular, the problem of understandability takes on different forms since, for this document, there is no mandatory technical structural form. Art. 2427 of the Italian Civil Code identifies the minimum content that must necessarily characterize the notes to the financial statements. The preparation of this component of the financial reporting can take place in a discursive form and with the help of tables, graphs, etc. ... at the discretion of the preparer of the financial statements. Clearly, as far as the illustrative notes are concerned, this makes the observations made in the previous pages become relevant principles, also in the legal sphere. The understandability of the descriptive notes cannot be “measured” by analyzing their correspondence with a scheme predetermined by the legislator and, consequently, in order to assess compliance with the postulate subject of our interest; it is necessary to check their overall intelligibility, completeness and “simplicity” (the latter being a characteristic that must be interpreted as the light on the considerations made previously and, in particular, bearing in mind the observations contained in the Conceptual Framework of IFRS emphasises that: “ 2.36 Financial reports are prepared for users who have a reasonable knowledge of business and economic activities and who review and analyses the information diligently. At times, even well-informed and diligent users may need to seek the aid of an adviser to understand information about complex economic phenomena), and the comprehensibility of the information contained therein.

With regard to the understandability of the balance sheet and income statement, however, some additional considerations must be made with respect to what has been stated up to now.

Actually, if we stop at the analysis carried out so far, we could run into an error that, in judicial terms, could certainly lead to the invalidity of the balance sheet and the income statement. In reality, given the current legislation in force, slave compliance with the structural schemes indicated respectively in articles 2424 and 2425 of the Italian Civil Code does not guarantee that financial reporting can be defined as “clear” and therefore, can be considered perfectly legitimate.

---

<sup>42</sup> With regard to this claim, see however the considerations made in the following pages.

In fact, the analysis of compliance with understandability cannot disregard the consideration of art. 2423 ter 2, 3 and 4.

This provision requires that:

paragraph 2: items preceded by Arabic numerals may be further subdivided, without the elimination of the total item and the corresponding amount; they may be grouped only when the collecting due to their amount, is immaterial to the purposes indicated in the second paragraph of art. 2423 (obligation to observe the understandability, faithful representation in measurement of the economic facts' objects of accounting postulates and correctness) or when it promotes the understandability of the financial statements. In the latter case, the notes must separately contain the items that are grouped together.

comma 3: other items must be added if their content is not included in any of those provided for by Articles 2424 and 2425 c.c.

paragraph 4: items preceded by Arabic numerals must be adapted where the nature as the activity exercised so requires.

From the analysis of art. 2423 ter it is clearly understood that compliance with the reclassification structures and with articles 2424 and 2425 of the Italian Civil Code does not guarantee the understandability and, therefore, the legitimacy of the financial statements. In fact, these schemes must be considered as "basic" structures that can obligatorily be modified if the understandability postulate requires it.

The understandability therefore, requires that the structural indications of Articles 2424 and 2425 c.c. supplemented by information that, by its nature, are not rigidly outlined.

The intelligibility and comprehension and, as a result, the understandability itself, depend on a subjective evaluation that must go beyond what is provided for by reclassification schemes structured in such a way as to be used in a generalized manner.

The understandability assumption implies, in itself, the consideration of elements connected to the business reality that is the subject in the report by the financial statements, which, by their nature, cannot be identified in an exhaustive, definitive and generalisable manner, by a reclassification scheme whose objective is to provide the basis for the comparability of the economic and financial data made public by the companies.

A balance sheet and an income statement are therefore, clear, not when they are prepared on the basis of the provisions of Articles 2424 and 2425, but when the data that reflect the economic and financial reality of the business entity are

presented in such a way as to ensure that the company's situation is correctly understood and interpreted by the user to whom the information is addressed.

Clearly understandability depends on a series of subjective elements that, by their very nature, are extraneous to pre-package and generally usable structural schemes governed by articles 2424 and 2425, which are well summarized in the above-mentioned Conceptual Framework IFRS 2018.

On the basis of the considerations made in the previous pages, it can therefore be affirmed, in agreement with Pontani, that understandability must be characterized by three inseparable peculiarities”:

“1) a morphological understandability (understandability of forms) which concerns the compilation of financial reporting and, which focuses on the methods of systematic data ordering

2) a syntactic understandability, regarding the logical expressiveness of the financial statements

3) a lexical understandability, pertinent to the language used, necessary in order to avoid risk factors implicit in ambiguity, generic or terminological mismatches”<sup>43</sup>.

With regard to the meaning of the postulate of understandability, the considerations made by Colombo are especially interesting. In fact, this self-reinforcement, after having deepened the provisions contained in articles 2424, 2425, and 2423 ter c.c., affirms that “the principle of understandability, in its formulation as a general clause superior to the specific norms, ends up having importance, principally, with regard to the methods of preparation of the explanatory notes: precisely because this “part” of the financial reporting is not governed by rigid schemes, the need for an ordered, easily understandable, unequivocal and exhaustive formulation is remarkably imposed on it.”<sup>44</sup>.

Understandability is therefore interpreted, mainly, as a postulate that must guide those who are organizing to ready the attach report (nota integrativa in Italian language) to the financial statements, a document that forms part of financial reporting but is not characterized by a form structured within rigid accounting schemes and as such, requires a method of communication characterized by the intelligibility and comprehensibility of the message contained therein.

---

<sup>43</sup> Pontani, La claus. gen. ed i princ. di red. del bil. d'es., p. 239.

<sup>44</sup> Colombo, La cl. generale, in Il bil. di es., a cura di Palma, p. 32.

Particularly interesting is the considerations made explicit by the jurisprudence of legitimacy regarding the “temporal moment” in relation to which the observance of art. 2423. The Court of Cassation has, in fact, highlighted how “understandability and completeness ..... are re-requested at the time the shareholders’ meeting resolves on approval, because the financial reporting during the year must be drawn up according to strict annual deadlines, and therefore, subsequent events do not in themselves justify ex-post decisions that must intervene before the situation in which they arose when they were taken into consideration when approving the financial statements”<sup>45</sup>.

In conclusion, with regard to the concept of relevance, it should be noted that the correct interpretation and application to this principle are also important in order to understand the effects of errors/simplifications that can be identified during the preparation of the financial statements. This is not the right place to go on this issue in depth. In this article it is sufficient to underline how errors, simplifications and rounding are technically unavoidable and find their “limit” in the concept of relevance: that is, they must not be of such a magnitude as to have a important effect on the financial reporting data and on their meaning for the recipients.

In the Conceptual Framework IFRS 2018, this standard is set out in § 2.23 to § 2.39 which state that, in order to be useful, information must be significant for the information needs connected with the users’ decision-making process. Information is of a qualitative nature when it is capable of influencing users’ economic decisions by helping them to evaluate past, present or future events or by confirming or correcting measurements made by them previously.

The significance of information is influenced by its nature and relevance. In some circumstances, the nature of the information alone is sufficient to determine its significance. For example, disclosure of a new segment may affect the assessment of the risks and opportunities facing the entity regardless of the significance to the performance of the new segment during the period. In other cases, both nature and materiality are important, as is the case for amounts of inventories in each of the main categories appropriate in the business of the enterprise.

Information is material if its omission or misrepresentation could influence economic decisions of users taken as the basis of the financial statements. Rel-

---

<sup>45</sup> Cass. 4 aprile 2001, n. 4937.

evance depends on the quantitative size of the mail, and the error judged in the specific circumstances of omission or misrepresentation. Therefore, relevance provides a threshold or limit rather than being a primary qualitative characteristic that information must possess to be useful.

The concept of relevance and significance, which is so well presented in economic and business terms within the context of the OIC and IAS/IFRS standards, also plays a fundamental role in assessing the legitimacy of the financial statements. In fact, in various sentences, both in substance and legitimacy, it is pointed out that irrelevant errors or insignificant omissions cannot lead to the total invalidity of the financial statements, or rather of the resolution approving them.

The principle of relevance/signification therefore, also has legal and judicial value.

In the previous pages, we have highlighted how, with reference to financial reporting, the term "truth" cannot be used - which would imply the existence of an absolute truth - but it is necessary to refer to a concept of faithful representation in measurement of the economic facts' objects of accounting. in the sense of reliability. This is because in the financial statements, in addition to objective values (and therefore, true in the absolute sense), subjective items must also be recorded that identify, respectively, conjectures and estimates.

It has already been noted that individual values identify estimated quantities in the hypothesis in which the determinations are approximations to the truth while they identify conjectures if they represent "hypotheses of individual representation of the true" <sup>46</sup>.

It does not seem appropriate to return to this subject, but to understand the concept of faithful representation in measurement of the economic facts' objects of accounting. imposed by art. 2423 of the Italian Civil Code (as art. 2217 of the Italian Civil Code) it is necessary to make some reference to the above problem as the correct interpretation of the postulate of the faithful representation in measurement of the economic facts' objects of accounting. is inter-connected with the presence in financial reporting of speculative and estimated items, i.e. both items that attempt to represent, on the one hand, an approximation to the "actual" and, on the other, a individual representation of the "real". By way of examples of values that are subjective in nature, depreciation, amortization, de-

---

<sup>46</sup> Ferrero, La valutazione del cap. di impresa, p. 29

termination of the final value of inventories, identification with the exchange value as the basis of which a payable or receivable expressed in foreign currency is recorded in the financial statements, identification of receivables that are potentially subject to bad debts, determination of the year-end valuation of securities, equity investments and derivative financial instruments, etc. are all examples of subjective in nature.

Bearing in mind these types of accounting items indicated in financial reporting, it is easy to understand how this document can therefore be more or less reliable depending on whether the approximations to the “true” are made in a manner that is consistent with the reality that we wish to highlight in the balance sheet and income statement.

For this reason, concerning the subjective quantities, it is possible to speak therefore, not of truth but of a “greater or lesser level of approximation to the true”<sup>47</sup>.

The presence of these items inevitably requires, on the part of the preparer of the financial statements, the implementation of a correct valuation process that identifies reliable values with respect to the economic and financial reality that the financial reporting must reflect<sup>48</sup>.

In this regard, Giunta-Pisani, point out that “the case, estimates and conjectures must not be the result from the will of the editor of the financial reporting. In other words, they must not express an absolute subjectivity and as such, incomprehensible and unquestionable. On the contrary, they must express a rational subjectivity, that is, they must be the result of an ordinary and rigorous “logical-applicative” process. This process presupposes:

- \* the definition of adequate premises, feasible hypotheses and very precise cognitive objectives concerning the quantities subject to evaluation;
- \* the awareness that the quantities to be measured are expressed by a number but by a range of numbers. A value must be chosen from these, in the light on the premises and assumptions made, using a certain criterion or method. In other words, it establishes a precise valuation criterion, i.e. a way of elaborating

---

<sup>47</sup> Onida, Ec. d'az., p. 558.

<sup>48</sup> “It is not correct to speak of truth in financial reporting matters it is appropriate to speak of reliability of which what we have called faithful representation in measurement of the economic facts' objects of accounting. is just a particular moment. In fact, the values that make up financial reporting are only partly objective, capable of expressing the true in an absolute sense. In most cases, however, these are subjective values for which any claim to accuracy is absurd“. Brusa, veridicità, attendibilità e chiarezza del bilancio d'esercizio, p. 26.

the previously defined assumptions and conditions, translating them into balance sheet values.

\* the constant verification of the consistency and compatibility between the hypotheses, criteria and conclusions reached at the end of the estimate reasoning.

The truth in a subjective sense, therefore, is to be understood as the rationality to the evaluation process followed by the editor of the financial reporting and as the consequent credibility to the results obtained”<sup>49</sup>

Therefore, as Colombo points out, “no one can guarantee (with the exception of certain values) the absolute correctness of the judgement”.<sup>50 51</sup>

While for approximate and estimated quantities an ex post “control” of accuracy is however conceivable, for conjectures this is technically impossible in that they represent values, which are attributed to different objects as the scission of unique values common to those reference objects<sup>52</sup> they cannot be subsequently.

With regard to the concept of faithful representation in measurement of the economic facts' objects of accounting and its interconnection with the understandability, the position taken by Superti Furga appears peculiar and has highlighted how, in his opinion, “the three requirements of understandability, truth and correctness of the financial statements tend to be traced back to the more general and more intelligible concept that represents the true purpose of the preparation of the financial reporting during the year. In fact, the term understand-

---

<sup>49</sup> Giunta Pisani, *Il bilancio*, p. 38.

<sup>50</sup> Colombo, “La clausola gen.” In AA.VV. *Il bil. d'ese. a cura di Palma*, p. 29.

<sup>51</sup> In conclusion to these brief considerations regarding the postulate of interest, the considerations set out in Assonime Circular No. 70 of 1986 appear to be interesting: “In the context of the provisions of the project intended to give effect to the fundamental Article 2 (of the Fourth EEC Directive, note of author), it should be pointed out that the proposed formula for transposing into Italian law the well-known notion of “true and fair view” adopted by the Directive is logically flawed and, in any event, likely to give rise to misunderstandings. The project is based in the concept of real representation, which obviously presupposes the concept of the “truth” of the company’s financial position, results of operations and cash flows. However, it is unquestionably recognized by the doctrine that the concept of truth is only attached as a part in the values entered in the financial statements, those for which objective verification is possible and that for other values, one can just ask for estimates, forecasts and conjectures based on which they are determined until they are carried out in a loyal and technically correct manner. Therefore, this formula can be misleading because it promises more than financial reporting can provide. It may also cause serious discomfort to auditors to whom I will ask to give a statement, impossible, that the financial reporting is a true representation ... .. it is not seen (however) why the rule should not enunciate this concept and should refer to the concept of truth, with the mental reservation that this truth is a non-objective truth: concept intimately contradictory con-creditor because there is no objective truth, the truth being, by definition, objective.

<sup>52</sup> Superti Furga, *Le val. di bil.* p. 30 e ss.



ability is impracticable by default with respect to its possible use for the preparation of the financial reporting since it is impossible to establish either naturally or conventionally precise rules to follow. The reference to truth is also ...scarcely usable, but in this case out of excess, since (it) ...constitutes a sort of limit concept or regulatory idea, to which financial reporting must aim without ever being able to fully achieve it. The reference to correctness must then be understood in a strictly economical sense, with all the margins of discretion that every economical evaluation necessarily entails. ...Consequently, it seems that it is possible to attribute a relative homogeneity of meanings to these three concepts only by considering them as three different specifications of the broader notion of intelligibility (of the financial reporting of the financial year”<sup>53</sup>

From what this author affirms, therefore, we can understand how a doctrinal current can be identified according to which the postulates of understandability faithful representation in measurement of the economic facts' objects of accounting. In addition to being logically interrelated, correctness and correctness have a connection such as to deny the existence of a substantial difference between the three principles mentioned. For Superti Furga, therefore, the three postulates imposed by art. 2423 c.c. integrate the so-called intelligibility of financial reporting and, due to the liaison that indissolubly binds them, identify “only” three different specifications of this concept.

The above considerations regarding the postulates of faithful representation in measurement of the economic facts' objects of accounting and correctness are illustrated, in a similar way, also by the IFRS Conceptual Framework<sup>54</sup> which, in points 2.12 to 2.19, highlights how the financial statements communications must be truthful. The Framework states that:

### **“Faithful representation**

2.12 Financial reports represent economic phenomena in words and numbers. To be useful, financial information must not only represent relevant phenomena,

---

<sup>53</sup> Superti Furga, *Il bil. di es. secondo la norm. eur.*, p. 45 e ss.

<sup>54</sup> Sulla problematica dell'internazionalizzazione si veda Haller, A. *Financial accounting developments in the European Union: past events and future prospects*, (2002). *European Accounting Review* vol 11 issue 1, pages 153-190; Haller A, P. Walton and B. Raffournier B. (2003). *International accounting*. Cengage Learning EMEA; Haller A., B. Eierle (2004). *The adaptation of German accounting rules to IFRS: a legislative balancing act*, *Accounting in Europe* Vol. 1, Issue 1, pages 27-50; Hopwood, A. G. (2000). “Understanding financial accounting practice”, *Accounting, Organizations and Society* Volume 25, Issue 8, pages 763-766; Hopwood, A. G., Chapman C. S., Shields M. D. (2007). *Handbook of management accounting research*. Volume 1, Elsevier; Hopwood, A. G., Chapman C. S., Shields M. D. (2007). *Handbook of management accounting research*. Volume 2, Elsevier.

but it must also faithfully represent the substance of the phenomena that it purports to represent. In many circumstances, the substance of an economic phenomenon and its legal form are the same. If they are not the same, providing information only about the legal form would not faithfully represent the economic phenomenon (see paragraphs 4.59–4.62).

2.13 To be a perfectly faithful representation, a depiction would have three characteristics. It would be complete, neutral and free from error. Of course, perfection is seldom, if ever, achievable. The Board's objective is to maximize those qualities to the extent possible.

2.14 A complete depiction includes all information necessary for a user to understand the phenomenon being depicted, including all necessary descriptions and explanations. For example, a complete depiction of a group of assets would include, at a minimum, a description of the nature of the assets in the group, a numerical depiction of all of the assets in the group, and a description of what the numerical depiction represents (for example, historical cost or fair value). For some items, a complete depiction may also entail explanations of significant facts about the quality and nature of the items, factors and circumstances that might affect their quality and nature, and the process used to determine the numerical depiction.

2.15 A neutral depiction is without bias in the selection or presentation of financial information. A neutral depiction is not slanted, weighted, emphasized, de-emphasized or otherwise manipulated to increase the probability that financial information will be received favorably or unfavorably by users. Neutral information does not mean information with no purpose or no influence on behavior. On the contrary, relevant financial information is, by definition, capable of making a difference in users' decisions.

2.16 Neutrality is supported by the exercise of prudence. Prudence is the exercise of caution when making judgements under conditions of uncertainty. The exercise of prudence means that assets and income are not overstated and liabilities and expenses are not understated.<sup>6</sup> Equally, the exercise of prudence does not allow for the understatement of assets or income or the overstatement of liabilities or expenses. Such misstatements can lead to the overstatement or understatement of income or expenses in future periods.

2.17 The exercise of prudence does not imply a need for asymmetry, for example, a systematic need for more persuasive evidence to support the recognition of assets or income than the recognition of liabilities or expenses. Such asymmetry is not a qualitative characteristic of useful financial information. Nevertheless, particular Standards may contain asymmetric requirements if this is a

consequence of decisions intended to select the most relevant information that faithfully represents what it purports to represent.

2.18 Faithful representation does not mean accurate in all respects. Free from error means there are no errors or omissions in the description of the phenomenon, and the process used to produce the reported information has been selected and applied with no errors in the process. In this context, free from error does not mean perfectly accurate in all respects. For example, an estimate of an unobservable price or value cannot be determined to be accurate or inaccurate. However, a representation of that estimate can be faithful if the amount is described clearly and accurately as being an estimate, the nature and limitations of the estimating process are explained, and no errors have been made in selecting and applying an appropriate process for developing the estimate.

2.19 When monetary amounts in financial reports cannot be observed directly and must instead be estimated, measurement uncertainty arises. The use of reasonable estimates is an essential part of the preparation of financial information and does not undermine the usefulness of the information if the estimates are clearly and accurately described and explained. Even a high level of measurement uncertainty does not necessarily prevent such an estimate from providing useful information (see paragraph 2.22).<sup>55</sup>

The current legislation regulates the valuation of accounting items of a “subjective” nature with art. 2426, which contains a set of valuation principles that the financial reporting editor must, obligatorily, follow except for applying the fundamental principle indicated in art. 2423 IV comma according to which if, in exceptional cases, the application of a provision of the following Articles is incompatible with a true and fair view, the provision shall not be applied. The notes to the financial statements must justify the departure and must indicate its influence in the representation of the balance sheet, financial position and economic result. Any profits deriving from the derogation must be entered in a non-distributable reserve if not in an amount corresponding with the value recovered.

The wording of this provision includes the higher value compared with any other provision of the first paragraph of Article 2423 c.c. 1 comma. The postu-

---

<sup>55</sup> Conceptual Framework IFRS 2018, da 2.12 a 2.19. On the problem of IAS/IFRS and the comparability of financial reporting items see Nobes, C.W., (2013). “The continued survival of international differences under IFRS”, *Accounting and Business Research*, Vol.43, No.2, pages 83-111.; Nobes C. (2016). *Towards an Assessment of Country Effects on IFRS Recognition Decisions and Measurement Estimations*, Paper, Venezia; Nobes C. , Parker R., (2016), *Comparative International Accounting*, Pearson.

lates of faithful representation in measurement of the economic facts' objects of accounting and of correctness must be applied even if this implies the non-observance of the specific norms indicated by the code in art. 2424 c.c. and following.

This means that, precisely to safeguard the faithful representation in measurement of the economic facts' objects of accounting of the data shown in the financial statements, the same legislator allows the misapplication of provisions issued to identify the valuation framework principles. The observance of the postulate discussed here, together with that of correctness and un-degradability, therefore, represents the ultimate goal that the financial reporting editor must set himself. Any other rule identifies a subordinate law rule and accordingly, represents only a legislative attempt to furnish useful elements for the achievement of this priority objective, the relevance of which is such as to ensure that the legislation itself allows, without further specification, for derogation from any provision if, in exceptional cases, it does not allow compliance with the postulates considered herein.

In the first chapter, it has already been pointed out that, by its very nature, regulations for the approval of financial statements cannot rule in an analytical and specific manner, any subject connected with the various items of a speculative and estimated nature in the financial statements.

The task of legislation is "only" to dictate the "framework principles" to which the parties that prepare the financial statements must refer. In fact, it is not conceivable that the lawful regulations set out, in detail and specifically, the procedures and valuation principles that must be followed for financial reporting to be truthful.

The law never regulates in a specific and analytical way every subject concerning financial reporting and, in particular, every evaluation criterion connected to the conjectures and estimates present in the balance sheet and in the income statement, must be judged in a positive way as this matter must be characterized by a certain elasticity and adaptability to the changes that occur both in the external world and within each company that, necessarily, the lawful regulations cannot have. Flexibility which, by definition, cannot possess a legal provision whose characteristic, in general, resides in its immutability for a period of time which is generally quite long.

Based on these considerations, it is easy to understand how, in the articles of the Code relative to financial reporting, only the reference framework can be found, which the editor, when evaluating estimates and conjectures, must adapt to. Careful reading through the articles of the Code, however, makes us immediately understand how these principles of reference, although essential

and relevant, need further indications of an economic and business nature. Affirming that depreciation/amortization must be systematic and calculated to the basis with the possibility of residual use of the asset, or knowing that inventories, by law, must be esteemed at the lower of cost or realizable value based on market trends, or being aware that receivables must be recorded at their presumed realizable value, helps the editor to understand the basic principle applicable when determining the individual item but does not provide the latter with pragmatic and theoretical elements useful for determining the quantitative-operating amount to be recorded in the financial statements.

As highlighted above, Giunta Pisani<sup>56</sup> have been well highlighted how subjective values, in reality, are not precise numbers but identify a framework within which it is necessary to opt for the value that the editor believes is closer to the reality that he wants to represent in the financial statements. "Truth in a subjective sense, therefore, is to be understood as the rationality to the evaluation process followed by the financial reporting editor, and as the consequent credibility to the results obtained... Estimates and conjectures... must express a rational subjectivity, that is, they must be the result of an orderly and rigorous "logical-applicative" process".<sup>57</sup>.

In the Civil Code, the operating principles applicable to the preparation of financial reporting can therefore, only find the framework of reference but, precisely for this reason, require a source, analytical and structured, external to the legislation.

The hypothetical source from which to draw useful cues for the correct evaluation of the conjectured and estimated financial reporting items could, in theory, be represented by the economic-company doctrine which, daily, deals with these issues. It is easy to understand, however, how the deepening of the doctrinal thought of the various authors, even if, for sure, very interesting, would be, in good substance, impossible for the drafters of the financial statements. This would mean, in fact, studying and analyzing hundreds of books that are continuously written about the problematic object of our interest. This is why, for several decades, the need has been felt about the issue of correct accounting

---

<sup>56</sup> Giunta-Pisani, *Ult. op. cit.* p. 36 e ss.

<sup>57</sup> Giunta-Pisani, *Il bilancio*, p. 37. "... clearly distinct drafters of the financial statements ... can ... reach different conclusions, so that, in relation to the generation of a minimum, neutral information for all stakeholders, a range of values is created, considered, in the circumstances, to be the expression of values that are all equally correct. This means, in essence, making information deriving from subjective evaluation's objective. Within the hypothesized range of values, each value can therefore be considered right (even if n.e.c.) the problem must be posed of what conditions can make the estimated and conjectured values correct within the reasonableness of the processes of their determination. "Pontani, *Ult. op. cit.* p. 276.

standards, duly formalized, which represent the summary of the best doctrine and practice at the time of issue. These principles, by their very nature, are not immutable over time but capture the changing situation and, for this reason, identify the instrument that, due to its completeness and flexibility, manages to integrate legislative “gaps” that necessarily characterize all the legal regulations governing financial reporting.

In order to overcome this problem, national (In Italy OIC) and international (IAS/IFRS) accounting standards have been issued<sup>58</sup>. Both, although in different ways, currently have legal validity since, for international standards, the law establishes that certain categories of companies must draw up their financial statements based on their provisions. As far as OIC principles are concerned, the recent law has given them the power to integrate legislation, giving them, indirectly, lawful power.

In this sense, the application of the postulate of faithful representation in measurement of the economic facts' objects of accounting, also understood in a lawful sense as with respect to a legislative norm (articles 2423 and 2426 of the Civil Code), cannot disregard from the knowledge of what is illustrated by the accounting principles which, in this sense, can be considered, rightly, necessary elements of integration and of pragmatic analytical illustration, of the “framework” principles set forth in the legal provisions concerning financial reporting.

To conclude this brief examination of the postulate of faithful representation in measurement of the economic facts' objects of accounting. Colombo, with regard to this issue, points out:” it should be noted that the general clause in question not only imposes a certain behavior on the editors of financial reporting (objective research on the components converged in the determination of the cost, careful and diligent investigation of the relevant market data, acknowledgment of the most likely assumptions about the future use of the asset, and finally faithful representation of the results obtained as the basis of those data and assumptions) but also aims to ensure that the representation of financial reporting comes to results as consistent as possible with reality. Of course, “true representation” does not in any way exclude the relativity of the result... but this relativity finds its limit on the duty of diligence, accurate and neutral search for the most coherent value for the purposes of financial reporting and the legal-

---

<sup>58</sup> See Hopwood, A. G. (2000). “Understanding financial accounting practice”, *Accounting, Organizations and Society* Volume 25, Issue 8, pages 763–766.

ly imposed criteria, so that, when objectively one leaves the limits of the consistent with those purposes and criteria, one no longer gives a true representation whatever the subjective conviction of the editor of financial reporting in this regard”<sup>59</sup>.

On the basis of the above considerations, it can therefore be said, together with Jaeger, that “in no case may financial reporting have the characteristics of a photograph of the company’s assets. It still remains a representation bound by its own stylistic canon. Out of metaphor: the editor must respect criteria chosen by the legislator in order to resolve the conflicts between the various interests at stake and not in order to represent a univocal “objective reality”. In this sense, it should be noted that financial reporting offers a still conventional image of the company’s economic, equity and financial situation”<sup>60</sup>. For this reason, as will be seen later, the opinion about the legitimacy of this document can never ignore the assessment of the “acceptability” / “economical and business consistency” of the “subjective principles” used for the preparation of the balance sheet, income statement and notes.

In conclusion, we must point out how, obviously, the faithful representation in measurement of the economical facts’ objects of accounting, or better; in this specific case, the truth of the financial reporting requires that the objective values are absolutely true.

Concerning these data, the concept of truth assumes a different meaning from that of reliability relating to estimates and conjectures. The impartial data can be regarded as true and if they are not so specific, it is possible to speak of a false financial reporting.

By way of example, such as falsehood may occur where:

\*the values of financial reporting do not correspond with the data entered in the general accounts

\*the impartial items indicated in the balance sheet and/or income statement are, in reality, non-existent or exist for a value different from that recorded in the financial statements

\*errors are made about the allocation to financial reporting that compromise the correct determination of income and capital (e.g. \*the allocation of multi-

---

<sup>59</sup> Colombo, *La cl. generale, in il bil. di es., a cura di Palma*, p. 30.

<sup>60</sup> Jaeger Denozza, *Appunti di diritto commerciale*, p. 467.

year costs to the income statement or the recognition of operating costs in the balance sheet)

A particularly clear summary of the methods is provided, which Branciarri De Minicis has used to record in financial reporting untrue objective values:

Alteration of objective quantities:

(table in Branciarri De Minicis, *Il bil. falso e inattendibile*) p. 32

<b>OPERATIONS</b>	<b>ALTERATIONS</b>
1) MANAGEMENT OPERATIONS: PREPARATION OF DOCUMENTS	1) Preparation of false documents: *the facts as presented are non-existent *the facts are there but not represented to the required extent *management operations are carried out without supporting documents being provided There is no falsehood when the documents faithfully represent economically incorrect management operations (e.g. not convenient for the company note of author).
2. THE RECORDING OF DOCUMENTS IN THE ACCOUNTS	2) False accounting: *mismatch between the values indicated in the documents, and the values recorded in the accounts *recording of facts not supported by document *distortion of the accrual basis of accounting for costs and revenues. *errors in the classification of values compared with the order established within the accounting system
3) THE PREPARATION OF FINANCIAL REPORTING	3) It can occur: *exposure in financial reporting of data other than those recorded in the accounts *exposure in financial reporting of data not recorded in the accounts

It is not necessary to dwell on the fact that, in the event of the occurrence of one of the above-mentioned hypotheses of falsification of objective data, the postulate of the faithful representation in measurement of the economic facts' objects of accounting imposed by art. 2423 c.c., certainly cannot be considered as applied.

Since such falsifications of objective and true data in an absolute sense do not give rise to any problems of interpretation, it is considered that this brief examination is sufficient to stigmatize behavior which, without a shadow of a doubt, leads to an illegitimate financial reporting. Invalidity which, precisely because of the characteristics highlighted above, can often transcend the limits of civil law illegitimacy to encroach on the criminal field of false corporate (penal crime) communications governed by art. 2621 Civil Code.

With regard to the postulate of correctness, however, expressly provided for by art. 2423 c.c., it can be affirmed that, from the greater part of the economic-



company doctrine, such as a principle identifies a concept which, even if different from that of faithful representation in measurement of the economic facts' objects of accounting, presents some indeterminable relevance to the latter<sup>61</sup>.

Santesso Sostero, believe that “the two concepts (correctness and faithful representation in measurement of the economic facts' objects of accounting (note of author)) are closely related, so that it is difficult to imagine that financial reporting could be with faithful representation in measurement of the economic facts' objects of accounting without being at the same time correct. ... Fairness can, in fact, be interpreted in two ways: from a technical point of view, as an obligation to refer to technically correct criteria for the determination of values and from a behavioral point of view, as an obligation to fully and fairly comply to the rules, correctly communicating information, in particular, in the parts of the financial reporting that are discordant (notes to the financial statements). In the first meaning, correctness is worth underlining an aspect already included in the “true representation” because the use of technically correct criteria in the determination of values is an essential prerequisite for faithful representation in measurement of the economic facts' objects of accounting. ... In the second sense, correctness takes on a dimension of deontology, that is, of loyal behavior, in good faith, in the communication of information and reconnects itself, completing it, to the principle of understandability. In other words, the financial reporting editor must apply the rules by striving to clarify their most authentic spirit, avoiding taking refuge in literal or convenient understandings to formulate reticent or deviant communications”<sup>62</sup>.

In brief terms, it can be affirmed that the postulate of correctness “integrates ... the principle of faithful representation in measurement of the economic facts' objects of accounting”<sup>63</sup>.

It should be noted that other scholars have provided definitions different from those indicated above, to the postulate in question. According to Salafia,

---

<sup>61</sup> In relation to this problem, Quagli identifies such an interconnection between faithful representation in measurement of the economic facts' objects of accounting. and correctness that leads the author to affirm that “...correctness must be interpreted as honesty, neutrality, that is as the will to draw up a financial report that does not favor any particular centre of interest in form and content”. Quagli, bilancio di esercizio e principi contabili, p. 25. Sul problema della comparabilità della forma si veda 14)De Franco G., S. P. Kothari and R.S. Verdi (2011). “The Benefits of Financial Statement Comparability”, *Journal of Accounting Research*, Vol. 49, pages 895–931.

<sup>62</sup> Santesso Sostero, *I principi contabili per il bilancio di esercizio*, p. 19. A similar definition of correctness is given by Giunta Pisani, *Ult. op. cit.*, p. 39.

<sup>63</sup> Colombo, “La clausola generale” in *AA.VV* (a cura di Palma), *il financial reporting di esercizio*, p. 30 e ss.

financial reporting can be considered correct when the editor has adopted the schemes provided for by the legislator, has provided the information set provided for by the Code and has applied the principles of preparation dictated by law<sup>64</sup>.

According to with many authors, on the other hand, correctness has an interrelation with the valuation and recording (according to correct accounting principles) of assets registered in financial reporting.

Finally, it is worth mentioning Bocchini's position, who believes that the postulate of correctness is linked to the prohibition of the violation of the mandatory rules imposed by the code on who draws up the financial reporting and to the respect of the correct accounting principles in the areas where precise regulatory obligations cannot be identified<sup>65</sup>.

At the end of this brief overview, it is necessary to underline how, in the statutory field, the analysis of compliance/non-compliance with the postulates of financial reporting totally and absolutely disregards any consideration regarding the subjective and motivational aspect of the behavior implemented by the preparer of the financial statements.

The balance sheet, income statement, notes and cash flow statement of a whole are therefore, not faithfully representation in measurement of the economic facts' objects of accounting and incorrect when it is found that the postulates, inherent in the substance of the valuations, imposed by art. 2423 c.c.. A more detailed analysis of the reasons that led in the use of principles that do not comply with civil law provisions is of no relevance in this area.

In civil law, accordingly, there is no difference if, who draws up the financial statements, acts in "good faith" or, on the contrary, it is proposed the objective of fraudulently in-generating third parties.

This subjective aspect becomes, instead, a constitutive element in the crime when the problem shifts from the civil to the penal sphere. The crime of false corporate communications occurs only when it is possible to identify a series of personal elements explicitly indicated in articles 2621 and 2622 of the Civil Code. As we will see later, therefore, in this area, identifying the will to deceive third parties achieving, at the same time, an unfair profit for oneself or for others, represents a necessary step in the conduct analysed being penalty relevant. In the absence of such subjective motivation, the error/opposition does not fall

---

<sup>64</sup> Salafia , nota int. Del bil d'es. in le soc 1992, p. 695.

<sup>65</sup> Bocchini, Manuale di dir. della cont., p. 46.

within the conduct sanctioned by articles 2621 and 2622 of the Italian Civil Code.

When, on the other hand, the analysis concerns the civil law irregularity of the financial statements, the subjective and motivational aspect connected with the unlawful accounting behavior, it does not have any theoretical and/or pragmatic relevance.

In the presence of an indefatigable representation in measurement of the economic facts' objects of accounting and/or inaccuracy of the financial statements data, the shareholders' resolution approving the balance sheet, the income statement and the notes to the financial statements must be declared null and void even if the omissions, inaccuracies, inaccuracy, etc. have been committed, in perfect and absolute faith, in good faith.

Any consideration to the reasons/motivations/causes that led to the implementation of certain accounting behavior is, absolutely and without exception, outside the scope of the analysis of the validity/civil validity of the resolution approving financial reporting, which is characterized by content flaws.

In this field, therefore, the only element which is relevant is the failure to apply the postulates imposed by Article 2423 c.c.. Failure to comply with these principles renders the financial statements unlawful for statutory purposes, regardless of any motivational and/or subjective considerations.

### 3.2.2 Judicial and business consequences of the violation of the understandability postulates and/or faithful representation in measurement of the economical facts objects of accounting and/or correctness

#### 3.2.2.1. Historical evolution of the interconnection of understandability violation and precision/faithful representation in measurement of the economic facts' objects of accounting/ correctness: the past and the present.

The period from 1865 (date of promulgation of the first Italian Code of Commerce) to the present day is characterized by a considerable diversity of positions within the judiciary regarding the various issues related to the financial reporting. However, an in-depth analysis aimed at highlighting, in a comprehensive manner, the historical evolution that has marked the jurisprudence on financial reporting does not fall within the scope of this work. In the following pages, therefore, only the trends that developed up to the 1990s will be highlighted. For an analysis of the current situation, the reader is referred to the next paragraph.

In the 1800s and early 1900s, jurisprudence, both in terms of merit and legitimacy, considered judicial control of financial reporting to be an inadmissible “interference” in the company’s administrative-management field, with the consequence that some judges even ruled in the direction of legitimacy in relation to clearly false financial statements.

Around the 1930s, however, the idea that financial reporting was a document totally beyond the control of judges began to become outdated: and by starting to judge financial reporting against the law as invalid<sup>66</sup>, the first step was taken towards the controllability prospectus which, until a few years earlier, was considered practically impenetrable

From that moment on, the jurisprudence recorded a slow but progressive evolution that allowed the operators outside the companies to be able to count on a financial reporting characterized by an always greater connotation of information tools for third parties.

However, it is above all from the end of the 1960s onwards that financial reporting begins to take on importance as a means of communication to the outside, also thanks to a revival of jurisprudence that led to a “reevaluation” of the information function (for third parties in general) of the aforementioned prospectus. Before that period, in fact, in almost all the periods, there was an acceptance for the principle that Articles 2423 et seq. of the Code were not, in reality, mandatory rules and, consequently, the only parameter used to judge whether the financial statements were false was the provision contained in Article 2423 et seq. 2621 Civil Code. In this way, in the period prior to the 1960s, a close relationship was created between criminal law and the civil nullity of financial reporting” in the sense that the invalidity of the resolution to approve financial reporting was identified exclusively in the material element of the offence envisaged and punished by art. 2621 c.c.” thus requiring, for “the falsity of the document in question, the fraudulent disclosure of untrue facts, the omission of facts concerning the economic conditions of the company”<sup>67</sup>.

In that period, moreover, the judges, both of merit and of legitimacy, did not contribute to the principle of understandability the slightest relevance and, consequently, in the proceedings, the only postulate discussed was that of truth.

---

<sup>66</sup> Court of Cassation, the Italian Supreme Court of Justice, both civil and penal (hereinafter, in the summonses in the notes Cass.): Cass. 24/6/1937, in Foro it., 1938, I, c. 33; App. Torino, 23/12/1938 in Foro it., 1939, I, c. 374; Appello Milano 23/6/1936, in Foro it., 1937, I, c. 137.

<sup>67</sup> Cass. 15 giugno 1959 in Giur. It., 1959, I, c. 1047, Cass. 31 maggio 1966, in Casi e mat. di dir. comm, I, Spa, p. 1430.

In the '60s a certain evolution began to be noticed as in the sentences, at first the hypothesis of false even when the assets to the company were valued below the limit of "reasonableness" began to be recognized<sup>68 69</sup>and, subsequently, little by little cutting the close link that had been created between the invalidity of financial reporting and criminal law, the principle of precision began to be given importance even in the case in which the valuations, although not integrating the details of the forgery, were carried out without compliance with the parameter mentioned above<sup>70</sup>.

Was in 1968, however, that we saw, in jurisprudence, a real "turning point". The Court of Milan, in fact, with the historic sentence of December 23, 1968<sup>71</sup>, affirmed principles that were true points of reference for subsequent jurisprudence. In summary, after what has been rightly called the leading case<sup>72</sup>, it began to be asserted, first of all, that the statutory regulations governing financial reporting were to be considered "mandatory", with the consequence that a violation of these regulations had to be considered a cause of invalidity of the approval resolution.

As regards the type of invalidity, it should also be noted that most of the courts, acknowledging in Articles 2423 et seq. the character of rules intended to protect third parties in general, agreed that failure to comply with those provisions did not merely render the financial reporting annulable, but resulted in its radical nullity<sup>73</sup>.

After 1968, moreover, not only was the mandatory nature of the above rules recognized, but the principle of understandability was also reassessed in that the judges began to assert that the violation of this postulates should always be

---

<sup>68</sup> Bocchini, *il bil delle imprese*, p. 32.

<sup>69</sup> This conclusion was previously challenged on the grounds that it was denied that the assessments could be included in the 'facts' referred to in Article 2621 c.c.. Subsequently, however, on both the doctrinal and jurisprudential sides, both admitted that the evaluations could not be excluded tout court from the criminal relevance; and today this is the absolutely dominant thesis both among the scholars and among the judges, even if, observes Caraccioli, there would be strictly interpretative data in favour of the above exclusion (e.g. Art. 373, penalty Code, where the concepts of fact and deed are kept clearly distinct). I. Caraccioli, *Il bil. e le sanzioni penali*, in *Il fisco*, 1985, p. 1856.

<sup>70</sup> Cass. 15/6/1959 in *Giur. it.*, 1959, I, c. 1047; Cass. 31/5/1966 in *Casi e mat. di dir. corn.*, I, S.p.A., p. 1430; Cass 13 febbraio 1069 n. 484.

<sup>71</sup> Trib Milano 23 dicembre 1968, in *Giur. It.*, 10969, I, 2, c. 129.

<sup>72</sup> Così in *Casi e materiali di diritto commerciale*, 1, S.p.a, p. 1438.

<sup>73</sup> The principle that the provisions governing financial reporting were of public policy, and that the resolution to approve non-compliant financial reporting should be null, has been confirmed by a number of sentences, including; Trib. Milano 3/12/81 in *Le societ'*, 1983 p. 469; Trib. Milano 5/ 5/83 in *Le soc.*, 1984 p. 439; Trib. Vicenza, 18/10/84 in *Le soc.*, 1985 p. 182; Trib. Milano 26/9/83 in *Le soc.*, 1984 p. 786; Trib. Milano 15/5/1981, in *Giur. corn.*, 1981, II, p. 101; Trib. Milano, 5/2/1981 in *Giur. corn.*, 1981, II, p. 796.

considered as a cause for the nullity of the financial reporting. Even in the event of a minor error.<sup>74</sup> the courts declared the financial reporting null and void, without making any further assessment of the real impact of such a 'lack' on the right to information, which was beginning to be recognized to shareholders and third parties outside society.

It was especially after this revival of jurisprudence that financial reporting really began to take on the connotation of an information tool intended for use outside the company.

In the years following 1968, the tendency to recognize the mandatory nature of the rules governing financial reporting became more and more consolidated and, at the same time, the opinion began to spread, at a jurisprudential and doctrinal level, that the contrast with the rules, though binding, but inspired exclusively by the protection of singular shareholders or groups of shareholders, implied a simple revocability of the resolutions. The infringement of provisions laid down in the general interest greater than that of the individual member began to be considered a cause for radical nullity of the acts<sup>75</sup>.

The spread of the principle that financial statements not drawn up in accordance with civil law rules were to be considered null had two significant consequences:

\* in the first place, anyone who had an interest, and therefore, not only members, the right to challenge the approval resolution was recognized

\* last but not least, it was implicitly admitted that financial reporting was an information tool helpful to communicate information to the actual shareholders<sup>76</sup> and, in addition, to all economic operators<sup>77</sup> that for a wide variety of rea-

---

<sup>74</sup> In this respect, it should be noted that in Case 23/12/68 Trib. of Milan, it was stated that even the violation of a single prescription contained in art. 2424 resulted in the financial reporting being completely null.

<sup>75</sup> This principle, which was already affirmed in 1961 by Cass. (Cass. 20/4/61 in *Casi e mat. di dir. com.*, 1, S.p.A., p. 492) e stato ribadito anche negli anni successivi. Così fra gli altri: Trib. Milano 4/7/74 in *Giur. com.*, 1975, II, p. 46 Cass. 23/12/78 in *Riv. dir. corn.*, 1978, II, p. 182; Cass. 28/7/77 in *Giur. corn.*, 1978, II, p. 33; Cassaz. 18/4/75 in *Giust. civ. mass.*, 1975, 686; Cass. 7/4/72 in *Giust. civ.*, 1972, I, p. 995; Trib. Catania 27/2/82 in *Giur. corn.*, 1983, II, p. 778.

<sup>76</sup> With regard to the right to information of the member" it should be noted that, although the existence of such a right is not explicitly admitted in our legal system, in several judgments the expression mentioned above is used. So e.g.: Trib. Aosta 3/7/1971 in *Giur. it.*, 1971, I, 2, c. 132; Appello Venezia 2/8/67 in *Riv. dir. corn.*, 1968, II, p. 368; Trib. Milano 5/5/80 in *Giur. corn.*, 1980, II, p. 938; Trib. Milano 11/11/69 in *Giur. it.*, 1970, I, 2, c. 552; Trib. Milano 23/12/68 in *Giur. it.*, 1969, I, 2, c. 129. The recognition of the existence of such a right is in any case in line with the now consolidated orientation of the judiciary, which recognises financial reporting as an information function for third parties in general. In this regard, see what stated by Pansieri *Interesse ad agire e valutaz. dei titoli*, in *Giur. comm.*, 1981, II p. 466; *Id.*, *Interesse ad impugnare*, in *Giur. comm.*, 1980, II, p. 942.

sons, they were interested in obtaining information about the company to which the document referred<sup>78</sup>.

However, at the end of the 70's, what the Court of Cassation called "a temperament to the previous strict stance" was recorded on this issue<sup>79</sup> while some authors considered it a significant step backwards in terms of financial reporting information<sup>80</sup>. Here we intend to refer to the revival of jurisprudence (or rather of a part of it) on the appeal of financial statements that lacked exclusively the principle of understandability.

The latter was a postulate characterized by a very "troubled" life: until 1968, in fact, it was practically ignored by the judges, as if observing it or not had, in practice, no relevant consequence. The above-mentioned sentence of the Court of Milan of 23/12/1968, however, stated that, in spite of the violation of one of the provisions of art. 2424 c.c., implied the radical nullity of the resolution for the approval of the financial statements: and it is clear how such an assertion re-evaluated, enormously, that principle which until recently, from the jurisprudence, was not even taken into consideration. This decision then triggered a new position of the judiciary on the financial reporting issue. For several years, in fact, reaffirming the importance of the above principle, the jurisprudence declared unclear financial reportings null.

In the second half of the 70's, however, there was a real "reversal" of the orientation followed by the prevalent jurisprudence after the leading case of 1968.

In 1977, in fact, for the first time the Court of Cassation<sup>81</sup> stated that the lack of understandability of financial reporting could lead to the nullity of the resolution approving financial reporting only when it was such as to make it objectively impossible to check compliance with the principle of faithful representation in measurement of the economic facts' objects of accounting<sup>82 83</sup>.

---

<sup>77</sup> The sentences that recognized financial reporting as an information function that transcends the interest of knowledge of shareholders included the following: Trib. Milano 23/12/68, in *Giur. it.*, 1969, I, 2, p. 129; Cass. 13/12/69 in *Giur. it.*, 1969, I, p. 628; Cass. 5/12/73 in *Giur. corn.*, 1974, II, p. 127; Trib. Milano 6/7/70 in *Giur. it.*, 1971, I, 2, c. 528; Trib. Milano 9/6/75 in *Giur. corn.*, 1976, II, p. 557; Cass. 9/2/79 in *Giur. corn.*, 1979, II, p. 351; Trib. Milano 27/4/78 in *Giur. com.*, 1975, II, p. 46; Trib. Milano 5/1/81 in *Giur. corn.*, II, p. 461; Cass. 9/2/79 in *Giur. corn.*, 1979, II, p. 357; Trib. Milano 14/11/74 in *Giur. corn.*, 1974, II, p. 346; Cassaz. 23/1/78 in *Riv. dir. corn.*, 1978, II, p. 182; Trib. Milano 5/2/81, in *Giur. corn.*, 1981, II, p. 798

<sup>78</sup> See Libonati, *osservazioni*, in *Riv. dir. comm.*, 1975, II, p. 161

<sup>79</sup> Cass. 9/2/79, in *Giur. corn.* 1979, II, p. 358

<sup>80</sup> Così: Pansieri, *Int. ad agire e valutaz. dei titoli*, in *riur comm*, 1981, I, p. 459; Jaeger, *Crisi del principio di chiarezza*, in *Giur. Sulla continuità dei bil.*, in *Giur. corn.*, 1984 p. 753;

<sup>81</sup> Cass. 28/7/77 in *Giur. corn.*, 1978, II, p. 33.

<sup>82</sup> It should be noted, however, that even before 1977, some sentences of judges on the merits can be

In this way, the postulate of instrumental understandability was made and, consequently, subordinated to that of faithful representation in measurement of the economic facts' objects of accounting, with the consequence that the violation of the rules governing the intelligibility of financial reporting was no longer considered an "autonomous" cause of nullity.

This orientation (present both in the judgments of the Court of Cassation<sup>84</sup>, that in the decisions of most of the courts or tribunals on the merits<sup>85</sup>, which, in turn, referred to the thesis put forward by authoritative scholars, for more than a decade, the concept that "the violation of the rules governing the content of financial reporting could lead to the nullity of the resolutions of the shareholders' meeting of approval (was subject to the verification that), from the substantive point of view, the omission resulted in a material prejudice to the general interests that the law intends to protect (violation of the principle of the accuracy of the financial statements)").

On the other hand, the constant jurisprudence of the Court of Milan opposed the assumption that the understandability postulate was subordinate to that of truth, in whose sentences the independent detectable of possible violations of the principle of understandability was reaffirmed for the purposes of the nullity of the financial statements.

With regard to the revival recorded by jurisprudence (or rather by part of it) in the 1970s in relation to the non-autonomous relevance of the understandability postulate, it should be noted that having considered understandability a purely instrumental principle to that of truth, has, to all intents and purposes, led to a significant devaluation of the rules that governed the content of the financial statements.

This, in the final analysis, meant that the recognition of the informative function of the document in question underwent, at that time, a regression in that a balance sheet, in order to be a valid information tool to the outside world, while, on the one hand, it must be true, on the other hand, it must also be un-

---

found where it is stated that the mere violation of understandability does not imply nullity. So e.g.. App. Roma 10/6/75 in *Giur. corn.*, 1975, II, p. 670; Trib. Novara, 19/5/76 in *Giur. corr.*, 1977, II, p. 205.

<sup>83</sup> For an interpretation of the above judgments, see Jaeger, *Relaz. E chiarezza del bilancio*, in *Giur. comm.*, 1978, II, p. 33. Si veda pero anche quanto affermato dallo stesso autore in *Crisi del principio di chiarezza* in *Giur. corn.*, 1979, II, p. 353.

<sup>84</sup> See among others: Cass. 25 maggio 1994; n. 5097; Cass. 9/2/79 in *Giur. corn.*, 1979, II, p. 351; Cass. 29/3/79 in *Dir. fall.*, 1979, II, p. 360; Cass. 23/5/78 in *Riv. dir. corn.*, 1978, II, p. 182; Cass. 5/11/79 in *Rep. Foro it.*, 1979; Cass. 16/12/82 in *Giur. it.*, 1983, I, 2, c. 197 ed in *Le soc.*, 1983 p. 760; Cass. 27/2/85 in *Le soc.*, 1986 p. 722; Cass. 18/3/86 in *Le soc.*, 1986 p. 723.

<sup>85</sup> *Così ad es.*: Trib. Torino 23/4/79 in *Giur. corn.*, 1980, II, p. 442; App. Genova 19/1/82 in *Giur. corn.*, 1983, II, p. 792; App. Torino 26/5/80 in *Giur. corn.*, 1981, II, p. 666.



derstandable and intelligible. If the prospectus under discussion contains correct information that is at the same time ambiguous, confusing and imprecise, clearly users outside the company cannot consider their legitimate right to information to be satisfied.

Therefore, understandability, like truth, must be considered a postulate that cannot be ignored if we want to draw up a document that represents a cognitive means for third parties exterior to the company.

In the context with the problem of external corporate information, the approach taken by the Court of Cassation at the end of the 1970s and during the 1980s was therefore, a considerable step backwards.

On this subject, Jaeger agrees that "if the intention of the Supreme Court was to avoid the serious sanction of nullity, "insignificant" violations of the rules for the preparation of the financial reporting, this result could have been achieved without giving the structure of principles laboriously built a shock so violent. In fact, the principle according to which a substantially irrelevant violation cannot lead to the complete nullity of financial reporting can also be found in various sentences in which the independent recognition of the principle of understandability was affirmed simultaneously<sup>86</sup>.

As it will be shown in the following pages, this attitude of the Supreme Court is today, completely, outdated. In fact, concerning the understandability postulate, in the 90's the judiciary modified the position previously adopted, and this can only be judged in a favourable way as just the "equalization" of the understandability postulates/ faithful representation in measurement of the economic facts' objects of accounting/correctness of the information provided can guarantee the preparation of a financial report that can be interpreted as a valid tool for providing information to the outside world.

If, in the '70s and '80s, jurisprudence, concerning the importance of the understandability postulate, recorded a regression in the matter of financial statement disclosure, in the same decades it assumed, however, an innovative position, compared with the past, with regard to the type of interest protected by articles 2423 et seq. of the Civil Code.

In the period prior to these decades, most seniors maintained the principle that a shareholder could challenge a financial reporting only if he could demon-

---

<sup>86</sup> See e.g. App. Milano 24/9/71 in *Casi e mat. S.p.A.*, p. 1511 e Trib. Milano 5/1/81 in *Giur. corn.*, 1981, II, p. 463. See Colombo, *La giurispr. recente*, in *Riv. dott. corn.*, 1972, p. 26.

strate at the same time the existence of an economically assessable interest<sup>87</sup>. Despite this orientation was criticized by authoritative scholars<sup>88</sup>, in the 1960s, judges, including the Court of Milan<sup>89</sup>, usually known for its “openness” in terms of financial reporting, they continued to attribute to the shareholder’s interest in acting as an extremely restrictive conception (that of balance sheet), with the consequence that the financial reporting information function was considerably reduced and, consequently, underestimated.

Fortunately, already from the ‘70s, this rigid jurisprudential position changed and, in the following decades until today, it can be said that in almost all the sentences<sup>90</sup> the shareholder was no longer required to demonstrate an interest in acting in relation to any economic advantage that the shareholder might enjoy if his application were accepted. This new orientation demonstrates, once again, the evolution that has taken place since the 1970s, also within the judiciary, in the field of outward company information. Financial reporting can no longer be seen as a simple means to determine only the profits that the shareholder can enjoy but, on the contrary, is considered a tool of information to which the shareholder is entitled, regardless of whether the acceptance of legal action can derive a concrete economic benefit or not.

Although there are still some points in reports on which it is hoped that the judiciary will take different positions, there is no doubt, however, that the informative function of financial reporting has been considerably strengthened, not only by the numerous and profound legislative interventions, but also by the “global” orientation adopted, especially in recent years, by the jurisprudence.

Consequently, even though the above evolution presents elements of discontinuity, the judiciary should as well be credited with having allowed the financial

---

<sup>87</sup> *Così ad es.*: Trib. Milano 22/9/77 in *Gins.-. corn.*, 1978 II, p. 688; Trib. Milano 27/4/78 in *Giur. corn.*, 1978, II, p. 692; Trib. Milano 4/7/74 in *Giur. com.*, 1975, II, p. 45; Appello Milano 7/5/76 in *Riv. dir. com.*, 1976, II, p. 171; Trib. Milano 14/ 9/78 in *Foro it.*, 1980, I, c. 441; Trib. Roma 17/9/77 in *Foro it.*, 1978, I, c. 1026.

<sup>88</sup> See what has been written by Libonati, *Osservazioni in tema di bil. irregolari ...*, in *Riv. dir. corn.*, 1975, II, p. 155; A. Arrigoni, *Note alla sentenza del Trib. di Milano 27/4/78*, in *Giur. corn.*, 1978, p. 715.

<sup>89</sup> However, it should be noted that in some sentences, which were however isolated for a long time, the Court of Milan deviated from the orientation cited. So e.g. Trib. Milano 18/10/76 in *Riv. dott. comm.*, 1977, p. 112; Trib. Milano 25/1/72 in *Giur. it.*, I, 2, c. 88. These decisions, however, constituted the beginning of a new orientation on the subject, in that for several years the Court of Milan asked the shareholders to demonstrate an interest in assets to act.

<sup>90</sup> *Fra le altre*: Trib. Milano 5/5/80 in *Giur. comm.*, 1980, II, p. 938; Trib. Milano 5/1/81 in *Giur. corn.*, 1981, II, p. 458; Trib. Milano 12/1/84 in *Giur. comm.*, 1984, II, p. 276; Trib. Milano 30/9/85 in *Le soc.*, 1986, n. 1, p. 60; Cass. 18/3/86 in *Le soc.*, 1986, n. 7, p. 722.

statements, from an initial means of knowledge of the economical subject alone, to become an instrument that allows operators outside the company to come into possession of information on the economical and financial conditions within the company.

At present, the doctrine, economical and legal, and jurisprudence now agrees in considering financial reporting as the main instrument of communication economical and financial intended for the outside.

“The primary function of financial reporting is (therefore) to provide shareholders and third parties with objective, understandable and correct information on the company’s financial position and results for the year, a function upon which the creation and protection of a series of interests depend, among which we highlight:

- 1) the public and general interest in the regular and transparent functioning of corporate, in view of the significant impact this has on the world of business, work and collective savings, of which companies are the natural recipients
- 2) the interest to the shareholders in a understandable and complete knowledge of the equity, financial and economic situation within the company and of the profits (or losses) actually accrued during the financial year
- 3) the interest of third party creditors and not to decide whether to remain or whether to enter or not in business relationships with the company
4. the interest of the fiscal administration”<sup>91</sup>.

While financial reporting is the ultimate tool for providing information to the outside world, we must not fall into the erroneous belief that this document can meet any information needs of users outside the company. “Among the principles of good interpretation is also that of not pretending to read in financial statements what they can in “this applies to all categories of persons interested in the company’s destiny: categories with specific cognitive needs that cannot in any way be privileged by the financial reporting editor who must, rather, achieve a trade-off between them, offering a minimum of information to all groups of company interlocutors. o way make known”<sup>92</sup>.

“This applies to all categories of persons interested in the company’s destiny: categories with specific cognitive needs that cannot in any way be privileged by

---

<sup>91</sup> Quatraro Fumagalli D’Amora, Del. ass. e cons., p. 445.

<sup>92</sup> Onida, Il bil. d’eser.d delle imprese, p. 134

the financial reporting editor who must, rather, make a trade-off between them, offering a minimum of information to all the groups of company interlocutors"<sup>93</sup>.

The above statements are, almost unanimously, accepted by company and legal doctrine and also reflect the position of current jurisprudence, both in substance and legitimacy.

Financial reporting, therefore, is currently interpreted as the information tool intended for external use which, often representing the only means of economic-financial communication, must be drawn up in such a way as to ensure that the third parties to whom the document is addressed are capable, in a clear and therefore, intelligible manner, to understand the "real" economical, financial and asset situation within the company to which the financial reporting refers without, however, that this means being capable to satisfy, in a complete and exhaustive manner, all the information needs of users outside the company.

The diffusion of such an opinion has inevitably created the basis for a radical evolution, with respect to what has been affirmed in the past decades, regarding the consequences deriving from the failure to comply with the postulates of understandability / faithful representation in measurement of the economical facts' objects of accounting / correctness imposed by the art. 2423 c.c.

As we have already pointed out several times, understandability "is synonymous with the comprehensibility and intelligibility of the document; it allows the reader to understand the meaning of what is written there without the possibility of error and, as a consequence, to acquire exactly the information that through the document its author wants to transmit"<sup>94</sup>.

The postulate of faithful representation in measurement of the economic facts' objects of accounting, on the other hand, refers to the "substantial" elements of the financial statements. The information provided in this document must reflect the operating, financial and operational situation that the financial reporting process is intended to illustrate. Faithful representation in measurement of the economic facts' objects of accounting which, as noted in the previous pages, "is to be understood in a relative sense, in the sense that those values conform to generally accepted valuation principles and are above all contained within the limits of rationality that prevent dilution of capital and income"<sup>95</sup>.

---

<sup>93</sup> Marchi, *Introduzione alla cont. d'impresa*, p. 605.

<sup>94</sup> Catturi, *La redazione del bilancio di di esercizio*, p. 29

<sup>95</sup> Cassandro, *Trattato di ragioneria*, p. 672

Returning to the importance of the postulates imposed by art. 2423 Civil Code, it must be remembered that, at the state of the art, the Civil Code “clarifies very clearly the principle of truthful and correct representation of the function of general clause, dominant all the rules of financial reporting”<sup>96</sup>. Widely outdated appear therefore, the doctrinal opinions illustrated during the period before 1991 that interpreted the art. 2423 as a mere reference complied with Articles 2424 (form) and 2425 (substance, evaluation criteria) which “resulted in a practice of repeal of the provision, reduced to an irrelevant “rule-label”<sup>97</sup>.

From the above clearly, in the presence of a financial reporting culture “open” to the needs of third parties external to companies and therefore, proactive with respect for the environment, we are witnessing a rapprochement between “internal” financial reporting, i.e. both the document which, at least in theoretical terms, reflects the economic reality of the entity to which the financial reporting refers, and the financial reporting governed by the Italian Civil Code.

In the presence of a culture of “closed” financial reporting of a conflicting nature with parties external to the company, the two documents may be distanced, which inevitably leads to a proportional reduction in the information capacity of the document to be published.

From the above it can be deduced how the postulates of understandability, faithful representation in measurement of the economic facts' objects of accounting. and correctness identifies the fundamental bases on which the preparation of the financial statements must be founded

In the previous paragraph, however, it was pointed out how, until the 1980s, jurisprudence (except for the exception of the Court of Milan, which has always held a different opinion) supported the overarching postulate of faithful representation in measurement of the economic facts' objects of accounting. compared to understandability. This meant recognizing the legal relevance of the lack of understandability only if such an element implied, contextually, an injury to the postulate of faithful representation in measurement of the economic facts' objects of accounting. Therefore, understandability, in the 1980s, was not considered an independent cause of invalidity of financial reporting but, on the contrary, was considered a contributory cause of illegality in the hypothesis in which it was possible to identify an inter-relationship between the incompre-

---

<sup>96</sup> Colombo , *La clausola generale*, in *Il bilancio di esercizio*, a cura di Palma, p. 25.

<sup>97</sup> Colombo, *Ult. op. cit.*, p. 25.

hensibility of financial reporting and “untrue representation in measurement of the economic facts’ objects of accounting of the same.

According to this approach, there was a sort of supremacy of the principle of truth or, however, while attributing importance to the defects of understandability, it was considered necessary to recognize in the violation of the latter principle some compromise with the principle of truth, to which, consequently, understandability was considered functional.

Since the 1990s, this unacceptable position in jurisprudence, which inevitably caused negative repercussions in the context for the problem of information for third parties outside the company, was abandoned by all judges, both in terms of merit and legitimacy.

From the sentences in which the subordination of understandability to the faithful representation in measurement of the economic facts’ objects of accounting was affirmed. It went on to the judicial pronouncements in which it is denied that the importance of the understandability precept must remain subordinate to the re-examination of a superior principle of truth of the financial reporting

On the basis of this guideline, “notes that the financial reporting of a limited liability company is unlawful not only when the violation of the relevant regulations results in a discrepancy between the actual result in the year (or the figure intended for the overall representation of the equity value in the company) and that for which financial reporting is used, but also in all cases in which it is impossible to deduce from the financial reporting itself and from its attachments the entire range of information that the law instead requires to be provided with regard to the individual items for which registration is requested.

Given the emphasis placed on the essential nature of the information function of the financial statements, the guideline in question identifies the illegality of this whenever the violation of the mandatory precepts of law<sup>98</sup>, which govern

---

<sup>98</sup> “According to the established case law of this Court, which the board fully shares and which must be given continuity, the rules designed to ensure the clarity and accuracy of the financial statements are obligatory because their violation leads to a reaction of the legal system regardless of the conduct of the parties and makes illegal, and therefore, null, the resolution to approve. These regulations, in fact, are not only required, but contain principles dictated to protect not only the interest of individual shareholders to be informed about the progress of corporate management at the end of each financial year, but also the custody of all persons who enter upon a relationship with the company, who has the right to know the actual financial position and assets to the entity. It follows that, since the unavailability of the rights protected by the above provisions has not ceased to exist following the reform of the Legislative Decree. Article 2434 bis and 2379 of the Italian Civil Code set time limits for the appeal against the resolution to approve the financial statements and, in general, for the appeal against the null resolutions, and therefore, the dispute regarding the validity of the

his training, does not allow to perceive with sufficient understandability the specific information that the reading from the document and its attachments must instead offer with regard to each of the items from which the financial reporting is formed.

The principle of understandability does not therefore, remain subordinate to the principle of truth, since financial reporting that is not able to provide sufficiently readable information cannot be considered valid solely because, in the final analysis, the data it contains are not, in their accounting expression, contrary to the truth. Such an opinion would be manifestly untenable after the formal receipt, in Italian law, with the enactment of Legislative Decree No 127 of 1991, of the dictates of the Fourth Community Directive on Companies, clearly inspired by the maximum enhancement of the so-called principle of transparency of the financial statements.

However, it cannot be supported either in the light of the previous legislation in force at the time of drafting the financial reporting under examination, the interpretation of which, moreover, cannot be ignored in the light of the principles that have long been laid down in the fourth directive, which was issued in July 1978. While it is true that Community directives are not directly applicable in relations between private individuals before they are formally transposed, it

---

resolution to appeal against the financial statements cannot be compromised by arbitrators". Cass. 22/5/2018 n. 12583. "It has also been specified that the area of unavailability must be considered limited to those interests protected by mandatory rules, the violation of which gives rise to a reaction of the legal system free from any party's initiative, such as, in particular, the rules designed to ensure the clarity and accuracy of the financial statements (cf. Cass., Sect. 6th, 12/09/2011, no. 18600; Cass., Sec. I, 23/02/2005, no. 3772); that the violation of the aforesaid provisions, in fact, leads to the unlawfulness, and therefore, the nullity of the resolution to approve the financial statements, since these regulations are not only mandatory, but contain principles dictated for the protection, in addition to the interest of the individual shareholders to be informed of the trend of the company's management at the end of each financial year, also of the assignment of all persons who enter upon a relationship with the company, who has the right to know the actual financial and asset situation of the entity. Cass. 5/2/2018, n. 2692. "A dispute concerning an appeal against a resolution approving a company's financial statements for lack of the requirements of truth, clarity and precision cannot be compromised in arbitrators. Indeed, despite the provision for the lapse during the appeal period, with the consequent amnesty of nullity, the regulations aimed at guaranteeing these principles are not only mandatory, but, in addition to protecting the interest of each shareholder to be informed about the trend of company management at the end of each financial year, they are also dictated by the entrusting of all persons who enter upon a relationship with the company, who has the right to know the financial position and assets.

Of the institution, transcend the interests to the individual and relate, therefore, to unavailable rights. Cass. 13/10/2016, n. 20674. "It must also be stated that the financial statements of limited liability companies must be clearly drawn up and faithfully represent in measurement of the economical facts' objects of accounting in the financial position of company and the economical result in the year (art. 2423 c.c.), being the legal discipline of the financial statements of the companies aimed at guaranteeing the faithful representation in measurement of the economic facts' objects of accounting and correctness of the accounting results, as well as the greater transparency of the financial statement data that lead to those results." Cass. 22/12/2017, n. 30799. "

is also true that - as the European Court of Justice as well stated in its judgment of 14 July 1994 in Case No 91-94 - the court "is required to interpret them as far as possible in the light on the aim and the wording of the directive when it applies provisions of national law, both prior to and subsequent to the directive".

In any event, Article 2423 c.c. (old text) places the understandability precept on the same level as the precision precept, without suggesting any ranking of importance and without subordinating the respect of the first to that of the second or of any other precept. At the same time, the opposite opinion does not take into account further provisions, such as those aimed at regulating the content of the directors' report, which testify to the utmost importance attributed by the legislator to the understandability of the individual information that must be guaranteed to the recipients of the financial statements. And it therefore risks betraying, in substance, the very *raison d'être* of the regulations in question, since it is clear that the lack of understandability in the individual items into which the financial reporting is divided fatally compromises that informative function (also outside the corporate structure) which has already been seen to be one of the main purposes pursued by the legislator in regulating the accounting profile of company law"<sup>99</sup>.

According to this approach, now unanimously shared by doctrine and jurisprudence, the postulates of understandability and faithful representation in measurement of the economic facts' objects of accounting are characterized by a reciprocal autonomy. The violation of even one of them, therefore, causes, unequivocally, the radical nullity of the resolution for the approval of the financial statements. Of course, all this must also be read for the light on the considerations developed by scholars and judges regarding the possibility that understandability is irreparably damaged by errors that do not substantially impact upon the ability of financial reporting to inform third parties in an intelligible manner about the economic and financial situation of the entity to which the financial reporting refers. On this issue, the reader is referred to the next paragraph.

Apart from these necessary considerations regarding the presence of negligible omissions and/or errors, it is certain that the non-application of the understandability postulates has consequences, at the level of invalidity of the res-

---

<sup>99</sup> Cass. 21 febbraio 2000, n.27. Così anche Cass., 14 marzo 1992, n. 3132; Cass. 30 marzo 1995, n. 3774; Cass. 3 settembre 1996, n. 8048; Cass. 8 agosto 1997, n. 7398; Cass 3 settembre 1996, n. 8048; Cass. 29 settembre 2005, n. 19097.



olution approving the financial statements, that are completely similar to those caused by the failure to comply with the postulates of faithful representation in measurement of the economic facts' objects of accounting and/or correctness<sup>100</sup>.

“The orientation that subordinates the relevance of the understandability precept to the respect of a superior principle of truth can no longer be (therefore) followed, almost as if financial reporting that is not able to provide sufficiently readable information could be considered valid only so that the data reported therein are not, in their accounting expression, contrary to the truth”<sup>101</sup>

“In the legal discipline of the financial statements of companies (therefore, note by author) the principle of clarity is not at all subordinates to that of correctness and faithful representation in measurement of the economic facts' objects of accounting. Of the same financial statements, but has an independent value, since the fundamental objective of the legislator is to guarantee not only the faithful representation in measurement of the economic facts' objects of accounting and correctness of the accounting results, but also the greater transparency of the financial statement data that lead to those results. Consequently, the financial statements of a company with share capital that infringe the requirements of understandability and precision laid down in art. 2423 comma 2 of the Italian Civil Code (also in the text prior to the amendments made by the legislative decree). 9 April 1991 no. 127), it is unlawful, and therefore, the shareholders' resolution by which it was approved is null”<sup>102</sup>.

“The understandability and the faithful representation in measurement of the economic facts objects of accounting and correct representation are (for as long) autonomous values and of equal legal weight and the violation of even one of them determines the invalidity of the financial reporting and therefore, the invalidity of the resolution of approval of the same”<sup>103</sup> in how much “it is impossible to deduce a sort of supremacy of the principle of truth (representation in measurement of the economic facts objects of accounting) over that of the understandability, supremacy that is indeed excluded from the analysis

---

<sup>100</sup> See the considerations of Musumeci Mastrangelo, *La mancanza di understandability e precisione dei dati contabili. Il commento*, in *Le soc.*, 2002, p. 757.

<sup>101</sup> Cass. 3 settembre 1996 n. 8048

<sup>102</sup> Cass. 2/5/3007, n.10139

<sup>103</sup> Colombo, *Commento all'art. 2423 bis*, in *AA.VV. La riforma del diritto societario*, by Lo Cascio, p. 90.

of the normative system”<sup>104</sup>. The consideration of the regulatory framework for financial reporting therefore, makes “the hypothesis of placing the understandability postulate in a less important position with respect to the principle of faithful representation in measurement of the economic facts objects of accounting and correct representation absolutely unsustainable”<sup>105</sup>.

In conclusion, using the words of the Court of Cassation “pursuant to the Italian Civil Code, the preparation of the financial statements of limited liability companies must meet the criteria of clarity, faithful representation in measurement of the economic facts’ objects of accounting and correctness”<sup>106</sup>.

In other words, “according to the constant teaching of this Court, the financial statements of a capital company which infringe the precepts of understandability and precision laid down in Article 2423 c.c., comma 2 (also in the text prior to the amendments made by the Legislative Decree. 9 April 1991, no. 127), is unlawful, and consequently, the shareholders’ resolution by which it was approved is null and void. Such a situation can be considered recurrent, both when the violation of the regulations on the subject causes a discrepancy between the actual result for the financial year (or the figure intended for the overall representation of the equity value of the company) and that for which the financial statements instead give an account, and in all cases in which it is impossible to deduce from the financial statements themselves and the relative attachments the entire range of information that the law requires for each of the individual items entered.

The right as a shareholder to appeal for nullity against the resolution to approve financial statements drawn up in violation of legal requirements does not depend, therefore, only on the frustration of the expectation, of the shareholder himself, to receive a dividend or, in any case, an immediate financial advantage that a different and more correct formulation of the financial statements may show, but may also arise from the fact that the lack of clarity or accuracy of the financial statements does not allow the shareholder to have all the information - as well intended to reflect upon the value of the individual shareholding - that the financial statements should instead offer him, and to which, through the

---

<sup>104</sup> Cass. 7 marzo 2006 n. 4874.

<sup>105</sup> Colombo, La cl. generale, in *Il bil. di es.*, a cura di Palma, p. 32.

<sup>106</sup> Cass. 4/5/2018, n. 10686

*Legitimacy of financial statements: faithful representation in measurement of the economic facts'*

declaration of nullity and the consequent need to draw up a new financial statement, amended by the flaws of the previous one, he legitimately aspires”<sup>107</sup>.

---

<sup>107</sup> Cass. 8/3/2016, n. 4522.

## Chapter IV

The qualitative penalty false: penal false financial reporting also when the civil financial reporting is based on faithful representation in measurement of the economic facts' objects of accounting, and on true and view measurement, and it is correct.

SUMMARY: 4.1 The understandability and the qualitative penalty false. Demonstration that a financial reporting can be based on faithful representation in measurement of the economic facts' objects of accounting and true and fair view but can be a penal false financial reporting (with jail as punishment).

4.1 The understandability and the qualitative penalty false. Demonstration that a financial reporting can be based on faithful representation in measurement of the economic facts' objects of accounting and true and fair view but can be a penal false financial reporting (with jail as punishment).

The third question is a very sensitive one. We asked ourselves if the financial reporting with faithful representation in measurement of the economic facts' objects of accounting and correct, deriving or not from the introduction of the reinforced derivation, is a guarantee of civil and criminal validity of the financial reporting or if the financial reporting could be correct and with faithful representation in measurement of the economic facts' objects of accounting, may be civilly invalid and penalty false. The question could be summarized as follows: can a financial reporting with faithful representation in measurement of the economic facts' objects of accounting be correct and invalid from a civil and penal point of view? If the answer is affirmative, it should be said that a financial reporting with faithful representation in measurement of the economic facts' objects of Accounting and correct can be invalid and, consequently, civilly appealable and potentially penalty false.

In order to answer this question, it is necessary to be clear about the postulates of financial reporting imposed by art. 2423 c.c.. This provision, in addition to referring to the faithful representation in measurement of the economic facts' objects of accounting. The third postulate, with the same dignity as the first two, is understandability.

Too often, understandability is underestimated because it is wrongly believed that the essential element of financial reporting is represented by the correct measurement of the economic facts' objects of accounting. Nothing is wrong any more. Before going into the subject in more detail, we can anticipate the conclusions: A financial reporting with faithful representation in measurement of the economic facts' objects of Accounting and correct but not understandability, is civilly invalid and penalty false. In the latter case, reference is made into a concept that the Court of Cassation recently explained very well, reiterating its previous position: penalty false qualitative Therefore, a financial reporting with faithful representation in measurement of the economic facts' objects of accounting can be civilly invalid and can be the object of false social communications or as we say in synthetic terms, can be a penalty false.

With regard to understandability, it should be noted that understandability is to be understood as the intelligibility of financial reporting. Even indirectly, understandability is also linked to the principle of substance over form, imposed by art. 2423 bis c.c. Indirectly, however, the principle of the prevalence of substance over form also affects understandability since the accounting of management operations, from a formal point of view, from the entry into force of the reform also depends on the application of the aforementioned principle.

The postulate of understandability has not always enjoyed a great interest in jurisprudence, in fact, in the '60s and in previous decades was considered a principle without any legal relevance, although imposed by art. 2423 c.c. Over time, understandability has seen its relevance and autonomy considerably increased with respect to the postulate of faithful representation in measurement of the economic facts' objects of accounting so much so that it takes on not only a civil but also a penalty role.

Understanding the concept of understandability therefore, becomes fundamental in order to avoid the civil invalidity of financial reporting, the imputation of false corporate communications.

Financial reporting must be understandable, intelligible and therefore analytical. In this regard, the attach report (in Italian *nota integrativa*) may facilitate understanding of the accounting symbols contained in the balance sheet and income statement. However, the information provided shall not be disproportionate and shall not contain unnecessary data, as the principle applies that "su-

perfluous information means failure to inform external users” An enormous amount of information, in fact, prevents the identification of all the data useful to understand the economic, financial and balance sheet situation within the company.

The assessment of compliance with the understandability postulates of financial reporting cannot ignore two specific considerations:

- (a) information means sending messages to the outside world by appropriate means;
- (b) information also means taking into account the real capacity of the addressee to understand the message.

In the area of corporate reporting, the problem of correctly understanding the message contained in financial reporting is particularly important since accounting is not only a semiotic system composed of signs and therefore, complex to interpret in itself, but it is also a system with specific characteristics that make it even more difficult for those who have to understand the contents of such a document to do so.

The main problems that a subject has to face in order to understand that set of signs that is the financial reporting are therefore connected with the interpretation of the symbology contained within the document. These problems can essentially be traced back to three distinct situations:

- 1) In financial reporting, familiar language expressions are often used as well. This fact, while, on the one hand, it can sometimes simplify the task of those who have to interpret those signs, on the other hand, it can create considerable problems since it is not uncommon that accounting symbology, while using terms typical of spoken language, uses them with meanings that are also profoundly unusual from those with which they are received in the common language. Thus it may happen that the interpreter is led to attribute to the accounting symbol the commonly accepted meaning in ordinary language with the risk of falling into misunderstandings, even macroscopic, of interpretation;
- 2) many accounting items do not find an immediate correspondent in the common language. In other words, whoever has to interpret financial reporting is faced not only with phrases that could deceive him because their accounting meaning is different from that normally attributed to them in common language, but also with purely technical-accounting entries that, not being directly translatable into the common language, are incomprehensible in practice to a non-expert reader;

3) Finally, it often happens that equal symbols designate different objects or, vice versa, that distinct signs refer to identical phenomena. If we add to this the fact that different authors can attribute heterogeneous meanings to the same items and homogeneous meanings to distinct terms, we can well understand how the work of those who have to interpret financial reporting data can become difficult and complex.

The three types of problems mentioned above do not represent an exhaustive list of all the possible difficulties that non-expert reader encounters in interpreting a financial reporting, but they must be kept in mind when judging, in economic-business and purely legal terms, the observance of the understandability postulates imposed by art. 2423 c.c..

In the light of these brief observations, it is easy to understand how often a financial reporting can be totally or partially incomprehensible to a large number of subjects who find themselves in the necessity of analyzing the public financial reporting of a given company. This problem mainly concerns people who are not competent in this area, although it should be noted that it is not impossible in some financial statements to find items that are difficult to interpret, even for those who are experts in accounting.

The understandability postulate must therefore, be interpreted taking into account all the above observations, since rare bearing in mind, the complex problem of the intelligibility of a document made up of symbols can this principle be attributed the right connotation to the concept of comprehensibility.

Therefore, if, on the one hand, the financial reporting, often representing the single instrument of information about the outside, must, absolutely, be understood also by non-experts, on the other it is impossible to prescind from the consideration that the accounting language is a form of communication characterized by an interpretative problem inherent in the language itself.

As for the degree of intelligibility that would be desirable in public financial reportings, there is no unanimity among scholars. In fact, while some academics believe that the accounting language cannot be separated from an inevitable technicality, others instead affirm that financial reporting can be made abstracting, at least in part and as far as possible, from an overly technical symbiology. However, supporters of this second doctrinal current point out that adopting such a philosophy often means clashing with the opinion of those who believe that items of financial reporting should be as concise as possible. This “necessary” conciseness, at the same time, is not of such importance as to justify a substantial decrease as the information capacity of financial reporting and, consequently, some scholars believe that a greater specification, even if apparently

contrary to the ancient canons of accounting aesthetics, should in any case be chosen to ensure a better understanding of those indications. According to some scholars, this thesis would be implicitly accepted also by the Italian legislator since the balance sheet is considered by the law as an instrument of information directed to a group of users of which one cannot, a priori, suppose a particular receptivity. Furthermore, the legislator prescind from any reference to specific accounting techniques, which would further prove the acceptance of the thesis advocated by the doctrinal current to which those scholars adhere.

The various authors that have dealt with this subject have therefore expressed differing opinions on the degree of “accounting technicality” that should characterize the stage of preparation of the financial statements. Nevertheless, the doctrine essentially agrees about the need for financial reporting to become an information tool that is comprehensible and accessible to an increasing number of subjects

The various authors which have dealt with this subject have therefore expressed differing opinions regarding the degree of “accounting technicality” that should characterize the stage of preparation of the financial statements. Nevertheless, the doctrine essentially agrees about the need for financial reporting to become an information tool that is comprehensible and accessible to an increasing number of subjects.

In the opinion to the writer, the understandability postulate necessarily implies the assumption that the reader of financial reporting is provided at a minimum of accounting knowledge since that document adopts a technical language, unavoidable as it is inherent in the document itself, whose understanding cannot prescind from knowledge, even minimal, which inevitably must distinguish those who are preparing to read and interpret the data contained therein.

We therefore, fully agree with Salafia when it states that “understandability allows the understanding of the accounting document by the recipients provided with media accounting culture”, as well as with Quatraro, Fumagalli and D’Amora when they stress that “the understandability desired by the legislator is not that which could demand, for example, an analyst of financial statements, but that (lower provided) sufficient to provide the recipient of it (socio-economic or third of normal accounting culture) the representation of the equity, economic and financial situation within the company..”<sup>108</sup>.

---

<sup>108</sup> B. Quatraro-A. Fumagalli-S. D’Amora, *Le delibere assembleari e consiliari*, Tomo I, Giuffrè, Milano, 1996, p. 374.



Given the legislation in force, slavish compliance with the structural schemes indicated respectively in articles 2424 and 2425 of the Italian Civil Code does not guarantee that financial reporting can be defined as “clear” and therefore, considered perfectly legitimate. The analysis of compliance with understandability, in fact, cannot disregard art. 2423 ter, paragraphs 2, 3 and 4, which, as we have already had occasioned to point out, impose, if requires by understandability, the unification, disaggregation, addition of other items with respect to the scheme of art. 2424 and 2425 of the Italian Civil Code and the adjustment of the items if the activity so requires.

From the analysis of art. 2423 ter of the Italian Civil Code, it is clearly understood that slavish compliance with the reclassification structures indicated by articles 2424 of the Italian Civil Code and 2425 of the Italian Civil Code does not guarantee the understandability and, therefore, the legitimacy of the financial statements. In fact, these schemes must be considered as “basic” structures that can obligatorily be modified if the understandability postulate so requires.

Consequently, understandability requires that the structural indications of articles 2424 and 2425 of the Italian Civil Code be completed by information elements that, by their nature, cannot be rigidly schemed.

The intelligibility, and the understanding, and, therefore, the understandability, itself, derive from a subjective evaluation that must go beyond what is moved by reclassification schemes structured in such a way as to be used in a generalized manner.

The understandability assumption implies, in itself, the consideration in the financial reporting of elements connected to the business reality being communicated, which, by their very nature, cannot be identified in a comprehensive, definitive manner by a reclassification scheme whose objective is to provide the basis for the comparability of the economic and financial data made public by the companies.

A balance sheet and a profit and loss account are therefore, clear, not when they are drawn up based on the provisions of Articles 2424 and 2425, but when the data that reflect the economic and financial reality of the business entity are shown in such a way as to ensure that the company’s situation can be correctly understood and interpreted by the user to whom the information is addressed. The assessment of understandability is therefore, subjective and left, as a last resort, to a judge who decrees compliance or non-application of the postulate imposed by art. 2423 c.c.

In conclusion, we report part of a recent ruling that effectively expresses the meaning and purpose of the principle of financial statement understandability:

“The aim of the understandability principle was to provide the interested parties (shareholders, third parties, the market, etc.) with adequate information on the analytical composition of the company’s assets and not only on the positive and negative elements of income; therefore, it was not deemed sufficient to indicate the overall value of the company’s assets or the economic result during the period, but it was deemed necessary, for the purposes of adequate knowledge, to indicate analytically the elements that make it possible to arrive at that given final value. In this context, as an expression for the principle of understandability, the provisions of the Code concerning the structure of the balance sheet (article 2424 of the Italian Civil Code) and of the income statement (article 2425 of the Italian Civil Code) and those concerning the accounting policies for items in financial reporting (article 2426 of the Italian Civil Code) are relevant, provisions that constitute the minimum content that must be observed in preparing the financial reporting for the year.

A complete analysis of the problem in question requires an answer to the following question: Does the reinforced derivation concern every financial reporting postulates or is there a selection which excludes some fundamental principles of financial reporting from the above-mentioned tax legislation?

The answer to the above question is, certainly, negative as the tax principle cited is inherent in the postulates of faithful representation in measurement of the economic facts’ objects of accounting, and correct but not related to understandability which, currently, is without opposition considered a postulate of financial reporting of equal dignity and consequences of faithful representation in measurement of the economic facts’ objects of accounting and correctness.

According to the approach, now with one accord shared by doctrine and jurisprudence, the postulates of understandability and faithful representation in measurement of the economic facts’ objects of accounting, are characterized by mutual autonomy and equal dignity. The violation of even one of them therefore causes, unequivocally, the radical nullity of the resolution for the approval of the financial statements. Of course, all this must also be read in the light of the considerations developed by scholars and judges regarding the possibility that understandability may be irreparably damaged by errors that, substantially, do not impact on the ability of financial reporting to inform third parties in an intelligible manner about the economic and financial situation of the entity to which the financial reporting refers. On this issue, the reader is referred to the next paragraph.

Apart from these necessary considerations regarding the presence of negligible omissions and/or errors, it is certain that the non-application of the un-

understandability postulates has consequences, at the level of invalidity of the resolution approving the financial statements, that are completely similar to those caused by the nonobservance of the faithful representation in measurement of the economic facts' objects of accounting postulates. and/or correctness.

Where, the postulates of faithful representation in measurement of the economic facts' objects of accounting and correctness, also applied following the implementation of the reinforced derivation, were observed, the presence of information gaps in the understandability postulate would entail, first of all, consequences of a civil nature.

The invalidity of a resolution of a general meeting may be twofold. This resolution, in fact, may be subject to annulment or radical nullity. This is not the place to analytically illustrate the differences between the two categories of civil invalidity of shareholders' meeting resolutions. In this regard, however, it is possible to briefly state, by simplifying a complex subject, that the formal flaws of the resolution generally lead to its annulment. If, on the other hand, non-compliance with the regulations concerns the preparation of the financial statements, the resolution approving the latter is affected by nullity, which implies the possibility of challenging the invalid resolution by anyone with an interest, which does not necessarily have to coincide with the search for an economical advantage. In fact, the interest could also lie in the mere desire to come into possession of a true, fair and clear financial reporting, without this resulting in a return or a positive economical element.

Failure to comply with the understandability postulate therefore, means that even a third party exterior to the company can challenge the resolution approving the financial statements, as the communication intended for external use is misleading and does not comply with the provisions of the Civil Code on the intelligibility and comprehensibility of accounting data.

Art. 2434 bis established that the actions provided for by articles 2377 and 2379 c.c. may not be proposed against the resolutions approving the financial reporting after the confirmation of the financial reporting of the following financial year. The Code also requires, in the third paragraph of art. 2434 bis c.c., that the financial reporting for the financial year during which the above civil invalidity is declared must take into account the reasons for the invalidity.

In this regard, it should be noted that the civil nullity of the resolution approving financial reporting for failure to apply the postulate of understandability, as well as the absence of faithful representation in measurement of the economic facts' objects of accounting and correctness, it does not require that there

be a specific desire to achieve particular goals, other than to illustrate a situation does not correspond with the economic and financial reality of the company.

Therefore, the nullity of the resolution due to the absence of understandability, does not depend upon the desire to obtain an unfair profit or to deceive third parties, but is based solely and exclusively on the non-application of a postulate imposed by art. 2423 c.c. for lack of knowledge of accounting principles or for incorrect interpretation of regulations.

The above nullity falls within the scope of civil law and, therefore, this sanction does not have any criminal relevance.

For many years, during the various reforms that have taken place since the 1990s, the doctrine has discussed the possibility that erroneous accounting items in the financial statements, which, however, did not imply any quantitative changes either in assets or in income, could be included among criminal offence precisely within what is improperly defined as “penalty false accounting”. In other words, it was debated whether a lack of understandability could lead to penalty false corporate communications and, consequently, to sanctions of a criminal nature as a result of the application of art. 2621 Civil Code

If the penalty false accounting does not lead to quantitative changes of an equity or income nature, the penalty false accounting is defined as “qualitative”. Much has been said about the penalty false quality. In a nutshell, the false quality is achieved by the inclusion of accounting entries that are formally incorrect, marked by their true value. It is evident that the qualitative falsehood is part of the orbit of the problem with the absence of understandability, while the false evaluation presents interconnections with the non-application of the postulates of faithful representation in measurement of the economic facts’ objects of accounting and correctness.

In the previous 2002 reform of penalty false reporting, the Code provided for quantitative thresholds below which criminal law could not be applied. The fact that there were these thresholds was one of the arguments most used by scholars to deny the existence of a false quality because, in the presence of true and correct values, it was impossible to speculate on a falsehood of corporate communications. The introduction of such thresholds had been considered by many as “the result of political reactions to the extensive interpretations of art. 2621 Civil Code in the period of Tangentopoli and the dilution of the direct effectiveness of the adverb “fraudulently”.<sup>109</sup>

---

<sup>109</sup> G.F. Ricci, *Il nuovo reato di false comunicazioni sociali, commento alla legge 27 maggio 2015*, Giappichelli, 2015, p. 55.

Before the 2002 reform, in the wake of the reactions to Tangentopoli, most scholars agreed that false quality could be criminally punished. The situation, as highlighted above, underwent a revival with the 2002 reform and the introduction of quantitative thresholds. In such a situation, many authors began to deny the hypothesis that the qualitative falsehood could still be considered penalty relevant.

The 2015 reform has overcome these objections and, at the state of the art, it is possible to state that the interpretation of articles 2621 of the Civil Code and 2622 of the Civil Code leads to the belief that false quality is penalty punishable. In any case, art. 2621 bis of the Italian Civil Code, which limits the criminal consequences for minor offences, and art. 2621 ter of the Italian Civil Code, which excludes the penalty relevance of facts marked by the particular tenuousness of the crime.

“In fact, the object of deceptive conduct is, exactly as before, the economic, equity and financial situation of the company or group, and this expression do not have an exclusively numerical quantitative meaning, in the sense of purely arithmetic results; if only the vehicle through which the crime may be committed is not only the accounting records, but any other corporate communication directed to shareholders and the public required by law. It is therefore, necessary to go back ... to the legal good protected by the incriminating provision. If... this asset is the reliance of the shareholders and the general public in the true and correct representation of the subjective and objective situation within the company, the criminal relevance of the qualitative falsehood is undeniable”<sup>110</sup>.

The lack of understandability, i.e. the recording of items with titles of accounts that are incorrect because they do not correspond to the reality that they should represent, is therefore also of penalty, as well as civil, importance.

By way of example, let us think of the cases in which:

- \* a gains on disposal of investment is write in financial reporting as characteristic revenue;
- \* a loss on disposal of investment or a contingent profit is, instead, a cost of characteristic management of a company;
- \* a debt is written as a provision for risks and charge;
- \* short-term securities and participations are included in fixed assets-to or vice versa;

---

<sup>110</sup> G. F. Ricci, ult. cit., p. 58.

- \* there is an allocation of maintenance and renovation costs to an asset other than the one to which, in reality, they refer;
- \* a receivable is recorded under current assets when, in reality, it is fixed;
- \* the short-term portion of a debt or credit is not indicated or is indicated quantitatively incorrectly.

In all the above cases, the value of the company's assets and income does not change from what it would have been if the information in the financial reporting had been correct in quality. There is no doubt, however, that the formal inaccuracy of the accounting indication, while giving rise "only" to a qualitative picture that is different from the reality, may be highly misleading for third parties outside the company. There is no doubt, therefore, that penalty false quality is a criminal offence, even though all valuations are correct and the value of company assets and income has not changed as a result of this offence.

Penalty false quality leads to a misrepresentation of the company's situation, which can have a significant impact on the decisions that third parties may have to take vis-à-vis the company. Even if the third party only had an interest in knowing the company's situation, this would be seriously compromised if a false quality had been created that was not particularly tenuous. Consequently, understandability has a double value: it is relevant in the civil field and develops its effects in the criminal field.

This position has also been taken up by the judiciary.

Since 1999, when there was a criminal law in force relating to penalty false communications very different from that currently provided for by the Civil Code, the Court of Cassation has pointed out that "on the subject of penalty false communications, since the law referred to in art. 2621 c.c. are aimed at protecting the interests within the company itself, of creditors and of third parties in general, even simply by avoiding the danger of damage to protected interests, the faithful representation in measurement of the economic facts' objects of accounting. Of financial reporting should not be evaluated solely based on the accuracy of the overall amount of assets or liabilities, but also assuming everyone item, when the individual representation of this item is such as to mislead the protected parties with regard to the structure of the financial reporting itself."<sup>111</sup>

---

<sup>111</sup> Cass. Pen. 12 maggio 1999, n. 6006.

Also recently, the Supreme Court, in a significant sentence in which it reaffirmed the existence of penalty false valuation, highlighted how in the case of the formal allocation of values described with incorrect account titles and/or in the absence of understandability, the crime of penalty false corporate communications is committed. “the deceptive potential may well derive not only from the exposure of a non-existent asset to financial reporting or from the omission of an existing asset, but plus from the false valuation of an asset that is also present in the company’s assets. The alteration of such data, on the other hand, does not necessarily have to affect only the quantitative aspect, since the so-called “data” can furthermore have an impact. “Misrepresentation” means a misleading attitude and effectiveness towards the reader of the financial statements. Indeed, the wrong recording of true data, the incorrect causal justification of “items”, even if real and existing, may well have a deceptive effect (for example: showing a situation of fictitious liquidity) and therefore, negatively affect that asset of corporate transparency, which has been seen to be the foundation of the criminal protection of the financial statements”<sup>112</sup>.

In the above-mentioned judgment, which took a final position on the relevance of the false evaluation in the financial statements<sup>113</sup>, The thorny question about the existence of an offence at the presence of a mere qualitative “false” without a quantitative impact on the company’s assets and income was therefore, additionally defined.

In light also of the most-recent jurisprudential position, it is therefore, possible to affirm that the absence of understandability or the simple insertion of incorrect accounting items in the financial reporting from a formal point of view gives rise to a criminal offence, which can be defined for its technical characteristics as “penalty false qualitative”.

Assuming what has been written so far, it might seem that there are no substantial differences between the statutory nullity of the financial reporting (*recitius* of the resolution to approve the financial statements) due to the absence of understandability and the false quality. It could therefore be assumed that one involves the other. The situation is, on the other hand, profoundly different, in that the criminal offence of false corporate communications, whether due to false quality or to false valuation and/or unfaithful representation in measurement of the economic facts’ objects of accounting, is committed. of financial statement data, provides for an element that does not appear in the civil code.

---

<sup>112</sup> Cass. Pen. 27.5.2016, n. 22474.

<sup>113</sup> Similarly: Cass. nn. 12793/2016 e 890/2016; contra: Cass. nn. 6916/2016 e 33774/2015.

The element in question is what is generally called the “subjective aspect”. Article 2621 of the Italian Civil Code and Article 2622 of the Italian Civil Code states that false corporate communications are punished in criminal proceedings only if they are committed:

- (1) a clear intention to deceive the members or the public is identifiable,
- 2) and it is proven that the ultimate purpose of the active subject was to obtain for himself or for other’s unjust profit.

The lack of one of these subjective factors prevents the applicability of the criminal sanctions provided for by articles 2621 of the Civil Code and 2622 of the Civil Code.

For both cases of false corporate communications, the legislator has today provided for intentional intent, as can be seen from the expression “...with the intention of deceiving shareholders or the public” placed at the beginning of the regulation. This form of malice has been flanked by a connotative-finalist moment consisting in “the aim of achieving for oneself or others an unjust profit”. In criminal matters, therefore, deception must be accompanied by intention, which must also have the aim of unfair profit.

It is precisely the indication of the achievement of unjust profit that has induced part of the doctrine to believe that “there are no extremes of the specific intent required by articles 2622 and 2621 of the Civil Code whenever the false communication ... has been subjectively oriented by the administrators to the rescue of the social enterprise, to the recovery of a positive image and competitiveness on the markets, to the safeguarding of jobs, etc.”.

On the other hand, it is considered a criminal offence if the company to which the agent belongs obtains the unfair profit.

The necessary presence, on the one hand, of an intention to deceive shareholders or the public and, on the other hand, of an intention to achieve for oneself or for others, an unfair profit marks the clear and radical rift between the statutory invalidity of the financial report and the criminal relevance of false corporate communications.

It is common ground, in fact, that civil penalties (nullity and revocability of the resolution approving the financial statements) are completely “released” from any subjective element of deception and/or the obtaining of unjust profit.

Financial reporting is invalid in civil law if the editor has not applied the postulates of faithful representation in measurement of the economic facts’ objects of accounting. correctness and understandability. The reasons and/or causes for such accounting behavior do not count. Even in the event of a simple error made in perfect good faith, the financial reporting for the year may therefore



be invalidated in the statutory financial statements as it is a document that is not truthful and/or unintelligible. The lack of awareness of having carried out illegal behavior and/or of an conscious and deceptive will does not constitute, therefore, a reason to ask to “save” the financial reporting by protecting it from nullity and/or cancellation actions.

For false corporate communications punished by articles 2622 of the Civil Code and 2621 of the Civil Code, on the other hand, the deliberate conduct and the search for unfair profit are recognized as the subjective elements indispensable to the purpose of imposing the criminal sanctions disciplined therein.

Clearly, from this point of view, the civil law area of the invalidity of financial reporting presents a substantial discrepancy with respect to the penalty field of corporate crimes governed by the aforementioned articles, so in terms of “penalty false accounting” there is no overlap between civil and criminal legislation.

As well noted by Salafia, in fact “In carrying out evaluations aimed, for example, at calculating amortization, depreciation, receivables, production costs, etc., the editor of the financial report follows the imperative of his culture and the effects of his perceptions. His good faith in the use of one evaluation criterion rather than another cannot be excluded... In other words, the commission of a forgery always presupposes in the agent a conscious conduct of the manipulation of perceptions, when, as in the species concerned here, it is an ideological forgery”.<sup>114</sup>

Some authors argue that the concept of “unfair profit” should not be restricted to a merely and necessarily economic sphere. For some scholars, in fact, even a utility of a only moral nature would represent the subjective element required, in an obligatory way, by articles 2621 of the Civil Code. e 2622 c.c. It is evident that such an interpretation extends the sanctioning capacity of the above-mentioned norms. However, it is equally clear that, even if the rules were interpreted in such a “broadened” way, the gap between civil invalidity and criminal sanctions would remain open, demonstrating that penalty punishable can only concern different behavior, since they are more “treacherous and dangerous” than those sanctioned in the civil field.

---

<sup>114</sup> V. Salafia, *Rilev. civile e pen. Del bilancio di es. irregolare*, in *Le Società*, 1997, p. 1371.

## REFERENCES CITED AND CONSULTED

- AA.VV., *Il nuovo bilancio civile e fiscale*, IST editore, Bologna, 1993.
- ADAMO S., *L'eliminazione dell'appendice fiscale riflessi sull'attendibilità del bilancio d'esercizio*, in *Rivista dei Dottori Commercialisti*, N. 4, 1995.
- AGRUSTI G., *Ancora novità per società di capitali e cooperative*, *Amministrazione & Finanza*, n. 4/2005.
- AISBITT S., *Tax and accounting rules: some recent developments*, *European Business Review*, 14(2), 2002, pp. 92–97.
- ALBERTI G. B., *Il sistema dei controlli societari: realtà e prospettive*, *Le società*, n. 6/2005.
- ALBERTINAZZI G., *Attuazione della IV direttiva CEE: le voci n° 24 e n° 25 del conto economico*, in *Rivista dei Dottori Commercialisti*, N. 1, 1992.
- ALBERTINAZZI G., *prime considerazioni sull'abrogazione dell'appendice fiscale del conto economico*, in *Rivista dei Dottori Commercialisti*, n., 1, 1995.
- ALBERTINAZZI G., *Sostanza e forma nel bilancio di esercizio. Dal principio della prevalenza della sostanza sulla forma alla proposizione di un particolare modello di definizione dell'oggetto di rappresentazione di bilancio*, Giuffrè, Milano, 2002.
- ALLEGRETTI M. e MARTINI P. (a cura di), *Bilancio civilistico e imponibile fiscale*, Esselibri, Napoli, 2002.
- ALEXANDER D., *A European true and fair view?*. *European accounting review*, 1993, vol 2, issue n. 1.
- ALEXANDER D. and SCHWENCKE H.R., *Accounting changes in Norway: a description and analysis of the transition from a continental towards an anglo-saxon perspective on accounting*. 20th Annual Congress of the European Accounting Association, 1997, Graz, Austria.
- ALEXANDER D. and SCHWENCKE H.F., *Accounting change in Norway*, *European Accounting Review*, 2003, vol. 12, issue 3.
- ALEXANDER D., JERMAKOWICZ E., *A true and fair view of the principles/rules debate*, *Abacus*, 2006, Vol. 42, n. 2.
- ALEXANDER, D., NOBES C., *Financial accounting: an international introduction*, 2013, Pearson.
- AMADUZZI A., *Il bilancio di esercizio delle imprese*, Utet, 1978.
- AMATO A., *Il nostro sistema tributario dopo la riforma*, Cedam, 1973.
- AMATUCCI F., *Il principio di non discriminazione fiscale*, Cedam, 2003.

*References cited and consulted*

- AMATUCCI F., Principi e nozioni di diritto tributario, Giappichelli, 2016.
- AMBROSINI A., Appunti in tema di amministrazione e controlli nella riforma delle società, *Le società*, n. 2bis/2003.
- AMODEO D., Il bilancio delle S.p.A come strumento di informazione, in *Riv. dott. comm.*, 1970, n. 5.
- Anda E. O., Puiga X. (2005). *The Changing Relationship between Tax and Financial Reporting in Spain*, *Accounting in Europe*, Vol. 2, Issue 1, pages 195-207.
- ANDREANI G., TUBELLI A., L'Assonime chiarisce l'abrogazione delle deduzioni extracontabili, in *Corriere Tributario*, n. 31, 2008.
- ANDREANI G. e TUBELLI A., Disinquinamento fiscale. Problemi e possibili soluzioni, in *Il fisco*, n. 17/2005.
- ANDREANI G. e TUBELLI A., Affrancamento delle deduzioni extracontabili, *Corriere Tributario*, n. 23/2008.
- ANDREI P., Valori storici e valori correnti nel bilancio di esercizio, Giuffrè, 2004.
- ANDRIOLA M., Il disinquinamento del bilancio. Aspetti generali, vincolo di copertura patrimoniale e possibilità di pianificazione fiscale, *Fisco Oggi*, 19.07.2005, rivista telematica dell'Agenzia delle Entrate, [www.fiscooggi.it](http://www.fiscooggi.it).
- ANDRIOLA M., Il disinquinamento del bilancio. Inquinamento pregresso e relativi benefici indotti, *Fisco Oggi*, rivista telematica dell'Agenzia delle Entrate, 21.07.2005, [www.fiscooggi.it](http://www.fiscooggi.it).
- ANGHILERI R., BOTTINI M.C., GIOVANELLI A. e PAGANI P., Il raccordo tra il nuovo bilancio d'esercizio e il testo unico delle imposte dirette, da L'attuazione della IV Direttiva CEE. Aspetti fiscali e civilistici nel bilancio d'esercizio – Atti del Convegno di Milano, 16 giugno 1991, a cura di G. A. TEDESCHI, Giuffrè, 1992.
- ANTHONY R.N., *Contabilità per la direzione*, Etas Kompass, 1966.
- ATTARDI C., Abrogazione delle deduzioni extracontabili e riallineamento dei valori civili e fiscali, in *il Fisco*, n. 20, 2008.
- ASSONIME, circolare n. 14 del 21 giugno 2017.
- AVI M. S., Il bilancio come strumento di informazione verso l'esterno, Cedam, 1990.
- AVI M.S. "Bilancio di esercizio fra norme civilistiche e disposizioni tributarie" in *La settimana fiscale*, n.39, 1999.
- AVI M. S., Bilanci "irregolari" e Fisco. Aspetti economici, civilistici e penali, in *Il fisco*, n. 20/1999.
- AVI M.S., (a cura di), *Falso e invalidità di bilancio*, Cedam, 2001.
- AVI M. S., Passaggio dal bilancio civilistico al bilancio gestionale utilizzabile a scopi di analisi di azienda. Problematiche aperte e soluzioni, in *Il fisco*, n. 16/2002.
- AVI M. S., Bilancio: la riforma separa le esigenze fiscali da quelle civilistiche, in *Diritto e pratica delle società*, n. 11/2003.
- AVI M.S., "Bilancio di esercizio e norme tributarie: quale futuro dopo le riforme?" in *Forum Fiscale*, *Il Sole 24 ore*, n. 10, 2003.
- AVI M. S., Gli ammortamenti civilistici e fiscali. Situazione ante e post riforma, in *Il fisco*, n. 16, 2003.
- AVI M. S., Eliminazione delle interferenze fiscali. Evoluzione, rivoluzione o involuzione?, in *Il fisco*, n. 18, 2004.

- AVI M.S. “ Gli ammortamenti nella riforma civilistica e fiscale”, in *Giurisprudenza Commerciale*, supplemento dedicato alla riforma societaria, supplemento n. 3, 2004.
- AVI M.S., “ Le valutazioni in bilancio trib-economiche”, in *Rivista Italiana di Ragioneria e Economia Aziendale*, RIREA, settembre ottobre, 2006.
- AVI M.S. “ La trib-veridicità del bilancio e l’“eliminazione” delle interferenze fiscali, in *Il fisco*, volume 2, n. 13/2007.
- AVI M.S., *Come evitare le invalidità di bilancio*, Il sole 24 ore, 2007.
- AVI M.S., “L’impatto sul controllo di gestione delle “eliminate” interferenze fiscali, *Contabilità finanza e controllo*, n. 5/2007.
- AVI M.S. “Il bilancio d’esercizio fra veridicità economica e trib-veridicità”, in *Il foro Padano*, n. 1, 2008.
- AVI M.S., ““Eliminazione definitiva o nuova vita delle interferenze fiscali nel bilancio di esercizio?””, in *Il fisco* n. 46, 2014.
- AVI M.S., “The “tax-true and fiscally-fair” principle in Italian financial reporting”, in *Academy Accounting and Financial Studies Journal*, vol. 21, issue 3, 2017.
- ATTI CONGRESSO, *La riforma del diritto societario dieci anni dopo: per i quarant’anni di Giurisprudenza commerciale*: Milano, 13-14 giugno 2014, Giuffrè, 2015.
- BAFILE C., *Considerazioni sui requisiti e sugli effetti del bilancio nella determinazione del reddito d’impresa*, in *Rassegna tributaria*, n. 1, 1984.
- BALDUCCI D., *Il nuovo bilancio d’esercizio*, Fag, 2003.
- BALDUCCI D. e CECCARONI S., *Falso in bilancio e frodi contabili*, II ed., Fag, 2002.
- BALLWIESER W., BAMBERG G., BECKMANN M.J., BESTER H., BLICKLE R., EWERT R., WAGENHOFER A., GAYNOR M., *Agency theory, information, and incentives*, 2012, Springer Science & Business Media.
- BAMPO A., *Nuovi principi contabili e passaggio a riserva del fondo ammortamenti anticipati. Effetti contabili e brevi cenni sui risvolti tributari*, in *Rassegna tributaria*, n. 1/2005.
- BARBIERI C., *Bilancio d’esercizio e reddito d’impresa: Codice civile, Principi contabili e Tuir dopo la Finanziaria 2008*, Giuffrè, 2008.
- BASTIA P., *Il nuovo bilancio d’esercizio: attuazione della IV Direttiva CEE*, Clueb, 1993.
- BANDETTINI A., *Il bilancio di esercizio: finalità, postulati, elementi strutturali*, Cedam, 1999.
- BASILAVECCHIA M., *Verso il codice, passi indietro; spunti critici sulla tecnica legislativa nel decreto delegato sull’Ires*, in *Rivista di diritto tributario*, I, n. 83, 2004.
- BASILAVECCHIA M., *Imposta sul reddito delle società*, Clueb, 2007.
- BAUER R., *Gli effetti della riforma sul bilancio e governo d’impresa. Novità, modifiche e prospettive*, IPSOA, 2003.
- BEGHIN M., *Saggi sulla riforma dell’Ires: dalla relazione Biasco alla Finanziaria 2008*, Milano.
- BENSTON G. J., BROMWICH M., LITAN R.E, WAGEHOFER A., *Worldwide financial reporting: The development and future of accounting standards*, 2006, Oxford University Press.
- BISASCHI A., *Del mai sopito conflitto tra normativa civilistica e fiscale*, in *Rivista dei dottori commercialisti*, n-. 6, 1992.

- BEGHIN M., La previa imputazione al conto economico delle componenti negative ex art. 75, comma 4, DPR 917/1986: “norma centrale” o “scatola vuota” nel procedimento di determinazione del reddito d’impresa? da Falso e invalidità di bilancio a cura di AVI M. S., Cedam, 2001.
- BENAZZI A., Il “disinguamento” del bilancio d’esercizio, *Corriere tributario*, n. 44/2002.
- BERGAMIN BARBATO M., Reddito imponibile e risultato economico di gestione: sancita la diversità o avvicinate le posizioni?, *ib Rassegna tributaria*, n. 9/1987.
- BIANCHI M. T., Alcune riflessioni sulla nuova disciplina del bilancio, *Rivista Italiana di Ragioneria e di Economia Aziendale*, n. 1-2/2005.
- BIANCHI M. T., Fisco e bilancio d’esercizio. Nella nota integrativa una possibile soluzione alle interferenze tributarie, in *Il fisco*, n. 32/2002.
- BISASCHI A., Del mai sopito conflitto tra normativa civilistica e fiscale, in *Rivista dei Dottori Commercialisti*, n. 6, 1992.
- BLOCH J., Il prospetto della dichiarazione accoglie anche le voci fiscali non espressamente nominate, in *Corriere tributario*, n. 5/2004.
- BLOCH J. e SORGATO L., Eliminazione delle interferenze fiscali dal bilancio d’esercizio, in *Corriere tributario*, n. 38/2001.
- BOCCHINI E., *Il bilancio delle imprese*, Liguori, 1979.
- BOCCHINI E., *Manuale di diritto della contabilità delle imprese*, Utet, 1995.
- BONAZZA P., Inerenza, competenza e correlazione nel bilancio civilistico e nella determinazione del reddito imponibile. Casi e riferimenti concreti, in *Rivista Italiana di Ragioneria e di Economia Aziendale*, n. 5-6/2004.
- BONO M, SPAGNOL E., Riflessi fiscali del D. Lgs. 139/15, in *Schede aggiornamento Eutekne*, n. 3, 2017.
- BORRÈ L., La rappresentazione delle imposte sul reddito nel bilancio d’esercizio secondo la disciplina civilistica di attuazione della IV direttiva CEE, in *Rivista dei dottori commercialisti*, n. 1/1994.
- BORTOLETTO G., “Doppio binario” e disinguamento di bilancio. Il caso degli ammortamenti anticipati, *Il fisco*, n. 16/2005.
- BORTOLETTO G., Doppio binario: il valore di bilancio del magazzino é davvero un “valore minimo” ai fini fiscali?, in *Dialoghi di diritto tributario*, n. 5/2004.
- BOSCOTRECASE A., *Il nuovo bilancio di esercizio nell’ottica della IV Direttiva CEE*, Liguori, 1991.
- BOZZOLAN E., Primo piano sul progetto di riforma “Tremonti”, in *Amministrazione & Finanza*, n. 14/2003.
- BROGLIA GUIGGI A., *La funzione del bilancio di esercizio tra evoluzione e tendenziale mutazione*, Giappichelli, 2004.
- BUFFELLI G., PIAZZA M., RIZZARDI R., *Il nuovo bilancio di esercizio nella normativa fiscale*, II ed., *Il Sole 24 Ore*, 1993.
- BUFFETTI G., PIAZZA M., & RIZZARDI R., *Il nuovo bilancio d’esercizio nella normativa fiscale: il coordinamento fra il testo unico delle imposte dirette i decreti legislativi 127/1991 e 87/1992*, *Il sole 24 ore*, Giuffrè, 1994.
- BUONOCORE V., *La riforma delle società*, supplemento a *Giurisprudenza commerciale*, n. 4, 2003.

- BUSANI A., La riforma delle società e dei bilanci. Le nuove regole per SPA e SRL, Il Sole 24 Ore, 2003.
- BRUSA L, Veridicità, attendibilità e chiarezza del bilancio di esercizio, Giuffè, 1974.
- BURCHELL S., CLUBB C., HOPWOED A., HUGHER J, NAHAPIET J., The roles of accounting in organizations and society, Accounting, Organizations and Society, 1980, Vol. 5, issue 1.
- BURCHELL S., CLUBB C., Hopwood A., “Accounting in its social context: Towards a history of value added in the United Kingdom”, Accounting, Organizations and Society, 1985, Vol. 10, issue 4.
- CAMISASCA G. M., Ammortamenti ridotti: l’Agenzia Entrate ci ripensa, in Amministrazione & Finanza, n. 15-16, 2005.
- CAMPOBASSO G. F., Manuale di diritto commerciale, II ed., Utet, 2003.
- CAMPOBASSO G.F., Diritto commerciale vol I e vol.2, Utet Giuridica, 2015.
- CAPODAGLIO G., La comunicazione economico-finanziaria della fiscalità d’impresa e dei fondi del passivo, FrancoAngeli, 2003.
- CAPODAGLIO G., Le imposte anticipate e differite nel bilancio d’esercizio. Situazione attuale e prospettive future, in Rivista Italiana di Ragioneria e di Economia Aziendale, n. 5-6, 2004.
- CAPODOGLIO G., Prime osservazioni sulla disciplina del bilancio contenuta nel DLgs 17 gennaio 2003, n. 6, in Rivista Italiana di Ragioneria e di Economia Aziendale, n. 5-6, 2003.
- CAPOLUPO S., Definitivamente eliminata la dipendenza rovesciata, in Il fisco, n. 36, 2003.
- CAPOLUPO S., IAS. Considerazioni generali e riflessi fiscali, in Il fisco, n. 20, 2005.
- CAPOLUPO S., Deduzioni extra contabili. Un ritorno al passato, in Fiscalitax n. 1, 2008.
- CAMEL R. e COOPERS & LYBRAND, Il bilancio delle imprese, Il Sole 24 Ore, 1996.
- CARATTOZZOLO M., Il bilancio d’esercizio, Giuffrè, 1998.
- CARATTOZZOLO M., La nuova disciplina del bilancio d’esercizio, Le società, n. 2, 2005.
- CARATTOZZOLO M., La nuova disciplina del bilancio di esercizio (seconda parte), Le società, n. 4, 2005.
- CARDILLO M., La relazione di “dipendenza rovesciata” nella determinazione del reddito d’impresa, in Diritto e pratica tributaria, 2003, I.
- CARDILLO M., Criteri di valutazione delle rimanenze di magazzino: il metodo del dettaglio, in Rivista Italiana di Ragioneria e di Economia Aziendale, n. 5-6, 2003.
- CASSANDRO P.E., Sull’armonizzazione internazionale dell’informativa contabile, in Rivista italiana di ragioneria e di economia aziendale, n. 3, 1984.
- CASSANDRO P.E., Trattato di ragioneria, Cacucci, 1992.
- CASTELLANO M. – VESSIA F. (a cura di), Corso di diritto commerciale, Giappichelli, 2015.
- CATTANEO M., Il bilancio d’esercizio nelle imprese. Finalità e strutture, Etas, 1979.
- CATTANEO M. e MANZONETTO P., Il bilancio d’esercizio. Profili teorici e istituzionali, II ed., Etas, 1997.

- CATTURI G., La redazione del bilancio di esercizio, Cedam, 2003.
- CATTURI G., Teorie contabili e scenari economico-aziendali, II ed, Cedam, 1997.
- CAVALIERI E., Appunti in margine alla riforma del diritto societario, in *Rivista Italiana di Ragioneria e di Economia Aziendale*, n. 1-2, 2005.
- CEPPELLINI P. e LUGANO R., Testo unico delle imposte sui redditi, X ed., Il Sole 24 Ore, 2005.
- CERATO S., Risoluzione n.10/E del 14/01/2008 l'imputazione dei costi e dei ricavi nel conto economico, in *il Fisco*, n. 4, 2008.
- CERATO S., Unico 2008: le novità per il quadro EC, in *Contabilità finanza e controllo*, n. 6, 2008.
- CERATO S., Quadro EC e "riassorbimento" delle eccedenze, in *Guida alla contabilità & bilancio*, n. 10, 2008.
- CERATO S., "principio di derivazione rafforzata anche ai soggetti Oic "adopter"", in *Guida alla contabilità & bilancio*, Fascicolo: 4, 2017.
- CERATO S., "Principio di derivazione rafforzata e determinazione del reddito d'impresa (parte seconda)", in *Bilancio, vigilanza e controlli*, Fascicolo: 4, 2017.
- CERIANI V., Interrelazione tra il bilancio e il reddito d'impresa: profili comparati e comunitari da Il reddito d'impresa tra norme di bilancio e principi contabili, a cura di RINALDI R., Giuffrè, 2004.
- CIANI F., "Bilancio e TUIR: deroghe di principio di 'derivazione rafforzata' alla luce del D.M. 3 agosto 2017", in *Bollettino tributario d'informazioni*, Volume: 84 - Fascicolo: 20, 2017.
- CHIARAVIGLIO L., da AA.VV., L'impresa: economia, controllo, bilancio – Tomo III: il bilancio d'esercizio, Giuffrè, 1984.
- CIANI F., D.M. 3 marzo 2008 riallineamento fra valori civili e fiscali: opzione per l'imposta sostitutiva, in *il Fisco*, n. 12, 2008.
- CINGANO R. e GAGGERO G., Spese di ricerca e sviluppo. Un problema di non inquinamento del bilancio, in *Il fisco*, n. 20/2005.
- CNDCEC- Fondazione Dottori Commercialisti, Documento di Informativa periodica, Fiscalità, Documento "La fiscalità delle imprese OIC Adopter" 8 agosto 2017.
- CODA V. & FRATTINI G., Introduzione alle valutazioni di bilancio: principi economici, norme civili, norme fiscali e direttive comunitarie, Libreria universitaria editrice, 1990.
- COLOMBO G. E., Dalla chiarezza e precisione alla rappresentazione veritiera e corretta, da *Il bilancio di esercizio*, a cura di PALMA A., Giuffrè, 2003.
- COLOMBO G. E., Disciplina del bilancio e norme tributarie: integrazione, autonomia o inquinamento?, in *Rivista delle società*, 1980, I.
- COLOMBO G. E., *Il bilancio d'esercizio: strutture e valutazioni*, Utet, 1992.
- COLOMBO G.E., Relazione di sintesi, da *Il progetto italiano di attuazione della IV Direttiva CEE*, a cura di A. JORIO, Giuffrè, 1988.
- COLOMBO G. E. e PORTALE G. B., *Trattato delle società per azioni – Vol. VII*, Utet, 1995.
- COLUCCI E. e RICCOMAGNO F., *Il bilancio d'esercizio e il bilancio consolidato dopo l'attuazione delle direttive comunitarie. Analisi, commenti e soluzioni tecniche*, Cedam, 1992.

- CORDEIRO GUERRA R., Corso di diritto tributario, Giappichelli, 2016.
- CORRADI A., LEOTTA M., IRES: eliminazione dal bilancio delle interferenze fiscali, in *Rassegna tributaria*, n. 3, 2004.
- CORTICELLI R., Considerazioni sulle valutazioni di bilancio, in AA.VV., *Studi in onore di Onida*, Giuffrè 1981.
- COSSAR L., Osservazioni sullo schema di legge delegata per l'attuazione della IV direttiva CEE, in *Rivista dei Dottori Commercialisti*, n. 1, 1987.
- CRISTEA S.M., SACCON C., Italy between applying national accounting standards and IAS/ IFRS, in *Romanian Accounting Profession's Congress* (Bucharest: CEC-CAR), 2008.
- CRISTOFORI G. e MAISTRELLO A., Gli effetti della riforma societaria sul bilancio di esercizio, in "I quaderni" di *Contabilità finanza e controllo*, marzo, 2005.
- CRISTOFORI G., MAZZOLENI C., Disciplina tributaria e bilancio d'esercizio. Evoluzione normativa e problematiche applicative, in *Contabilità finanza e controllo*, n. 10, 2008.
- CROVATO F. e LUPI R., Il Reddito d'impresa. Concetti strutturali, collegamenti sistematici e approfondimenti operativi, *Il Sole 24 Ore*, 2002.
- D'AGOSTINIS B., Riflessioni sulle novità contenute nella Direttiva 2013/34/UE in materia di bilancio di esercizio, *Cacucci*, 2013.
- D'ALFONSO G., Debutta nel nuovo TUIR il consolidato fiscale mondiale, in *Amministrazione & Finanza*, n. 20, 2003.
- D'AMATIN., Spese e altri componenti negativi di reddito, in *Corriere tributario*, n. 22, 1991.
- DAMASCELLI N., La comunicazione nelle imprese, *Franco Angeli*, 1985.
- DAMIANI M., L'eliminazione delle interferenze fiscali nel bilancio, in *Giornale dei dottori commercialisti*, n. 7, 2003.
- DAMIANI M., Una finanziaria 2008 in salsa agrodolce. Quale approdo finale? in *Corriere Tributario*, n. 41, 2007.
- DAMIANI M., La rilevanza fiscale delle scritture contabili e del bilancio, *Corriere Tributario* 46/2007.
- DAMIANI. M & RICCI C., Inquinamento fiscale del bilancio e potere di sindacato del fisco sulle valutazioni civilistiche, in *Corriere Tributario*, n. 11, 2008.
- DAN G., Finanziaria 2008: guida alle principali novità per le società, in *Le Società*, n. 3, 2008.
- DELVAILLE P., EBBERS G., SACCON C., International financial reporting convergence: evidence from three continental European countries, *Accounting in Europe*, 2005, 2(1), pp. 137-164.
- DE LUCA G., *Manuale di diritto tributario*, Edizioni Simone, 2017.
- DE FRANCO G., KOTHARY S. P., VERDI R.S., "The Benefits of Financial Statement Comparability", *Journal of Accounting Research*, 2011, Vol. 49.
- DESIDERI S., Conseguenze dell'abolizione dell'appendice fiscale del conto economico, in *Corriere tributario*, n. 35, 1994.
- DEZZANI F. e DEZZANI L., "Ammortamenti fiscali" inferiori a quelli "civilistici" non sono consentiti, in *Il fisco*, n. 32, 2005.



*References cited and consulted*

- DEZZANI F. e DEZZANI L., Il disinquinamento fiscale del bilancio, in *Il fisco*, n. 25, 2005.
- DEZZANI F. e DEZZANI L., Il disinquinamento fiscale del bilancio. “Il Quadro EC”, in *Il fisco*, n. 28, 2005.
- DEZZANI F. e DEZZANI L., Il disinquinamento fiscale dell’ammortamento anticipato pregresso, in *Il fisco*, n. 8, 2005.
- DEZZANI F. e DEZZANI L., L’“ammortamento” iscritto nel bilancio al 31 dicembre 2004, *Il fisco*, n. 11/2005.
- DEZZANI F., PISONI P. e PUDDU L., DLgs 17 gennaio 2003, n. 6. Il bilancio d’esercizio, in *Il fisco*, n. 13, 2003.
- DI PACE M., La riforma del diritto societario. L’eliminazione delle interferenze fiscali nella redazione del bilancio, in *Impresa commerciale industriale*, n. 3, 2003.
- DI PIETRA R., L’evoluzione dell’armonizzazione contabile in Italia. Riflessioni a 10 anni dal recepimento della IV Direttiva CEE, *Contabilità e cultura aziendale*, vol. II, n.1/2002.
- DI PIETRA R., MCLAY S. e RICCABONI A., La regolazione del bilancio di esercizio: modelli teorici ed esperienza italiana, in *Rivista dei dottori commercialisti*, n. 6, 2001.
- DI PIETRA R., MCLEAY S., RICCABONI A., “Regulating Accounting Within the Political and Legal System“, *Contemporary Issues in Accounting Regulation*, 2001, Chapter 3.
- DI SARNO M., Profili evolutivi della comunicazione di bilancio dell’impresa, in *Rivista Italiana di Ragioneria e di Economia Aziendale*, n. 9-10, 2003.
- DI SIENA M., Bilancio di esercizio e disciplina tributaria: evoluzione dei rapporti, in *Contabilità finanza e controllo*, n. 1, 2005.
- DI TANNO T., “Doppio binario” per bilancio e reddito d’impresa, in *Bollettino tributario d’informazioni*, n. 13, 2001.
- DI TANNO T., Brevi note a favore del “doppio binario” nella determinazione del reddito d’impresa, in *Rivista di diritto tributario*, n. 4, 2000.
- DI TANNO T. e TOGNONI M., Rappresentazione in bilancio degli effetti dell’eliminazione delle interferenze fiscali. Un contributo alla chiarezza (dei bilanci), in *Bollettino tributario d’informazioni*, n. 21, 2004.
- DI TORO P. e IANNIELLO G., La politica di redazione del bilancio d’esercizio, *Cedam*, 1996.
- DODARO A., Bilancio e norme fiscali, da *Contabilità e bilancio. Fondamenti e disciplina*, a cura di G. FABBRINI e A. MUSAIO, FrancoAngeli, 2004.
- DODERO A., Chiarimenti dell’Agenzia Entrate sul disinquinamento 3332 del bilancio, in *Corriere tributario*, n. 13, 2005.
- DONATO R. A. e LEANZA P., Il bilancio d’esercizio, Giuffrè, 2004.
- DONDENA A., Breve nota sullo stato dell’impresa e la correttezza dei bilanci, in *Le società*, n. 8, 2004.
- EWER R., WAGHENHOFER A., Economic effects of tightening accounting standards to restrict earnings management, 2005, *The Accounting Review* vol. 80, Issue 4.

- FACCHINETTI I., Contabilizzazione della fiscalità differita. La rappresentazione in nota integrativa, “I quaderni” di Contabilità finanza e controllo, marzo, 2005.
- FAIENZA A.,M., Il ‘sistema tripartito’ di determinazione del reddito ai fini IRES e la derivazione rafforzata per i soggetti OIC-adopter”, in Corriere tributario, Volume: 40 - Fascicolo: 35, 2017.
- FALSITTA G., “Convergenze e divergenze tra diritto commerciale e diritto tributario”, in Giurisprudenza commerciale, società e fallimento, marzo-aprile, I, 1980.
- FALSITTA G., I rapporti tra bilancio civile e bilancio fiscale alla luce della IV Direttiva, da Il progetto italiano di attuazione della IV Direttiva CEE a cura di JORIO A., Giuffré, 1988.
- FALSITTA G., Il bilancio di esercizio delle imprese. Interrelazioni tra diritto civile e tributario, Giuffré, 1985.
- FALSITTA G., La dichiarazione tributaria e il bilancio di esercizio, da Trattato di diritto tributario – Vol. III, Cedam, 1994.
- FALSITTA G., “Il problema delle interrelazioni fra normativa di diritto commerciale e di diritto tributario”, in Impresa, ambiente e P.A., marzo, I, 1977.
- FALSITTA G., Manuale di diritto tributario, Cedam, 2000.
- FALSITTA G., Vicende, problemi e prospettive delle codificazioni tributarie in Italia, in Rivista Diritto tributario, n. 3, 2002.
- FALSITTA G., Il problema dei rapporti tra bilancio civile e bilancio fiscale nel progetto di riforma della imposta sulle società (IRES), Rivista di diritto tributario,I, 2003.
- FALSITTA G., Corso istituzionale di diritto tributario, Cedam, 2007.
- FALSITTA G., Corso istituzionale di diritto tributario / Gaspare Falsitta. Cedam, 2016.
- FALSITTA G., Manuale di diritto tributario, Parte generale, Cedam, Padova, 2017.
- FANTOZZI A., La nuova disciplina del bilancio d’esercizio in attuazione della IV Direttiva CEE: i rapporti fra la nuova disciplina del bilancio e la normativa tributaria, Rivista di diritto tributario, 1991, I.
- FANTOZZI A., Corso di Diritto Tributario, Utet, 2004.
- FANTOZZI A. – PAPARELLA F., Lezioni di diritto tributario dell’impresa, Cedam, 2014.
- FASOLINO A., ALBANO G., “La determinazione del reddito dei soggetti IAS ed il principio di derivazione rafforzata”, in Bilancio vigilanza e controllo, Fascicolo: 4, 2011.
- FAVINO C., la componente fiscale nel bilancio d’esercizio alla luce della riforma del diritto societario. Eliminazione delle interferenze fiscali ed analisi comparativa con la prassi contabile internazionale, in il controllo nelle società e negli enti, n. 8, 2004.
- FAZZINI M. e TERZANI S., Qualità dell’informazione e giudizio degli analisti. La comunicazione d’impresa fra etica ed efficacia, Rivista Italiana di Ragioneria e di Economia Aziendale, n. 5-6/2005.
- FELIZIANI C., Appendice fiscale al bilancio. Problemi applicativi e soluzioni operative, in Il fisco, n. 12, 1994.
- FELLEGARA A. M., Interferenza fiscale e misurazione dei valori aziendali. Riflessioni e spunti critici alla luce dei cambiamenti in atto, Giuffré, 2001.
- FERRANTI G., Rispetto del vincolo patrimoniale nel disinquinamento del bilancio, in Corriere tributario, n. 29, 2005.

- FERRARESE P., Le strutture formali di bilancio. Gli schemi di stato patrimoniale e conto economico, da Bilancio 2005: tutte le novità, in “I quaderni” di Contabilità finanza e controllo, marzo, 2005.
- FERRARI M., La riforma societaria cambia l’informativa di bilancio, inserto ad Amministrazione & Finanza, n. 12, 2003.
- FERRERO G., La determinazione del capitale d’impresa, Giuffè, 1966.
- FICO D., Impatto della riforma societaria sulla nota integrativa al bilancio di esercizio, in Le società, n. 10, 2005.
- FICO D., Le novità in tema di bilancio d’esercizio introdotte dalla riforma del diritto societario, in Le società, n. 4, 2003.
- FIORI G., Il principio della “rappresentazione veritiera e corretta” nella redazione del bilancio d’esercizio, Giuffrè, 1999.
- FONDAZIONE LUCA PACIOLI, Circolare n. 6 (L’eliminazione delle interferenze fiscali nel bilancio d’esercizio), 21 febbraio 2005, [www.fondazioneelucapacioli.it](http://www.fondazioneelucapacioli.it).
- FONDAZIONE LUCA PACIOLI, Circolare n. 17 (Approvazione del bilancio d’esercizio. Termini per la convocazione dell’assemblea e modalità di deposito presso il registro delle imprese), 9 maggio 2005, [www.fondazioneelucapacioli.it](http://www.fondazioneelucapacioli.it).
- FONDAZIONE LUCA PACIOLI, Circolare n. 18 (Alcune considerazioni circa gli effetti della riforma del diritto societario sulla redazione del bilancio d’esercizio), 16 luglio 2004, [www.fondazioneelucapacioli.it](http://www.fondazioneelucapacioli.it).
- FORMICA P., Finanziaria 2008: bilancio d’esercizio, in Guida alla Contabilità & Bilancio, n. 21, 2007, 21.
- FRANCESCHETTI B. CARDILE E. & CASERTANO A., Il bilancio d’impresa a norma della IV direttiva CEE: aspetti contabili, civilistici e fiscali, appendice di legislazione, edizioni Laurus Robuffo, Roma, 1993.
- FUSI A. & MAZZONE D., La riforma del diritto societario: commento sistematico alla legge delega 3 ottobre 2001 n°366, il Sole 24 ore, 2001.
- FRANCIOSO A., Il ritorno del “doppio binario”: la norma 159 dell’ADC di Milano, in Amministrazione & Finanza, n. 7, 2005.
- FRATTINI G., Una proposta per il bilancio unico di esercizio, in Rivista dei dottori commercialisti, n. 1, 1981.
- FUSA E., Bilancio ed eliminazione delle interferenze fiscali: la problematica degli ammortamenti anticipati torna in primo piano, in Il fisco, n. 7, 2002.
- FUSA E., Risultato civilistico e imponibile fiscale, dalla gestione congiunta al doppio binario, in Il fisco, n. 18, 2003.
- FUSA E., Risultato civilistico e reddito imponibile. Una separazione ancora da definire, in Il fisco, n. 38, 2003.
- FUSA E., Doppio binario a seguito dell’eliminazione civilistica delle interferenze. Forse qualche nuovo beneficio, in Il fisco, n. 11, 2004.
- FUSA E., Disinquinamento del bilancio. Vantaggi e svantaggi, in Il fisco, n. 14, 2005.
- FUSA E., Disinquinamento fiscale. Problemi ancora aperti, in Il fisco, n. 27, 2005.
- FUSA E., Imposte differite e disinquinamento fiscale, Il fisco, n. 20, 2005.
- FUSA E., Il “principio di derivazione” nella determinazione del reddito imponibile, in Il Fisco n. 24, 2008.

- FUSA E., Ancora difficoltà nel passaggio dal risultato del bilancio alla determinazione del reddito imponibile, in *Il fisco*, n. 7, 2008.
- GAETANO A., L'“appendice fiscale” al conto economico nello schema di legge delegata per l'attuazione della IV direttiva CEE, in *Giurisprudenza Commerciale*, I, n. 2, 1991.
- GAETANO A., Considerazioni sull'“appendice fiscale” al conto economico previsto dallo Schema di Legge Delegata per l'attuazione della IV direttiva CEE, in *Rivista Italiana di Ragioneria e di Economia Aziendale*, n. 9-10, 1990.
- GALLO F., Brevi note sulla necessità di eliminare le interferenze della normativa fiscale nella redazione del bilancio d'esercizio, in *Rivista di diritto tributario*, n. 1, 2000.
- GAREGNANI G. M., PROVASOLI A., VIGANÒ A., *Bilancio d'esercizio: valutazioni e fiscalità*, Giuffrè, 2001.
- GATTO M., L'appendice fiscale non serve più, *Il fisco*, n. 3/1995.
- Gavana G., Guggiola G., Marenzi A., *Evolving Connection between tax and financial reporting in Italy*, *Accounting in Europe*, issue n. 10, 2013.
- GAVELLI G., Impatto della riforma societaria sui bilanci 2004, in *Corriere tributario*, n. 15, 2005.
- GAVELLI G., L'eliminazione dal bilancio delle interferenze fiscali impone un ripensamento di alcune norme, in *Corriere tributario*, n. 2, 2003.
- GAVELLI G., L'impatto sul bilancio di esercizio della riforma del diritto societario, in *Il fisco*, n. 36, 2003.
- GAVELLI G., Nuova imposta sui redditi delle società (IRES). Legge delega. Collocazione delle nuove disposizioni. Soggetti. Linee guida della nuova imposta, in *Contabilità finanza e controllo*, n. 11, 2003.
- GIACONIA M. e RICCIARDI M., Ammortamento fiscale “vincolato” al bilancio, in *Corriere tributario*, n. 27, 2005.
- GIACONIA M., Riflessi dell'IRES sui bilanci 2004, in *Corriere tributario*, n. 15, 2005.
- GIOFFRE' V., *Il reddito d'impresa. Normativa civilistica e fiscale*, Maggioli, 1995.
- GIORDANO S., *Finanziaria 2008: le novità sugli ammortamenti*, in *Amministrazione e Finanza*, n. 3, 2008.
- GIRARDI C., MENGOZZI A., Eliminazione delle deduzioni extracontabili, in *Guida alla Contabilità & Bilancio*, n. 8, 2008.
- GIULIANI F. M., Iscrizione nel conto economico e deducibilità delle componenti negative, in *Giurisprudenza commerciale*, I, n. 1, 2000-.
- GIULIANI F. M., *Il processo di armonizzazione contabile e fiscale*, da AA.VV., *Il nuovo bilancio civile e fiscale*, IST Editore, 1993.
- GIROTTO G., *Affrancamento quadro EC: calcoli di convenienza*, in *Guida alla contabilità & bilancio*, n. 11, 2008.
- GIOVANNINI A., *Manuale di diritto tributario*, Neldiritto Editore, 2017.
- GIUNTA F., PISANI M., *Il Bilancio*, Giuffrè, 2017.
- GIUNTA G., L'abrogazione delle voci 23), 24) e 25) del conto economico, in *Contabilità Finanza e Controllo*, n. 1, 1995.

*References cited and consulted*

- GODFREY J.M., CHALMERS K., *Globalisation of Accounting Standards*, 2007, Edgar Elgar.
- GOBBI E. e POSTAL M., *La nuova IRES dopo il decreto correttivo*, 2006, Il Sole 24 Ore, 2006.
- GRAHAM J.R., RAEDY J.S., SHACKELFORD A., *Research in accounting for income taxes*, *Journal of Accounting and Economics*, 2012, vol. 53, issue 1- 2.
- GUIDANTONI S. e LIGUORI L., *Il destino delle interferenze fiscali. Sono davvero da eliminare?*, in *Il fisco*, n. 6, 2004.
- HALLER A., *The relationship of financial and tax accounting in Germany: A major reason for disharmony in Europe*, *The International Journal of Accounting*, 1992, Vol 27, issue 4, pages 310-323.
- HALLER, A. *Financial accounting developments in the European Union: past events and future prospects*, (2002). *European Accounting Review* vol 11 issue 1, pages 153-190.
- HALLER A, WALTON P, RAFFOURNIER B., *International accounting*, 2003, Cengage Learning EMEA.
- HALLER A., EIRLE B., *The adaptation of German accounting rules to IFRS: a legislative balancing act*, *Accounting in Europe*, 2004, Vol. 1, Issue 1.
- HANLON M., HEIZTMAN S., “A Review of tax research”, *Journal of Accounting and Economics*, 2010, vol. 50, issue 2-3.
- HOPWOOD A.G., “An Empirical Study of the Role of Accounting Data in Performance Evaluation”, *Journal of Accounting Research*, 1972, Vol. 10.
- HOPWOOD A. G., *An accounting system and managerial behavior*, 1973, Lexington Books.
- HOPWOOD A.G., *Leadership Climate and the Use of Accounting Data in Performance Evaluation*, *The Accounting Review*, 1974, Vol. 49, No. 3.
- HOPWOOD A. G., *Accounting and human behavior*, 1976, Prentice Hall.
- HOPWOOD A. “The archeology of accounting systems”, *Accounting, organizations and society*, 1987, vol. 12, issue 3.
- HOPWOOD A. G., MILLER P., *Accounting as social and institutional practice*. Vol. 24, 1994, Cambridge University Press.
- HOPWOOD A.G., “Situating the practice of management accounting in its cultural context: an introduction”. *Accounting Organizations and Society*, 1999, Vol. 24, Issue 5-6, pages 377-378.
- HOPWOOD A.G., “On trying to study accounting in the context in which operates”, *Accounting, Organizations and Society*, 1983, Vol. 8, No. 213.
- HOPWOOD A. G., “Ambiguity, Knowledge and Territorial Claims: Some Observations on the Doctrine of Substance Over Form”, *British Accounting Review*, 1990, Vol. I. pages 79-87.
- HOPWOOD A.G. “Accounting and the pursuit of efficiency”, *Accounting, Auditing & Accountability Journal*, 1990, Vol I, pages 238-249.
- HOPWOOD A. G., “Understanding financial accounting practice”, *Accounting, Organizations and Society* Volume 25, 2000, Issue 8, pages 763–766.

- HOPWOOD A. G., Whither accounting research?, *The Accounting Review* vol. 82, 2007, Issue 5.
- HOPWOOD A. G., CHAPMANN C. S., SHIELD M. D., *Handbook of management accounting research*. Volume 1, 2007, Elsevier.
- HOPWOOD A. G., CHAPMANN C. S., SHIELD M. D., *Handbook of management accounting research*. Volume 2, 2007, Elsevier.
- HOPWOOD A.G., “Changing Pressures on the Research Process: On Trying to Research in an Age when Curiosity is not Enough”, *European Accounting Review*, 2008, Vol. 17, Issue 1, pages 87-96.
- HOPWOOD A.G., “Accounting and the environment”, *Accounting, Organizations and Society*, 2009, Vol. 34, Issues 3–4, pages 433–439.
- HOPWOOD A.G., “The economic crisis and accounting: Implications for the research community”, *Accounting, Organizations and Society*, 2009, Vol. 34, Issues 6–7, pages 797–802.
- HOOGENDOORN M., “Accounting and Taxation in Europe - A comparative overview”, *European Accounting Review*, 1996, vol. 5, supplement.
- IANNIELLO B., Commissione Gallo: le proposte di adeguamento delle norme fiscali al nuovo diritto societario, in *Le società*, n. 12, 2003.
- IANNIELLO B., Imposta sui redditi delle società: novità della riforma fiscale (parte I), in *Le società*, n. 4, 2004.
- IANNIELLO B., Imposta sui redditi delle società: novità della riforma fiscale (parte II), in *Le società*, n. 5, 2004.
- IANNIELLO B., *La riforma del diritto societario. Guida sistematica e comparata alla nuova disciplina delle società di capitali e cooperative*. Riedizione rivista e aggiornata, Ipsos, 2003.
- JAAGER P. G., *Il bilancio d’esercizio delle società per azioni. Problemi giuridici*, Giuffrè, 1980.
- JAAGER P.G., Crisi del principio di chiarezza, in *Giur.*, 1979; n. 3.
- JAAGER P.G., Relaz. E chiarezza del bilancio, in *Giur. comm.*, 1978, II, n. 1.
- JAAGER P.G.- DENOZZA F. *Appunti di diritto commerciale*, Giuffrè, Milano, 2010.
- LA ROSA S., Prime osservazioni sui rapporti tra bilancio e dichiarazione negli artt. 75 e 76 del nuovo testo unico, *Diritto e pratica tributaria*, 1987, I.
- LACCHINI M., I Principi di redazione del bilancio: nello schema di legge delegata per il recepimento della IV Direttiva Cee, Giuffrè, 1989.
- LAI C., Ammortamenti anticipati, tra nuove ipotesi di tassazione e vigenti norme civilistiche, in *Amministrazione & Finanza*, n. 23, 2003.
- LAMB M., LYMER A., FRREMAN J., JAMES S., *Taxation, An Interdisciplinary Approach to Research*, 2005, Oxford University Press.
- LAMB M., NOBES C., ROBERTS A., *International Variations in the Connections Between Tax and Financial Reporting*, *Accounting and Business Research*, 1998, vol. 28, Issue 3.

*References cited and consulted*

- KLEVEN H. J., KREINER C.T., SAEZ E., “Why Can Modern Governments Tax So Much? An Agency Model of Firms as Fiscal Intermediaries”, *Economica*, 2016, Vol. 83, Issue 330.
- LENOCI F., Gli effetti delle interferenze fiscali, in *Amministrazione & Finanza*, n. 11, 1996.
- LEO M., MONACCHI F. e SCHIAVO M., *Le imposte sui redditi nel testo unico – Tomo I*, VI ed., Giuffrè, 1999.
- LEWIS A., CARRERA S., PHILIPJONES J.C., “Individual, cognitive and cultural differences in tax compliance: UK and Italy compared”, *Journal of Economic Psychology*, 2009, Vol. 30, Issue 3.
- LIZZUL R., Molto rumore per nulla: ovvero della commedia degli ammortamenti anticipati, in *Bollettino tributario d’informazioni*, n. 7, 1995.
- LEO M., MONACCHI F. e SCHIAVO M., in *Le imposte sui redditi nel testo unico – Tomo I*, VI ed., Giuffrè, 1999.
- LOERO F., “Se sia possibile iscrivere nel bilancio fiscale delle società di capitali componenti negati di reddito non iscritti nel bilancio civile (c.d. tesi del doppio binario)”, *Le imposte dirette erariali e l’IVA*, Editrice Libreria Tuscolana, 1975.
- LUGANO R. & NESSI M., Le principali novità nella determinazione del reddito d’impresa introdotte dalla legge finanziaria 2008, in *Rivista dei Dottori Commercialisti*, n. 3, 2008.
- LUNELLI R., Evoluzione e prospettive del reddito imponibile d’impresa, in *il Fisco*, n. 42, 1999.
- LUPI R., Reddito fiscale e bilancio civilistico: a sorpresa tornano gli inquinamenti, in *Corriere Tributario*, n. 40, 2007,.
- LUPI R., *Diritto Tributario – Parte generale*, VI ed., Giuffrè, 1999.
- LUPI R., *Diritto Tributario – Parte speciale – i sistemi dei singoli tributi*, VI ed., Giuffrè, 2000.
- LUPI R., La determinazione del reddito e del patrimonio delle società di capitali tra principi civilistici e norme tributarie, *Rassegna tributaria*, n. 10/1990.
- LUPI R., Le implicazioni fiscali nella redazione del bilancio delle aziende di credito, *Rivista di diritto tributario*, n. 12/1993.
- LUPI R., La deducibilità degli ammortamenti anticipati senza imputazione al conto economico: regola o eccezione?, in *Rassegna tributaria*, n.1, 1995.
- LUPI R., Per disinquinare occorre un inquinamento di segno opposto?, in *Dialoghi di diritto tributario*, n. 10, 2004.
- LUPI R., Quale doppio binario per i costi pluriennali?, in *Dialoghi di diritto tributario*, n. 11, 2004.
- LUPI R., Reddito fiscale e bilancio civilistico: a sorpresa tornano gli inquinamenti, in *Corriere Tributario*, n. 40, 2007.
- LUPI R., Nuove prospettive di raccordo tra valutazioni civilistiche e reddito fiscale, in *Corriere Tributario*, n. 14, 2008.
- MACARIO E., “Uscita di scena” agevolata per il quadro EC, in *Corriere tributario*, n. 8, 2008.

- MACARIO E., Ultima opportunità per il quadro EC e opzioni per eliminare deduzioni pregresse in UNICO 2008, in *Corriere Tributario*, n. 17, 2008.
- MAGISTRO A., Le interferenze fiscali nel disegno di legge delega per la riforma del diritto societario, in *Quaderno monografico RIREA*, n. 2, 2000.
- MANERA M., Verso una fiscalità comune in ambito U.E. anche per le imposte sui redditi (con particolare riguardo alle partecipazioni societarie e alla recente disciplina IRES), in *Diritto e pratica tributaria*, 2005, I, n. 1.
- MARASCO V., Formazione del bilancio passo per passo dopo le novità della Riforma, in *Amministrazione & Finanza*, n. 5, 2003.
- MARASCO V., Si stringe la morsa su bilanci falsi e irregolari, in *Amministrazione & Finanza*, n. 6, 2003.
- MARKLE K., “Comparison of the Tax-Motivated Income Shifting of Multinationals in Territorial and Worldwide Countries”, *Contemporary Accounting Research*, 2016, Volume 33, Issue 1.
- MARCHI L., *Introduzione alla contabilità d’impresa*, Giappichelli, 2013.
- MARIANI G., *Reddito d’impresa nel testo unico: componenti del reddito, obblighi contabili, verifica dei conti patrimoniali*, Pirola, 1994.
- MATACENA A., *Il bilancio di esercizio. Strutture formali, logiche sostanziali e principi generali*, Clueb, Bologna, 1993.
- MATTIA S., Il controllo contabile delle SPA, da La governance nel nuovo diritto societario. Analisi ricognitiva dei principali istituti. Le ultime novità, in *Amministrazione & Finanza*, n. 1, 2005.
- MAYR S., Riforma Tremonti: il nuovo regime di tassazione dei dividendi, in *Bollettino tributario d’informazioni*, n. 19, 2003.
- MASINI C., *Lavoro e risparmio*, Utet, 1970.
- MAURIZIO P., *I principi del nuovo bilancio d’esercizio: le logiche di redazione secondo il D.lgs. 127/91 in attuazione della IV Direttiva CEE*, Etas libri, 1993.
- MAZZA G., Interrelazioni e interferenze tra bilancio d’esercizio e dichiarazione, in *Rivista dei Dottori Commercialisti*, n. 6, 1974.
- MAZZA G., *Il bilancio di esercizio e la dichiarazione dei redditi da AA.VV.*, Il bilancio di esercizio. Problemi attuali, Giuffrè, 1978.
- MAZZA G. (a cura di), *Problemi di valutazione per il bilancio di esercizio*, Giuffrè, 1980.
- MAZZA G., Il principio di competenza nella normativa tributaria, in *Rivista italiana di ragioneria e di economia aziendale*, luglio-agosto 1988.
- MAZZA G., La cronica discrasia tra reddito di bilancio e reddito imponibile, in *Il fisco*, n. 25, 1994.
- MAZZA G., *Problemi di valutazione per il bilancio di esercizio*, Giuffrè, 1980.
- MAZZACUVA N., *Il falso in bilancio. Casi e problemi*, II ed., Cedam, 2004.
- MAZZOLA P. e MINOJA M., Rilievi critici e problemi applicativi delle soglie di punibilità in materia di falso in bilancio: gli insegnamenti tratti da alcuni casi giudiziari, in *Rivista dei dottori commercialisti*, n. 4, 2004,.
- MAZZOCCHI S., *Lineamenti di diritto tributario*, Giuffrè, 2015.
- MICHIELI G.A., *Corso di diritto tributario*, Utet, 1974.



*References cited and consulted*

- MIELE L., Eliminazione delle interferenze fiscali tra chiarimenti e problemi aperti, in *Corriere tributario*, n. 26, 2005.
- MIELE L., in I principi contabili internazionali alimentano il “doppio binario”, in *Corriere tributario*, n. 1, 200.
- MIELE L., Perimetro applicativo non del tutto definito per il Quadro EC, in *Corriere tributario*, n. 16, 2005.
- MIELE L., Riflessi sul reddito d’impresa delle nuove regole contabili, in *Corriere tributario*, n. 13, 2005.
- MIGLIACCIO G., Il “nuovo” bilancio nella riforma del diritto societario. Note di dottrina e prassi contabile, Giappichelli, 2004.
- MION G., Dall’individuazione dei linguaggi all’autenticità del messaggio informativo aziendale, in *Rivista Italiana di Ragioneria e di Economia Aziendale*, n. 9-10, 2004.
- MIRONE a (a cura di), *Diritto commerciale*, Giuffrè, 2015.
- MONARCA P., Disinguinamento del bilancio con il prospetto di raccordo delle interferenze fiscali, in *Corriere tributario*, n. 11, 2005.
- MONTALENTI P., La riforma delle società di capitali: prospettive e problemi, in *Le società*, n. 3, 2003.
- MONTI A., *Reddito civile e reddito fiscale. Gli effetti fiscali dell’attuazione della IV direttiva in materia di bilancio d’esercizio*, Cedam, 1994.
- MORETTI P., Esposizione in bilancio dell’eliminazione d’interferenze fiscali, in *Corriere Tributario*, n. 31, 2004.
- MORETTI P., Le interferenze fiscali nel bilancio d’esercizio - Intervento all’ANTI del 7 luglio 2004.
- MORETTI P., Le interferenze fiscali nel bilancio d’esercizio, *Corriere tributario*, n. 5/2005.
- MORONI S., Bilancio d’esercizio e reddito d’impresa tre punti a favore del doppio binario, in *Rivista dei Dottori Commercialisti*, n. 1, 1987.
- MORONI S., Bilancio d’esercizio e conto dell’imponibile, in *Rivista dei Dottori Commercialisti*, n. 5, 1993.
- MOURITSEN J., KREINER K., Accounting, decisions and promises”, *Accounting, Organizations and Society*, 2016, Vol 49.
- MUSUMECI M., La mancanza di understandability e precisione dei dati contabili. Il commento, in *Le soc.*, 2002, n. 5.
- NANULA G., Bilancio inquinato da ammortamento anticipato, *Bollettino tributario d’informazioni*, 1984, III.
- NANULA G., La deducibilità dei costi incerti, *Il fisco*, n. 37/1990.
- NASINI A., L’eliminazione delle interferenze fiscali e la rilevazione delle imposte sul reddito nella redazione del bilancio d’esercizio. Le novità della legge di riforma delle società di capitali, in *Rivista Italiana di Ragioneria e di Economia Aziendale*, n. 3-4, 2004.
- NOBES C. W., Fiscal harmonization and European integration: comments, *European Law Review*, 1979, August.
- NOBES C.W., Imputation systems of corporation tax in the EEC, *Accounting and Business Research*, 1980, Spring.

- NOBES C.W. Nobes, AISBITT S., “The True and Fair Requirement in Recent National Implementations”, 2001, Vol. 31, No. 2.
- NOBES C.W, SCHWENKE H.R., Modelling the links between tax and financial reporting: a longitudinal examination of Norway over 30 years up to IFRS adoption, *European Accounting Review*, 2006, vol. 15, Issue 1.
- NOBES C.W, and SCHWENKE H.R., Tax and financial reporting links: a longitudinal examination over 30 years up to IFRS adoption, using Norway as a case study, *European Accounting Review*, 2006, vol. 15, issue 1, pp. 63-87.
- NOBES C.W, C. W., GEE M., HALLER A., ‘The Influence of Tax on IFRS Consolidated Statements’, *Australian Accounting Review*, 2010, Vol. 7, No. 1, pages 97-122.
- NOBES C.W, “The continued survival of international differences under IFRS”, *Accounting and Business Research*, 2013, Vol.43, No.2, pages 83-111.
- NOBES C.W., *Towards an Assessment of Country Effects on IFRS Recognition Decisions and Measurement Estimations*, Paper, 2016, Venezia.
- NOBES C.W, PARKER R., *Comparative International Accounting*, 2016, Pearson.
- NOCERA C. e PATIMO R., Riforma diritto societario e principi contabili. Quadro di sintesi, in *Il fisco*, n. 45, 2004.
- NUZZO E., Eseggesi delle norme in tema di documentazione delle componenti negative del reddito d’impresa, in *Giurisprudenza commerciale*, I, n. 3, 1995.
- NUZZOLO A., Eliminazione delle interferenze fiscali e Unico 2004, in *Contabilità finanza e controllo*, n. 6, 2004.
- NUZZOLO A., Bilancio d’esercizio e determinazione del reddito d’impresa, in *Diritto e pratica delle società*, n. 16, 2008.
- ODERLHEIDE D., *Transnational Accounting*, 2001, Macmillan.
- ODORIZZI C., “La derivazione rafforzata e i suoi effetti fiscali”, in *Guida alla contabilità & bilancio*, Fascicolo: 5, 2018.
- OLIVIERI G., PRESTI G., *Il nuovo diritto delle società. Società di capitali e cooperative*, Il Mulino, Bologna, 2003.
- ONIDA P., *Economia d’azienda*, Utet, 2001.
- ORLANDI M., Il disinquinamento fiscale del bilancio nelle società di persone, in *Il fisco*, n. 27, 2005.
- PANSIERI S., La legittimità civilistica degli ammortamenti anticipati, in *Rassegna tributaria*, 1984, I, n. 4.
- PANSIERI S. Interesse ad agire e valutaz. dei titoli, in *Giur. comm.*, 1981, II, N. 2.
- PANSIERI S., Interesse ad impugnare, in *Giur. comm.*, 1980, II, N. 3.
- PANTEGHINI P. M., *La tassazione delle società*, Il Mulino, 2005.
- PAOLONE G., *Il bilancio di esercizio. Funzione informativa, principi, criteri di valutazione*, Giappichelli, Torino, 2004.
- PATRONI NEGRI L., Interferenze fiscali sul bilancio e imposte latenti, in *Contabilità finanza e controllo*, n. 4, 1995.
- PELLINGRA G., *L’imposizione tributaria*, Giuffrè, 1974.

- PESSINA C. e BOLLO C., Il disinquinamento fiscale dopo il DLgs n. 38/2005 e la compilazione del Modello EC, in *Il fisco*, n. 15, 2005.
- PIAZZA M. e SCAGLIARINI A., Il disinquinamento del bilancio. Effetti civilistici e fiscali a valere sull'esercizio 2004, in *Il fisco*, n. 10, 2005.
- PIAZZA M., Il raccordo tra reddito d'esercizio e reddito fiscale. Gli effetti fiscali della nuova disciplina sul bilancio d'esercizio da Il bilancio d'esercizio, a cura di Palma, Giuffr , 1992.
- PICCINELLI G., Il bilancio di esercizio nella normativa tributaria, Cedam, 2000.
- PICCINELLI G., Il bilancio di esercizio e le imposte dirette: norme civilistiche, regole IAS e disposizioni tributarie nelle loro mutue relazioni, in *bilancio di esercizio e imposizione tributaria: le regole per le societ  di capitali*, a cura di Camodeca R., Cedam, 2014.
- PICCOLLI A., L'appendice fiscale. Una storia infinita, in *Il fisco*, n. 46, 1994.
- PINI M., I principi del nuovo bilancio d'esercizio: le logiche di redazione secondo il d.lgs. 127/91 in attuazione della 4. direttiva CEE, Etas Libri, 1993.
- PINO C., Gestione o eliminazione delle interferenze fiscali sul bilancio?, in *Corriere tributario*, n. 44, 2002.
- PINO C., Finanziaria 2008: l'abolizione degli ammortamenti anticipati, in *Corriere Tributario*, n. 46, 2007.
- PISONI P., BAVA F. e BUSSO D., Disinquinamento del bilancio. L'eliminazione dell'inquinamento pregresso deve interessare soltanto le societ  di capitali, in *Il fisco*, n. 13, 2005.
- PISONI P., BAVA F. e BUSSO D., Disinquinamento fiscale e fiscalit  differita. Casi operativi non considerati dal Tuir e soluzioni contabili, in *Il fisco*, n. 14, 2005.
- PISONI P., BAVA F. e BUSSO D., Disinquinamento fiscale. Nuovo strumento di politiche di bilancio, in *Il fisco*, n. 12, 2004.
- PISONI P., BAVA F. e BUSSO D., Gli ammortamenti anticipati. Disciplina civilistica e fiscale dal bilancio 2004, in *Il fisco*, n. 17, 2005.
- PISONI P., BAVA F. e BUSSO D., Gli ammortamenti delle immobilizzazioni materiali. Disciplina civilistica e fiscale dal bilancio 2004, in *Il fisco*, n. 9, 2005.
- PISONI P., BAVA F. e BUSSO D., La disciplina civilistica e fiscale delle spese di manutenzione alla luce dei recenti chiarimenti in tema di disinquinamento, in *Il fisco*, n. 31, 2005.
- PISONI P., BAVA F. e BUSSO D., La riconciliazione tra valutazioni civili e fiscali di bilancio. Differenze temporanee, differenze permanenti e relative scritture contabili, in *Il fisco*, n. 37, 2005.
- PISONI P., BAVA F. e BUSSO D., Le scritture contabili del disinquinamento fiscale dell'esercizio, in *Il fisco*, n. 48, 2004.
- PISONI P., BAVA F. e BUSSO D., Modello Unico 2005 per le societ  di capitali. Le variazioni in aumento ed in diminuzione nel Quadro RF, in *Il fisco*, n. 27, 2005.
- PISONI P., BAVA F. e BUSSO D., Novit  in tema di bilancio introdotte dal correttivo della riforma societaria, in *Contabilit  finanza e controllo*, n. 12, 2004.
- PISONI P. BAVA F. & BUSO D., Finanziaria 2008. Ires modifiche dal 2008 e gestione dei disallineamenti – scritture contabili, in *Il fisco*, n. 6, 2008.

- POLLARI N., Determinazione fiscale del reddito d'impresa e raccordo con il bilancio d'esercizio, in *il Fisco*, n. 1, 1997.
- POLLARI N., *Manuale di diritto tributario*, Laurus Robuffo, 2017.
- PONTANI F., Il bilancio di esercizio e la cultura dell'onestà e del controllo, in *Sistemi & Impresa*, n. 2, 2004.
- PONTANI F., Imposte differite attive: alcune novità della riforma, in *Amministrazione & Finanza*, n. 10, 2003.
- PONTANI F., La clausola generale ed i principi di redazione del bilancio di esercizio, Cedam, 2005.
- PORTALE G. B., Riforma delle società di capitali e limiti di effettività del diritto nazionale, in *Le società*, n. 2bis/2003.
- POTITO E., I rapporti tra bilancio civile e dichiarazione nella normativa del testo unico delle imposte sui redditi, in *Rivista di diritto finanziario e scienze delle finanze* n. 1, 1989.
- POTITO L., Limiti del bilancio ordinario di esercizio, in *Rivista Italiana di Ragioneria e di Economia Aziendale*, n. 11-12, 2002.
- PRESTI G., Riforma della S.p.A e scalini normativi, in *Le società*, n. 2 bis, 2003.
- PRESTI G., *Corso di diritto commerciale*, Zanichelli, 2015.
- PROCOPIO M., Disinguinamento fiscale: ammortamenti e deduzioni extracontabili, in *Corriere tributario*, n. 29, 2006.
- PROCOPIO M. Il reddito d'impresa e la sua progressiva armonizzazione con il principio di dipendenza, in *Diritto e pratica tributaria*, n. 6, 2007.
- PROVARONI L., L'eliminazione delle interferenze fiscali e il nuovo regime delle deduzioni extracontabili, in *Rivista italiana di ragioneria e di economia aziendale*, n. 11/12, 2006.
- Provasoli A., Mazzola P., Pozza L., (2007) "The role of National Standard Setters in the Standards Developing process: the Italian experience", in Godfrey J.M., Chalmers K., *Globalisation of Accounting Standards*, Edgar Elgar.
- QUAGLI A., in *Bilancio di esercizio e principi contabili*, III ed., Giappichelli, 2004.
- QUAGLI A., Gli impatti della riforma del diritto societario sul bilancio di esercizio, in *Revisione contabile*, n. 55 – 56, 2004.
- QUAGLI A., D'ALAURO G. e TIOZZO F., *Dal bilancio d'esercizio alle dichiarazioni tributarie*, Giappichelli, 2004.
- QUATRARO B., Il bilancio civile e le interferenze tributarie le voci 24 e 25 del nuovo conto economico, in *Rivista dei Dottori Commercialisti*, n. 4, 1992.
- QUATRATO B., FUMAGALLI A., D'AMORA S., *Le delibere assembleari e consiliari*, Giuffrè, 1996.
- QUATTROCCHIO L., Le novità in tema di bilancio di esercizio, in *Le società* n. 2bis, 2003.
- RAGAZZI F.R., L'eliminazione delle interferenze fiscali nella redazione del bilancio d'esercizio: una pregevole proposta della Commissione Gallo, in *il Fisco*, n. 44, 2003.

*References cited and consulted*

- RAI N., Non è sempre necessario disinquinare il bilancio, in *Il fisco*, n. 2, 2005.
- RAVAIOLI G., GARDINI S., PIOVACARI S., Il bilancio d'esercizio. Novità della riforma del diritto societario e della riforma fiscale, *Experta*, 2004.
- RICCI G.F., Il nuovo reato di false comunicazioni sociali, commento alla legge 27 maggio 2015, Giappicchelli, 2015.
- RIGATO C., Disinquinamento e Quadro EC, in *Contabilità finanza e controllo*, n. 5, 2005.
- RIGATO C., Bilancio d'esercizio nella riforma del diritto societario. Le principali novità, in *Contabilità finanza e controllo*, n. 4, 2004.
- RINALDI R. (a cura di), Il reddito d'impresa tra norme di bilancio e principi contabili, in *Quaderni di giurisprudenza commerciale*, Giuffrè, 2004.
- RIZZARDI R., Il doppio binario: l'evoluzione verso i principi contabili internazionali e le prime interpretazioni, in *Rivista dei dottori commercialisti*, n. 4, 2005.
- RIZZARDI R., Nuovo diritto tributario. Disinquinamento del bilancio e "doppio binario", *Rivista dei dottori commercialisti*, n. 4/2004.
- RIZZARDI R., Principi ispiratori e inquadramento della riforma. Logiche della delega e tempi di attuazione, in *Contabilità finanza e controllo*, n. 11, 2003.
- RIZZARDI R., LUGANO R. & SIMONELLI E., Le principali novità nella determinazione del reddito d'impresa introdotte dalla legge finanziaria 2008, in *Rivista dei Dottori Commercialisti*, n. 3, 2008.
- RIZZARDI R., La tassazione delle imprese nella finanziaria 2008, in *Rivista dei Dottori Commercialisti*, n. 1, 2008.
- ROCCHI, F., "Accounting and Taxation in Italy", *European Accounting Review*, 1996, vol. 5, issue 1.
- ROSCINI VITALI F., Interferenze fiscali: eliminazione degli effetti pregressi e disciplina a regime, da *Bilancio 2005: tutte le novità*, in "I quaderni" di *Contabilità finanza e controllo*, marzo 2005.
- ROSCINI VITALI F., Finanziaria 2008: fiscalità differita, aliquote IRES e quadro EC, in *Guida alla contabilità & bilancio*, n. 1, 2008.
- ROSCINI VITALI F., Finanziaria 2008: fiscalità differita, aliquote IRES e quadro EC, *Guida alla contabilità & bilancio*, n. 1/2008.
- ROSSI G., Il principio di verità nella redazione del bilancio d'esercizio, in *Rivista Italiana di Ragioneria e di Economia Aziendale*, n. 7-8, 2002.
- ROSSI RAGAZZI F., Eliminazione delle interferenze fiscali nella redazione del bilancio, in *Contabilità finanza e controllo*, n. 3, 2003.
- ROSSI RAGAZZI F., L'eliminazione delle interferenze fiscali nella redazione del bilancio di esercizio. Una pregevole proposta della Commissione Gallo, in *Il fisco*, n. 44, 2003.
- ROVELLI L., Individuazione delle regole di redazione del bilancio d'esercizio, in *Corriere tributario*, n. 1, 1999.
- RUSSO R., Forme di rilevazione contabile del "disinquinamento fiscale", conferme e novità, in *Amministrazione & Finanza*, n. 14, 2004.
- RUSSO V., "Deroga alla derivazione rafforzata per le penali: un vero doppio binario", in *Bilancio e reddito d'impresa*, vol. 9 - Fascicolo: 4, 2018.

- SALAFIA V., Profili di responsabilità nel controllo legale dei conti di società e gruppi, in *Le società*, n. 4, 2005.
- SALAFIA V., Nota integrativa del bilancio d'esercizio, in *Le società*, 1992, n. 5.
- SALAFIA V., Legge 503/1994 e abrogazione dei numeri 23, 24 e 25 del conto economico, in *Le Società*, n. 5, 1995.
- SALAFIA V., "Caratteri generali del bilancio e principi di redazione " in *Le società*, 1998, N. 11.
- SALAFIA V., " Il bilancio di esercizio veridicità e correttezza. Dell'informazione" in *Le società*, 1998,n. 5.
- SALAFIA V., Rilevanza civile e penale del bilancio di esercizio irregolare, in *Le Società*, 1997, n. 8.
- SALVI G., "Principio di 'derivazione rafforzata' per i soggetti IAS: chiarimenti dalle Entrate", in *Amministrazione & finanza*, Volume: 26 - Fascicolo: 4, 2011.
- SALVINI L., La tassazione per trasparenza, in *Rassegna tributaria*, n. 5, 2003.
- SANNINO G., L'aggregato patrimonio netto nell'informazione di bilancio. Spunti di riflessione alla luce delle recenti novità introdotte dalla riforma del diritto societario, in *Rivista Italiana di Ragioneria e di Economia Aziendale*, n. 9-10, 2005.
- SANTESSO E. e SOSTERO U., *I principi contabili per il bilancio di esercizio*, Egea, 2017.
- SANTESSO E., *Il trattamento contabile delle imposte sul reddito nel nuovo principio contabile, da Falso e invalidità di bilancio*, a cura di AVI M.S., Cedam, Padova, 2001.
- SANTESSO E., *Valutazioni di bilancio. Aspetti economico-aziendali e giuridici*, Giappichelli, 1992.
- SAVIOLI G., *Risultato d'esercizio e imponibile fiscale: coordinamento per una corretta informativa esterna d'impresa*, ETAS LIBRI, 1994.
- SAVIOLI G., *Verità e falsità nel bilancio di esercizio*, Giappichelli, 1998.
- SALVADEO S., D'ANGELO G., "Principio di derivazione rafforzata nella determinazione del reddito dei soggetti IAS/IFRS", in *Bilancio e reddito d'impresa*, Volume: 2 - Fascicolo: 5, 2011.
- SCAFATI I. (commento di), *Le modifiche al TUIR*, *Corriere tributario*, n. 47/2005.
- SCAFATI I., *Semplificazione delle modalità di calcolo del reddito d'impresa*, in *Corriere tributario*, n. 43, 2007.
- SCAGLIARINI A. e PIAZZA M., *L'eliminazione delle interferenze fiscali nei bilanci bancari*, in *Il fisco*, n. 18, 2005.
- SCHOEN W., *International accounting standards – a 'starting point' for a common European taxbase?* *European Taxation*, 2004, vol 44, issue 10.
- SCHOEN W., "The Odd Couple: A Common Future for Financial and Tax Accounting?" *Tax Law Review*, 2005, Vol. 58, Issue 2 pages 111-148.
- SEBASTIANELLI M., LUZIETTI S., "Ambito soggettivo di applicazione del principio di derivazione rafforzata" in *Amministrazione & finanza*, volume: 33 - Fascicolo: 2, 2018.
- SERINO M., *Divergenze di principi tra valutazione civilistica e valutazione fiscale nella classificazione delle partecipazioni*, in *Il fisco*, n. 12, 2004.

*References cited and consulted*

- SFAMENI P., *Le fonti della disciplina del bilancio delle società da La disciplina giuridica del bilancio di esercizio*, a cura di BIANCHI L. A., Il Sole 24 Ore, Milano, 2001.
- SHAVIRO D., "The Optimal Relationship Between Taxable Income and Financial Accounting Income: Analysis and a Proposal", New York University, Law And Economics working papers, 2008, Paper n. 106.
- SCIFONI G., "Derivazione rafforzata, ma non troppo: le rettifiche fiscali al bilancio 'IAS/IFRS compliant'", in *Corriere tributario*, Volume: 34 - Fascicolo: 14, 2011.
- SILLA F., *Deduzioni extracontabili 2008: il quadro EC*, in *Guida alla contabilità & bilancio*, n. 5, 2008.
- SIMONAZZI R., *Contabilizzare il "disinquinamento" di bilancio: le differenze temporanee*, in *Amministrazione & Finanza*, n. 14, 2005.
- SORIGNANI P.R. e ROCCHI A., *Il problematico "disinquinamento" del bilancio civile*, in *Corriere tributario* 10, 2004.
- SOSTERO U., *La "competenza economica" nella nuova normativa civile e in quella tributaria*, in *Rivista Italiana di Ragioneria e di Economia Aziendale*, n. 9-10, 1994.
- SOTTORIVA C., *Principi contabili internazionali e coordinamento con il TUIR*, in *Le società*, n. 5, 2005.
- SPENGL C., *International accounting standards, tax accounting and effective levels of companies tax burdens in the European Union*, *European Taxation*, 2003, July/August 2003.
- SPOLETTI F., *Nuovo conto economico tra normativa civilistica e tributaria. Ultime considerazioni sull'appendice fiscale*, in *Rivista dei Dottori Commercialisti*, n. 3, 1994.
- STESURI A., *Il "disinquinamento" del bilancio*, in *Amministrazione & Finanza*, n. 4, 2004.
- STESURI A., *la riforma della tassazione societaria: disciplina ed aspetti operativi*, Giuffrè, 2004.
- STEVANATO D., *La nuova regola di deducibilità dei costi in sede extracontabile*, in *Corriere tributario*, n. 33, 2003.
- STEVANATO D., *Rinvio degli ammortamenti imputati a bilancio tra aperture e preconcetti*, in *Corriere tributario*, n. 28, 2005.
- STEVANATO D., *Spese di ricerca e sviluppo escluse dal "disinquinamento"*, in *Corriere tributario*, n. 45, 2005.
- SUPERI FURGA F., *Le valutazioni di bilancio*, Isedi, 1976.
- SUPERI FURGA F., *Il bilancio di esercizio italiano secondo la normativa europea*, Giuffrè, Milano, 1991.
- SUPERI FURGA F., *Il bilancio di esercizio italiano secondo la normativa europea*, IV ed., Giuffrè, 2004.
- SUPERI FURGA F., *Reddito e capitale nel bilancio di esercizio*, Giuffrè, 1987.
- TABET G., *I lavori della Commissione Gallo con particolare riferimento al tema del disinquinamento del bilancio*, in *Il fisco*, n. 39, 2003.
- TEDESCHI G.A., *L'attuazione della IV Direttiva CEE. Aspetti fiscali e civilistici nel bilancio d'esercizio*, Giuffrè, 1992.

- TERZANI S., Il sistema dei bilanci, Franco Angeli, 2002.
- TESAURO F., Istituzioni di diritto tributario – Vol. II – Parte speciale, VII ed., Utet, 2005.
- TESAURO F., Compendio di diritto tributario, UTET giuridica, 2016.
- TESSITORE A., il bilancio di esercizio verso il sistema duale, in *Rivista dei Dottori Commercialisti*, n. 2, 2006.
- TINELLI G., Il principio di inerenza nella determinazione del reddito d'impresa, in *Rivista di diritto tributario*, n. 3, 2002.
- TINELLI G., Istituzioni di diritto tributario: i principi generali / Giuseppe Tinelli, Cedam, Padova, 2016.
- TOMASSINI A., L'eliminazione delle interferenze fiscali nel bilancio d'esercizio, in *Corriere tributario*, n. 29, 2003.
- VALACCA R., Disinquinamento dei bilanci pregressi privi di indicazione in nota integrativa, in *Corriere tributario*, n. 38, 2005.
- VALACCA R., Dopo l'introduzione dell'IRES non è più previsto l'ammortamento minimo, in *Corriere tributario*, n. 22, 2005.
- VANETTI C.B., Approfondimenti – bilancio – mancata indicazione delle interferenze fiscali e disinquinamento tardivo, in *Corriere Tributario*, n. 15, 2006.
- VANETTI C.B., Mancata indicazione delle interferenze fiscali e disinquinamento tardivo, in *Corriere Tributario*, n. 15, 2006.
- VASAPOLLI G. e VASAPOLLI A., Dal bilancio d'esercizio al reddito d'impresa, IV ed., Ipsoa, 1997.
- VASAPOLLI G. e VASAPOLLI A., Il disinquinamento del bilancio nei principi contabili nazionali, in *Corriere tributario*, n. 12, 2005.
- VENUTI M., Le deroghe di bilancio alla luce della riforma societaria (I parte), in *Le società*, n. 11, 2005.
- VENUTI M., Le deroghe di bilancio alla luce della riforma societaria (II parte), in *Le società*, n. 12, 2005.
- VERNA G., L'appendice fiscale del conto economico, supplemento al *Corriere tributario*, n. 37, 1993.
- VERRASCINA G. & NEALE M.F., La quarta direttiva della CEE: riflessi giuridici contabili sul bilancio d'esercizio, ISEDI, 1978.
- VIETTI M., Le linee guida della riforma del diritto societario, in *Le società*, n. 2bis, 2003.
- VIGANÓ E., Il bilancio delle imprese bancarie, Giannini, 1981.
- VIGANÓ E., L'impresa e il bilancio europeo, Cedam, 1990.
- VILLA G., Il contenuto delle voci dello stato patrimoniale e del conto economico, da Il bilancio di esercizio, III ed, a cura di PALMA A., Giuffrè, 2003.
- VINCIGUERRA L., Deduzioni extracontabili e disinquinamento: i chiarimenti del Ministero, in *Amministrazione & Finanza*, n. 19, 2005.
- VIOTTO A., L'accertamento sulle valutazioni di bilancio: i poteri dell'amministrazione anche alla luce della recente soppressione delle deduzioni extracontabili e delle modifiche concernenti i soggetti che adottano gli IAS, in *Rivista di Diritto Tributario*, 2009.



*References cited and consulted*

- WAGENHOFER A., “Accrual-based compensation, depreciation and investment decisions.” *European Accounting Review*, 2003, Vol. 12, Issue 2, pages 287-309.
- WAGENHOFER, A., “Management accounting research in German-speaking countries”, *Journal of Management Accounting Research*, 2006, vol. 18, Issue1.
- WAGENHOFER, A., GOXA R.F., “Optimal impairment rules”, *Journal of Accounting and Economics*, 2009, Vol. 48, Issue 1, pages 2–16.
- WATSLAWICH K.D.- BRAVIN J.H.- JACLSPM D-D, *Pragmatica della comunicazione*, Astrolabio, Roma, 1971.
- Zambon, S. (2002) *Locating Accounting in its National Context: The Case of Italy*, Franco Angeli.
- ZANETTI E. e RIGATO C., *Ammortamento anticipato: i riflessi delle riforme*, in *Contabilità finanza e controllo*, n. 12,2003.
- ZAREAH A., ASATRYAN Z., CASTELLON C., STRATMANN T., *Balanced Financial reporting Rules and Fiscal Outcomes: Evidence from Historical Constitutions*, Centre for European Economic Research, 2016, Discussion Paper N. 16-034.
- ZAPPA G., *Il reddito d’impresa*, Giuffè, 1950.
- ZIZZO G., *Manuale di Diritto Tributario – Parte speciale – Il sistema delle imposte in Italia*, IV ed., di FALSITTA G., Cedam, 2005.
- ZIZZO G., *Riflessioni in tema di disinquinamento del bilancio d’esercizio e di cancellazione della regola della previa imputazione a conto economico dei componenti negativi del reddito d’impresa*, in *Rivista di diritto tributario*, I, n. 1, 2000,.
- ZIZZO G., *Quale doppio binario?*, in *Corriere tributario*, n. 28, 2003.
- ZIZZO G. *la soppressione della deduzione extracontabile: un passo avanti o un passo indietro?*, in *Corriere Tributario*, n. 46, 2007.
- ZIZZO G., *Il potere di disconoscere gli oneri forfetari: un passo falso o il segno di una nuova era?*, in *Corriere Tributario*, n. 10, 2008.
- ZIZZO G., *Il principio di derivazione a dieci anni dall’introduzione dell’Ires*, in *Rassegna tributaria*, n. 6, 2014.