Journal of Economics, Finance and Management Studies
ISSN (print): 2644-0490, ISSN (online): 2644-0504
Volume 06 Issue 05 May 2023
Article DOI: 10.47191/jefms/v6-i5-28, Impact Factor: 7.144
Page No. 2102-2131

The Italian Case: with the New Reform, Will Interferences Taxes in Financial Reporting be Definitely Eliminated?

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ABSTRACT: The presence of tax rules that place limits on the tax deductibility of items in the balance sheet in the public profit and loss makes it tempting for preparers of financial statements to reduce the taxable income on which taxes are to be calculated, to report tax items in the financial reporting of the company. In this case, one speaks of tax interferences in financial re-porting since the balance sheet and the profit and loss should be free from any connection with tax regulations since, while tax regulations regulate the determination of taxable income, the rules concerning financial repor-ting aim to ensure that financial reporting is correct, fair and understan-dable. Tax interferences are numerous and widespread in Italian financial statements; on 23 April 2023, a bill was pre-submitted that should reform the tax sphere, and among the various topics covered, the existing rela-tionship between financial reporting and tax regulations. As will be stated in the following pages, the elimination of tax interference, a primary goal set out in the bill as mentioned above, will be achieved if companies adhe-re to what will be set out in the implementing decrees of the law and if tax assessors can act on financial statement values. An objective of the reform is to eliminate tax interference in financial reporting, but only in the light of the implementing decrees, which have not yet been issued and after two or three years of financial statements, will we be able to know whether the objective of the reform as mentioned above will be achieved, or whether tax interference will continue to be present in the form of tax ru-les that, when the reform comes into force, will no longer have any legal value, but may continue to have operational and practical value.

KEYWORDS: tax interferences, civil and tax rules, taxes and business inco-me.

1) TAX INTERFERENCES IN FINANCIAL REPORTING IN ITALY: INTRODUCTORY CONSIDE-RATIONS

In all countries, financial reporting is governed by legislation that provides more or less stringent rules on the substance and form of financial state-ments. Each country has its legislation, although it can be seen, for exam-ple, in Europe, that all the laws of the lands belonging to the European Union converge towards the international accounting standards AS/IFRS, indirectly also through the national accounting standards, issued by the Italian accounting body OIC, which supplement and illustrate, by law, the civil code regulating the regulation of financial statements. The circum-stance that needs to be emphasised here concerns the correctness and truthfulness of balance sheet data. To be defined as correct, fair and un-derstandable, financial reporting must contain economically valid values and be prepared in a form that can be understood by anyone who wants to have information on the company's income, balance sheet and financial situation. A profit and loss or Balance sheet value must be economically correct and not be influenced by any event or regulation outside the pro-visions of civil law. Including in financial reporting values that are devoid of economic substance but reflect the tax law requirements for determining taxable income gives rise to what are known as tax interferences. The concept of 'tax interference' shows how, by most scholars, a negative connotation is attributed to the identifiable relationship between tax re-gulations concerning the determination of business income and civil law provisions governing financial reporting. In fact, at a semantic level, 'inter-ference' is associated with undue interference by a party in a field not wi-thin its competence.

In the case analysed here, the undue interference is implemented by the tri-baria legislation, which, in an 'improper' and 'inappropriate' manner, in-fluences the drafting of a document - the financial reporting for the year - whose objective is not to identify the taxable income, but to highlight, in a correct, truthful and transparent manner, the economic, financial and pa-trimonial situation of the companies.

In the following pages, we will highlight the Italian situation since the end of the 1800s, i.e. since the unification of Italy.

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Concerning this issue, one can already anticipate how the legislation, especially after the 1990s, has regulated the issue of fiscal interference in Italy. In particular, the legislature has given the tools to the preparers of financial reporting to draw up economically correct financial reporting, possibly highlighting, if provided for by the legislation, data of a purely fi-scal nature. Even though, in theory, the preparer of financial reporting has always been able to draw up a true and correct balance sheet and profit and loss, the spread of tax interferences in Italy has always been wide-spread. On 23 April 2023, a bill was presented by Giorgetti with which a comprehensive tax reform is planned that also includes the issue of tax in-terference in financial statements. In the following pages, we will highlight the main points of this reform in part concerning tax interferences in fi-nancial reporting and point out what are the conditions for the upcoming tax reform, currently only sketched out in the bill, to truly eliminate tax in-terferences in financial reporting in a total and final manner.

2) EVOLUTION OF TAX INTERFERENCES IN ITALY FROM 1860 TO 1940.

To identify the points of convergence between the two legislations mentioned in the previous paragraph (civil and tax), it is appropriate to establish the historical moments in which there were specific turning points for both disciplines.

To understand what the overlaps and inter-relationships between ta-xable income and financial reporting income were in the past, it is necessa-ry to carry out a brief examination of the evolution of the two regulations and then verify the existence of any points of convergence - legally regula-ted and unregulated - that can be identified between the taxable tax base (with further analysis of what the legislator intended by this) and financial reporting income.

In Italy, in the Albertine Code of 1842, derived from the Napoleonic Co-de de Commerce, we find the first reference to a part compo-renting the balance sheet, i.e. the so-called 'inventory'. This document in the later co-de was not the subject of specific and rigid rules but only of a general pro-vision, according to which 'the merchant is obliged to make an annual in-ventory of his movable and immovable objects, debts and credits of wha-tever nature and origin, and to copy it from year to year and sign it in a book intended for that purpose' (Art. 18 Albertine Code of 1942).

It is only in the 1865 code that explicit provisions concerning companies' financial reporting can be found. In particular, Art. 147 stipulated the direc-tors' obligation to vote in the meeting to approve the financial statements and Art. 121 stated that 'if the limited partner (of a limited liability compa-ny) (has) been paid interest on the capital promised in the deed of part-nership or shares in the profits, he is not obliged to repay them when the annual accounts made in good faith show sufficient profits to pay them'.

An analysis of the 1865 code shows that, at the time, there was a lack of minimal regulations governing financial statements. This document was only the subject of references, more or less explicit, to other articles of the law, a circumstance that demonstrates the absence of any regulation, not even briefly sketched out, of financial reporting itself.

This clearly and without the need for further proof, this demonstrates how the concept of financial reporting in 1865 was not even evident in the legislator's mind.

Legal evolution, historical progress, the change in the concept of the ro-le of the shareholder, the inevitable social transformation and the deve-lopment of business economics led to the enactment of the Commercial Code of 1882, which, despite its regulatory narrowness on the subject of financial reporting, is remembered as a milestone in the disclosure of in-formation to third parties outside of companies.

In fact, for the first time, the legislator perceived the need to regulate certain aspects of financial reporting, albeit concisely, incompletely and partially. For this reason, the phrase 'from nothing to little' has been used in the title of this paragraph. Before 1882, there was essentially no actual legislation concerning financial reporting. With the enactment of the Commercial Code of 1882, the situation improved slightly, as the legislator imposed, albeit in a concise and general manner, certain basic principles, the observance of which became mandatory for those preparing financial statements. As will be seen in the following pages, the rules governing the preparation of the profit and loss account and the balance sheet lacked a depth that would guarantee the preparation of financial reporting as a true management and communication tool. The vagueness, synthesis and, above all, the ambiguity of the postulates and principles underlying its drafting meant that, pragmatically, financial reporting was often a docu-ment without a real informative function on the balance sheet, income and financial situation of companies.

As mentioned above, therefore, from nothing to little.

It should be noted, however, that the transition from the 1865 legisla-tion to that promulgated in 1882 undoubtedly shows a slight tendency to improve the informative capacity of financial statements, which indicates progress in nuce.

In particular, Article 22 of the Commercial Code stipulated that 'The merchant shall each year take an inventory of his movable and immovable property and of his debts and credits of whatever nature and origin. The stock shall be closed with the financial reporting and the profit and loss ac-count and transcribed and signed by the merchant, from year to year, in a book intended for that purpose.

Articles 23 - 27 regulated the stamping, endorsement and keeping of books of account. These articles did not, however, reference the structure and regulation of financial reporting.

The most relevant article on the subject of financial reporting for the fi-nancial year was undoubtedly Article 176, which imposed the following obligations: "The directors shall submit to the auditors, at least one month before the day fixed for the general meeting that is to discuss it, the pre-vious financial reporting with supporting documents, indicating separately therein:

1) the share capital existing

2. the sum of paid-up and overdue payments.

The financial reporting must clearly and truthfully show the profits ma-de during the year and the losses incurred.

The third paragraph of Art. 176 and Art. 177 contained rules applicable to insurance and financial companies.

Art. 178 required the "auditors, in a report containing the results of the examination of the financial reporting and of the management," to submit their observations and proposals concerning the approval of the financial reporting and other necessary provisions.

Art. 179 stipulated, "The financial reporting was to be deposited in co-py, together with the auditors' report, at the company's offices during the 15 days preceding the general meeting and until it was approved. The one and the other could be examined by anyone proving his status as a share-holder."

Art. 180 prescribed the filing of the financial report with the chancellery of the Commercial Court within ten days of its approval.

Art. 181, of particular interest, stipulated that no dividends could be paid to shareholders except for profits from the approved financial repor-ting. The provision also stated that the shareholders were not obliged to return the bonuses paid to them. This provision also prohibited companies from mentioning, in their memoranda of association, articles of association or other documents, interest to be distributed on capital represented by shares. At most, the payment of interest, to be deducted from the mo-ney, could be agreed upon in those industrial companies for which a pe-riod was necessary to establish the object of the company, but no longer than three years and in an amount not exceeding five per cent. In this ca-se, the amount of interest was to be calculated among the expenses of the initial establishment. It is apportioned with those to be borne by the budgets with actual dividends.

Lastly, Article 182 regulated the mandatory allocation of a portion of the company's profits to the legal reserve.

From the brief excursus of the rules directly or indirectly related to the issue of financial reporting, it is evident that the legislature of 1882, al-though addressing this issue in a more structured manner than previously, certainly did not aim to regulate the formal and financial aspects of the ba-lance sheet and the profit and loss account analytically.

In this regard, it is of particular relevance to note that, while on the one hand, Art. 176 stipulated that the financial reporting had to demonstrate clearly and truthfully the profits made during the year and the losses incur-red, on the other hand, nothing was defined concerning formal structures and substantive valuation criteria that would make the document suitable for achieving the objective set by the legislator in that same article.

In this regard, however, there is one provision which, analysed in the light of the experience of the last decades, during which accounting princi-ples have increasingly become points of reference for the preparer of fi-nancial statements, may leave the reader astonished: Article 89 stipulated that the memorandum or articles of association of public limited compa-nies or limited partnerships with share capital had to indicate, among other information, the rules according to which the financial statements were to be drawn up and the profits calculated and distributed. Each company could therefore identify the method of financial reporting that most close-ly resembled its idea of 'evidence and truth', in this sense making a com-plete blanket reference to the accounting rules that could be accepted as true and correct valuation criteria, which, however, given the silence of the legislature on this issue, could be 'subjectively' interpreted by each company, without this in any way suggesting an incorrect method of finan-cial reporting.

Regardless of the historical and political motivations of the time, there is no doubt that, in the period after 1882, the drafting of financial reporting was left entirely and utterly in the hands of the directors, who, on a practi-cal level, could at best rely on what had been illustrated by the scholars.

There is no need to dwell on the fact that, in the absence of organic re-gulations concerning financial statements, the documents drawn up by companies were concise and, above all, compiled in a highly summary manner. What is certain is that these statements were regarded as the companies' internal documents. Consequently, there was no semblance of the concept of 'financial reporting as an instrument of information ad-dressed to the outside world'.

This situation was also influenced by jurisprudence that, interpreting judicial review as an objectionable intrusion into company management, considered good resolutions of financial statements declared false in the judgement itself, arguing that financial reporting was to be regarded as an internal act of the company and, as such, exempt from any external con-trol (including in such 'impracticable controls' even those carried out by the judiciary).

Regardless of any consideration of the informative capacity of the fi-nancial reporting prepared under the 1865 and 1882 regulations, it should be emphasised that, in both codes, the patrimonialist view of the document prevails clearly and decisi vely. The balance sheet, derived indirectly from the inventory of the 1842 Code de Commerce, became, albeit without specific regulations, a pre-eminent document with respect to profit and loss. This led to the spread, both in business practice and, to some extent, in doctrine, of the belief that financial reporting 'was' in fact the balance sheet. It is evident how, in such a view, the profit and loss (or, rather, the profit and loss account) played only a participatory role, almost completely devoid of actual relev ance. The profit and loss account therefore, even in the 1882 code, seems to have only a position as a mere annex to the income statement which, according to this theory, constituted the 'true balance sheet'.

Already from the considerations outlined above, one can understand why the analysis of potential 'tax int erferences in financial year repor-ting' can only be, in essence, an in-depth study that is in any case 'limi-ted' precisely by the historical-doctrinal context to which the analysis itself refers.

This situation changed radically over time as, especially in the early 1900s, legal and corporate studies concerning financial reporting flouri-shed and developed considerably. This, however, was not followed by a change in legislation. In fact, the 1882 code, at least in the part con-cerning financial reporting, was only revised and amended in 1942, the year in which the civil code currently in force was promulgated.

At this point, in order to understand any potential 'intersections' between civil law and tax provisions, it is necessary to consider, in ex-tremely synthetic terms, what were the salient features of the tax legi-slation in force in the last decades of the 19th century.

With regard to the subject of tax interferences in financial reporting, it can be stated that the turning point in post-unification tax legislation is to be found in Law No. 1830 of 14 July 1864, currently identified as the law establishing the tax on movable wealth. It should be remembered that the tax on mobile wealth was levied on income other than that al-ready subject to land tax. The tax in question therefore did not affect the entire income, but, residually, only the portion (or rather, as we shall see below, part of it) of income not linked to land possessions.

In order to understand the connections, if any, between the provisions of the code concerning financial reporting and the tax law governing the de-termination of corporate taxable income, it is worth recalling a few key articles of the law establishing the mobile wealth tax.

First of all, it is necessary to mention the provisions of Article 6 L. 1830/1864:

Art. 6

“The following shall be deemed income from movable wealth existing in the State.

(a) income registered in the mortgage offices of the Kingdom or otherwise resulting from a public deed made in the Kingdom

(b) salaries, pensions, annuities, interest and dividends paid in any pla-ce and by any person on behalf of the state, provinces, municipalities, pu-blic establishments and commercial, industrial and insurance companies that have their seats in the Kingdom

c) income from an ecclesiastical benefice paid as aforesaid by one of the Caisses indicated in the preceding paragraph;

d) income from industry, commerce, employment and professions exercised in the Kingdom

(e) and, in general, any non-landed income which has been produced in the State, or which is payable by persons domiciled or resident in the State."

As can be understood from reading the article mentioned above, inco-me derived from the exercise of enterprises became, for all intents and purposes, part of the taxable base of the tax on movable wealth. Unlike in present times, Article 14 of the 1830 Act required that uncertain and va-riable income, such as that from the exercise of industry, 'be calculated ac-cording to the average of the last three preceding years, or, if the exercise does not count three years, on the shortest period that the exercise will have lasted'.

In 1867, this principle was changed by Act No. 3719/1867, which stipula-ted that the tax was to be determined on the previous year's income. This law shifted the focus of the tax legislator from average income to actual income. This innovation, however, underwent further reform in 1877: with the Consolidation Act on the tax on movable wealth No. 4021 of 1877 (in fulfilment of the mandate given to the government by Art. 19 of Law No. 3903 of 23 June 1877), the legislature established a return to a tax deter-mined according to the arithmetical average of the two previous years.

However, this rule (calculation of income tax according to the average of the two previous years) did not apply to joint-stock companies, limited partnerships, credit institutions and savings banks that were not obliged by their statutes to compile half-yearly balance sheets. For these compa-nies, according to Article 25 of Consolidation Act 4021/1877, the tax on their income was to be calculated based on the financial reporting and the accounts for the calendar year preceding the year in which the reports were to be filed.

Article 30 T.U. 4021 also provided that in the income of companies limi-ted by shares and limited partnerships limited by shares, including mutual or fixed-premium insurance companies, all sums distributed under any tit-le among the shareholders were to be taken into account indiscriminately, as well as those used to increase the capital or the reserve and deprecia-tion fund, or otherwise used to pay off debts.

In the articles relating to the determination of the tax base for the tax on movable wealth connected with the exercise of business activities and the carrying on of activities by companies, although there are no explicit references to the balance sheet, there are references to income and asset items that could only be deducted from the financial reporting for the fi-nancial year.

In this context, it is possible to affirm that, albeit indirectly and not ex-plicitly at a regulatory level, financial reporting was the preferred referen-ce for those responsible for determining the taxable base for the tax on movable wealth.

The doubt mentioned above was, however, resolved with the 1877 re-form, which led to the enactment of the Consolidation Act on Mobile Wealth No. 4021. In particular, Article 25 of this Consolidation Act stipula-ted that joint-stock companies, joint-stock companies, credit institutions and savings banks, which were not obliged by their statutes to draw up half-yearly balance sheets, had to calculate their tax on the basis of their financial reporting and accounts for the calendar year preceding the year in which the reports had to be submitted. As already mentioned, Art. 30 of the Consolidated Law 4021 further provided that the income of joint-stock companies and limited partnerships with a share capital, including mutual or fixed-premium insurance companies, was to include indiscriminately all sums distributed under any title among the partners and those used to in-crease the capital or the reserve and depreciation fund, or otherwise used to pay off debts.

The period after 1877/1882 and before the promulgation of the Civil Code in 1942 was marked by two significant tax reforms: the De Stefani re-form of 1923 and the Thaon de Revel reform of 1940. However, these re-forms did not affect the issue of corporate income and its relationship with the profit and loss account. A fiscal breakthrough could have been seen in the so-called Meda reform, which was never implemented.

The reform envisaged by Meda was not implemented, but in 1923 De Stefani succeeded in intervening, albeit only partially, in the tax system in force then. However, the objective of De Stefani's reform was not a struc-tural change in the tax structure but a rebalancing of taxation at the level of individual taxpayers.

The progressive complementary income tax was established with Royal Decree No. 3062 of 30 December 1923.

The explanatory memorandum to Royal Decree No. 3062/1923 also pointed out that the tax object was narrower than previous bills. In parti-cular, it was emphasised that 'the thing of the tax is the total income, net of all deductions for tax expenses, liabilities and family burdens, resulting from the most recent assessment for tax on land, buildings and movable income, and other income resulting from documents recognised by the taxpayer. The complement is thus limited to the more reliable and easier-to-determine pool of well-founded incomes, removing those presumptive assessments based on inductions and indirect indices, which the Meda and Soleri projects accepted, but which may lend themselves to more ar-bitrary and excessively burdensome assessments for taxpayers. The ex-clusion in the present decree of the taxation of capital gains, for the tax of which all the previous projects had dictated widespread and repeatedly varied rules, is not only inspired by the enormous practical difficulties of correct determination but by the continuous and unspecifiable interwea-ving of purely monetary influences with the intrinsic causes of variations in values and by the frequency of fluctuations for the various assets constitu-ting the patrimony, which can annul at a short distance of time the increa-ses in value that have occurred for some possibly taxable values' (Relazio-ne al R. D. No 3062 of 30 December 1923)

However, as far as we are concerned, it is relevant to recall that Article 1 of Royal Decree No 3062/1923 subjected to the complementary tax 'only natural persons [...]'. Article 3 specified that corporations, commercial companies, bodies and associations of all kinds did not constitute taxable persons for the additional tax. According to the same article, income recei-ved by natural persons from the companies mentioned above and bodies such as employees, wage earners, pensioners, allottees, members, shareholders, directors, bondholders and for any other reason, was taxed directly in the hands of the recipient. With this new tax, therefore, the le-gislature intended to hit natural persons and not legal persons.

Moreover, since it is the same law (Article 3) that states that 'corpora-tions, commercial companies and all bodies and associations of any kind do not constitute taxable persons for the additional income tax', it should be noted that the law 'when it speaks of commercial companies, (it intends) to include also those companies that are irregularly constituted and mere de facto associations, and that under the term "body of any kind" are also included all collective companies constituted by persons bound together by a bond of a condominium or common interest'.

It can be understood from the above that the De Stefani reform, consi-dered by all scholars to be a turning point in the Italian tax system, does not represent, as far as we are concerned, an element of any interest. Sin-ce the object of the reform was the determination of the taxable income of natural persons and, by the express will of the legislator, all forms of companies were excluded from the changes of the progressive comple-mentary income tax, the substance of the De Stefani reform did not affect

the problem of the interrelation between taxable income and income de-ductible from financial reporting and, even less, influenced anything that could be approached to the issue of so-called tax interferences.
De Stefani was also responsible for the introduction in 1923 of the sin-gle tax on trade, which is 1940, with the reform wanted by Thaon de Revel, was replaced by the general sales tax (IGE), which, in addition to replacing the previous single tax on trade, affected the total value of all transfers of both goods and services. This calculation method penalised goods with a structured production and distribution chain since as the number of ex-changes increased, so did the tax to be paid.
Again, the De Stefani and Thaon de Revel reforms did not change the tax income/budgetary income ratio. These new provisions, therefore, had no relevance in the context of the issue we are analysing.

Therefore, as far as the analysis of the topic of our interest is concer-ned, until the entry into force of the Civil Code of 1942 on the one hand and the so-called Vanoni Law on the other hand, any analysis of the issues concerning the relationship between financial reporting and tax regula-tions and the possible presence of so-called tax interferences can only re-fer to the Commercial Code of 1882 and the Consolidated Act 4021 of 1877, supplemented and amended by Law no. 1231 of 8 June 1936. Only by comparing these regulations can observations be made as to the presence of possible tax "interferencess" in the financial reporting of the period.

At this point, however, a question arises spontaneously: in a regulato-ry, jurisprudential and doctrinal situation in which financial reporting was understood as an 'internal company document' not subject to any external control, what practical information value could be assigned to the profit and loss account, interpreted both as an 'accounting element' and as a 'ba-sic document to determine the tax base'? The answer is obvious: its rele-vance could only be minimal.
As we have already needed to point out, case law interpreted any ex-ternal control over financial reporting as an objectionable intrusion, even going so far as to explicitly declare the falsity of financial reporting and the simultaneous impossibility of sanctioning its invalidity as being considered an 'internal company document'. The judgement from which most of the jurisprudential decisions of the early 1900s probably originated was that of the Court of Cassation in Florence on 19 December 1892, in which it was stated that "the resolutions of the assemblies in what concerns the social interest are sovereign; and the judicial authority that arrogates to itself the right to scrutinise and reform them, even if they do not offend the law, just because a different provision seems more in keeping with the social interests, transcends to an illegitimate interference [...]". This judgement was echoed by numerous other jurisprudential decisions, in which the principle was reaffirmed according to which "the judicial authority cannot exercise a control on the merits on the formation of the financial state-ments and on the consequent resolutions of the shareholders' meeting, but must limit itself to a control of legitimacy", since such an intervention "would imply a control on the merits on the part of the judge on what is most delicate in the functioning of commercial companies; a control of me-rit which, if it were allowed, would wound to death any company, howe-ver well administered" (Court of Appeal Milan, 22 May 1926). .

Some scholars supported this position, while many others strongly en-dorsed it. The doctrine was therefore divided, but until the 1930s, the ju-diciary formed a united front against any possibility of pronouncing judg-ments of nullity of financial reporting dependent on hypothetical decisions on the merits of the financial reporting itself by the judicial authority. The financial statements, in such a context, were removed from any power other than the shareholders' meeting, which, for obvious reasons, did not represent the entirety of the shareholders, but rather the relative majori-ty of them, and which was invested with the power to approve the finan-cial statements.
It is evident that, in such a situation, the profit and loss account, while constituting a compulsory reference for the determination of the taxable base, was a document that could easily be 'tailor-made' for any need, be it 'external' and tax information.
With this situation, addressing the issue of tax interferences in financial reporting appears to be a pure waste of time, primarily because the pro-blem as mentioned above does not concern the possible implementation of tax evasion, for example, through the non-recognition of revenues or the potential inclusion of non-existent costs, but is linked to the much mo-re complex issue of the application, during the preparation of the financial statements, of tax valuation principles. A prodromal circumstance to this is that, of course, the issue of the valuation criteria for estimated and con-jectured values represented, in the historical period under consideration, an object of interest - at both a 'civil' and fiscal level - of doctrine, jurispru-dence and practice.

As already noted in the preceding pages, any consideration of this issue has its origin in the provisions of Article 25 T.U. 4021/1877, according to which the tax on movable wealth of anonymous companies, limited part-nerships with shares, credit institutions and savings banks that were not obliged by their statutes to compile semi-annual financial statements was to be calculated based on the financial reporting and accounts for the ca-lendar year preceding the year in which the reports were to be filed.

It is evident from the Article, as mentioned above 25 that there is an interconnection between financial reporting and the determination of ta-xable income.

The 1877 Consolidation Act was revised by Law No. 1231 of 8 June 1936. However, under Article 13, the principle of deriving fiscal income from fi-nancial reporting results was not changed. Indeed, Art. 13 provided that: "Articles 11 and 12 above apply to the taxation of income [...] earned by provinces, municipalities and corporations of all kinds required to prepare financial statements. Where such bodies manage different businesses on an economic or autonomous basis, even if they do not have separate legal personalities, the taxation shall be carried out separately for each compa-ny based on their respective balance sheets.

Even Article 12, while partially amending Article 25 of the Consolidated Act, did not affect the principle of deriving taxabl e income from the balan-ce sheet results.

To have an overall view of the situation, it must also be recalled, as has already been pointed out in the preceding pages, that under Article 89 of the Commercial Code, it was the memorandum or articles of association of anonymous or limited partnership limited by shares companies that had to indicate, among other information, the rules according to which the finan-cial statements had to be drawn up and the profits calculated and distribu-ted. Each company could therefore identify the methods of financial re-porting that most closely resembled its idea of 'evidence and truth', thus implementing a complete blank reference to the accounting standards considered 'accepted' and 'recommended' by the best doctrine, which, gi-ven the silence of the legislator concerning this issue, could be 'subjecti-vely' interpreted by each company without this in any way leading to the assumption of an incorrect method of preparing financial reporting.

Bearing the above in mind, to understand whether or not, in the late 19th and early 20th century, it was possible to assume the presence of tax interferences in financial statements, and it is essential to understand the accounting obligation s imposed by the legislature on companies subject to financial statements.

In this regard, the Commercial Code merely imposed, through the pro-visions of Articles 21 and 22 C. Co., the keeping of a journal, a ledger and a book in which all letters and telegrams sent had to be entered (as well as the obligation to keep all correspondence received).

Despite the limited nature of the "accounting" obligations of compa-nies, legal doctrine, including legal doctrine, agreed that "although the commercial law did not require merchants and companies to keep other books, it was well known that for the rational determination of the opera-ting income it was necessary to set up an entire accounting system of ac-counts that had to continually or periodically accommodate the manage-ment records, which, while being composed, formed the basis of all those adjustments [...] and of all those summaries which at the end of the fi-nancial year then form the object of particular recognition by those re-sponsible for compiling the financial reporting itself" (Grillo, 1040. Id 1955).

What was imposed by the Commercial Code was therefore deemed in-sufficient for preparing financial statements. This was primarily because of the valuation entries at the end of the financial year, which required ele-ments of knowledge and non-accounting and statistical records which could not be located in the inventory or the journal.

Hence the observation, accepted by the majority of doctrine and juri-sprudence, that "financial reporting was a con-table instrument and a legal means with full binding effect on the actions of the Finance Department as long as it and the entire system of accounts that characterise it lent them-selves to such meticulous analysis as to leave any possibility of controlling the various positive and negative components of income. If, therefore, one or more positive or negative components of financial reporting inco-me did not lend themselves to the rational and considered control of Fi-nance due to the inadequacy of the accounting records to capture all the economic and business phenomena, if the company provided no other ex-tra-accounting or statistical means with reliable probative value [...], which insisted on sustaining the full validity of financial reporting for tax purp o-ses, it was obvious [...] (it seemed) [...] the legitimacy of the inductive pro-cedure [...]" (Grillo, 1940. Id 1955, Id 1960), or, we would add, the legitima-cy of the variety of accounting data in financial reporting resulting from subjective estimated and conjectured valuations. In other words, "the fi-nancial reporting of companies and entities (was) elevated to a basis for the assessment of the companies' and entities' income, from which the offices (could) not deviate except when (they) demonstrated that the fi -nancial reporting lacks those characteristics and requirements [...] that (were) the logical and legal presupposition of Article 25. But this demon-stration (could) not (be) provided employing investigations and elements respectively carried out and drawn from outside the financial statements, or, to put it another way, the Finance Department (had) always had the right to carry out all the investigations that (it) considered appropriate or useful and to seek elements of evaluation even outside the financial re-porting and the other accounting documents, but only as a means of then investigating, based on the accounting settings, the validity and truthful-ness of the settings themselves. No one (counted) on the Finance De-partment has the right to investigate the average yield of a certain produc-tion instrument outside the financial reporting, but it (could) make use of the results of its investigations, not to invalidate the accounting appro-ches that deviate from it, but to have a clue, just a clue, which (could) be revelatory of a fact (the unreliability of the financial statements) of which (it was) necessary to seek the constituent elements only in the financial reporting and in the other accounting documents and not elsewhere" (La Mattina, 1933).

Starting from the assumption that this was unanimously accepted by the doctrine of the time, one must ask oneself whether, during the period in which the Commercial Code and Consolidated Act 4021 were in force, there was any doctrinal position that clearly and unequivocally expressed the possibility that the income statement for the financial year could differ from the tax return. In the absence of such positions and, consequently, in the presence of a widespread acceptance that income should be conside-red a single income, addressing an issue concerning the interference between one income and the other would appear to be a work devoid of any theoretical and pragmatic significance.

The panorama of jurists who agreed on this differentiation is highly va-ried and extensive. For all of them, we have chosen to set out the posi-tions of Grillo and Terranova, spearheads of the doctrine of the time.

Grillo states in an explicit and crystal-clear manner that 'among the ma-ny notions of income, one must also include that of fiscal income, which, however, cannot be confused with the notion of business income in ope-ration nor with other notions of the typical economic phenomenon men-tioned above [...]. It is worth emphasising the profound difference between a company's income in operation and the taxable income attribu-table to the same based on financial reporting, which shows, in extreme synthesis, the results of company management" (Grillo 1040, Id. 1955, Id. 1960)...

According to Grillo, 'Finance does not replace itself in the administrative acts of the company, nor does it claim to influence in any way the eco-nomic-productive activity of the company itself, but only tends to bring the economic-financial reporting within the limits of the fiscal financial re-porting through the careful examination of the most typical income com-ponents [...], (for this reason, Ed.) for tax purposes, it must be held [...] that the procedure of non-accounting revaluation of operating costs and revenues [...] is legitimate, especially concerning the valuation of those characteristic income components which, not being of numerical deriva-tion, arise based on multiple criteria of estimated valuation, the effects of which, being reflected mediately or immediately in time, cannot but have been affected by the subjectivity of the principles of those responsible for compiling the financial statements" (Grillo 1940).

From Grillo's statement, it can be understood how widespread the practice of 'the fiscal recovery of operating costs' was, meaning the tax practice of not supinely accepting the estimated and conjectured valua-tions recorded in the financial statements. It was, therefore, a common practice for the tax authorities to intervene in determining taxable income by identifying new valuation data, different from those shown in the fi-nancial statements, deemed more in keeping with the concept of 'quanti-fication of taxable income'.

It should note in this regard that Article 20 of Law no. 1231 of 8 June 1936, which partially amended the Consolidated Act. of 1877, explicitly sta-ted that "for the exact determination of the proper income of the compa-nies and entities indicated in Articles 11, 12 and 13 of this Law, the Tax Offi-ces and the Boards of Examiners - in addition to the power to check the items of financial reporting based on the accounting records - also can take into account all the elements and factual data they have collected, even outside the financial reporting and the accounting records, to adjust the settings resulting from the financial reporting or to determine the income as a result of such adjustments. The Tax Office, in the notice of assess-ment or other documents, served even after the period prescribed for such information, and the Boards, in their decisions, are obliged to state the grounds based on which they have adjusted the financial reporting settings and, as a consequence, the income. Suppose the financial repor-ting settings are unreliable due to a well-founded presumption of tax fraud. In that case, the Tax Offices and the Boards of Appeal are entitled to determine the income to be taxed based on the economic situation of the company as deduced from the elements and data collected by them, without prejudice to the obligation to state the reasons following the pre-ceding paragraph. Article 11 further provided that 'Article 3, second para-graph, of Law No 222 of 2 May 1907 is amended as follows: Companies and entities taxable based on financial reporting must submit their annual re-turns within three months of the approval of their financial statements. If the financial reporting is not completed by the yearly deadline in the arti-cles of association, or if it is not approved within three months after the annual deadline, the company or entity must submit the return within ni-ne months of the statutory deadline for completion. Both in the case re-ferred to in the first paragraph and in the case referred to in the second paragraph of this Article, the tax office may notify its proposals within one year from the day the return was submitted or should have been submit-ted.

Depreciation was one of the items most closely examined by the doc-trine of the time precisely because of the impact it could, and still can, ha-ve on operating income and the tax base. Concerning this item, Terranova pointed out how widespread the practice of recording depreciation al-lowances in financial reporting that, from an economic point of view, was acceptable/correct but, in reality, did not identify the tax-deductible cost. In particular, Terranova emphasised that 'if financial reporting [...] shows profit and loss items with large figures [...] for salaries, heating, postage, etc., the tax office cannot refuse the deduction of those items because they are exaggerated and disproportionate [...]; for depreciation expen-ses, on the other hand, the Office cannot always follow the company's way: it cannot always, we might say, respect the quotas that are calculated in the depreciation schedules. Sometimes, indeed often, one depreciates with one of the decreasing procedures: the first financial years

are loaded as a measure of prudence, because of obsolescence, because of the fear of a new, cheaper machine, to solidify the organism of the enterprise in the competition of similar enterprises, for the economy of costs, for the constitution of prudential reserves. Now, all this is commendable in ac-counting terms, but fiscally it cannot be allowed. The assessing Office must admit the share of wastage that comes closest to reality according to the form that is deemed most convenient and correct. The administrators may respect prudence because of the principle of solidarity during the financial years, which is dominant for the future of the business. Still, it is incompa-tible with the principle of the balance sheet's autonomy, of the assess-ment's definitiveness that dominates the fiscal matter for Art. 59 of the Consolidated Act of 1877. The Office must (therefore) follow rates that deviate from those adopted by the company' (Terranova, 1931).

From the above, it can be deduced that, on the part of the Finance De-partment, the modification of depreciation rates applied in the balance sheet was standard practice. This was because it was unanimously accep-ted by doctrine and jurisprudence that tax deductions of amounts not shown in the balance sheet were not permissible. Depreciations that were considered economically correct and included in the profit and loss ac-count were frequently regarded as incorrect from a tax point of view. Thus, even if it was deemed acceptable to apply 'prudential' depreciation rates and, consequently, even if the depreciation rates in financial repor-ting were supposed to be economically correct, they were often subject to variation by the tax authorities. It should note that the problem arose only if the financial reporting depreciation was higher than the deprecia-tion deemed acceptable in determining taxable income. "It follows from the application of Article 25 T.U. of 1877 that the Fi-nance cannot grant de-ductions by way of depreciation if the depreciation itself has not been ef-fected and is not shown in the accounts" (Terranova 1931).

From an analysis of Art. 25 of the 1877 Consolidation Act and from rea-ding the various doctrinal positions of the time, it is evident that the reco-gnition of the cost in financial reporting had to be a condition sine qua non for it to be considered tax deductible. Therefore, operations of an extra-accounting nature appear impracticable to increase, for tax purposes, de-preciation booked to a lesser extent in the profit and loss account.

If the depreciation of financial reporting was not deemed congruous because it was too high, the Finance Department could consider part of that cost to be fiscally irrelevant.

Precisely to limit the constant rants about the 'fiscal congruity' of the depreciation booked in the financial statements, 'between the Ministry of Finance and the main exponents of Italian industry (in the early years of the 20th century, Ed.), guiding criteria and rates to be applied for the de-preciation of plant and buildings were agreed upon [...]. This agreement aimed to reduce the daily disputes between companies and the Finance [...]".

In light of the above considerations, which represent a cross-section of the 'pragmatism' of the tax office applied in the decades following the enactment of the 1877 Unified Tax Code and, in particular, the situation in the early 1900s, one must ask oneself whether it made sense to discuss financial statement tax interferences at that time. As pointed out in the preceding pages, the Commercial Code laid down rules concerning finan-cial reporting which, euphemistically, could be described as 'synthetic and generic'. In essence, financial reporting was not regulated, or rather, it was held so superficially that everyone could interpret the few regulations concerning this document according to their convictions. The almost total freedom that characterised the drafting of financial reporting created fer-tile ground for the spread of financial reporting practices that had nothing to do with communicating the company's 'real' economic-financial-equity situation to shareholders and external third parties. The possibility of translating taxable income elements into the sphere of balance sheets to obtain tax benefits could, therefore, theoretically, certainly be feasible.

From the analysis of the doctrinal works of the time, it is reasonable to assume that recording tax data in financial reporting was not only a plausi-ble hypothesis but even represented a practice habitually implemented by companies to reduce the tax base.

Faced with an attitude of Finance tending to take over excessive costs imputed in financial reporting - as opposed to what is considered tri-nationally permissible - it is indeed logical to assume a mirror-image beha-viour on the part of companies. If, therefore, according to the tables that the companies had negotiated with the tax authorities, the depreciation of a specific asset had to amount to a certain percentage, it is reasonable to assume that the tax audit office would not investigate if the amount slavishly identified that amount. Even higher values triggered checks to make tax recoveries if necessary. In contrast, the presence of data that conformed to the accepted standard of the Finance Department was cer-tainly not the subject of further investigation. The Finanza did not have the objective of verifying the economic congruity of year-end valuations but only aimed to avoid the deductibility of costs that, although acceptable from an economic point of view, were not so from a tax perspective. However, this entailed the possibility that, in the presence of economic conditions that would impose reduced year-end valuations, companies would import tax-accepted values into the accounts with the clear objecti-ve of reducing the tax base. At this point, the question of whether, at the end of the 19th and beginning of the 20th century, one could speak, at least theoretically, of fiscal interference seems superfluous: the answer is undoubtedly affirmative. The circumstance that might surprise the super-ficial

reader of the rules in force at the time is that, despite the almost to-tal lack of legal regulation of financial statements, tax interferences of the latter could be carried out. However, what has been set out in some detail in the preceding pages leads us to assume that only those who had super-ficially read the mere rules of the Commercial Code would be surprised. A detailed analysis of the T.U. of 1877, amended by Law no. 1231 of 8 June 1936, and an in-depth study of the practices established at the time, of the agreements signed by the companies, and of the shared tables used to identify depreciation percentages accepted by the tax authorities, show how the situation was far more complex than may appear from a non-exhaustive study of the regulations of the time.

In the writer's opinion, therefore, it can undoubtedly be stated that even during the period in which the Commercial Code and the 1877 Consolida-ted Act (amended in '36 by Law No. 1231) were in force, the phenomenon of tax interference existed, albeit in a different form from what occurred in the decades following the Vanoni and Visentini laws and the various re-forms carried out in the 50 years following the enactment of the latter le-gislation. This demonstrates that the interrelation and mutual connec-tion/osmosis between civil/economic principles and tax provisions is a ti-meless issue with no limits linked to precise regulations. As we shall see in vol. III, the tax interferences of financial statements could, in theory, only cease in the presence of an impassable barrier between financial reporting values and tax data. As long as any relationship/dependency between these two elements can be identified, an absence of tax interference can-not be assumed. And this is also in the presence of absolutely generic, li-mited legal rules that are insufficient to give a 'really' true and correct pic-ture of the company's situation, as was the case during the period in which Article 176 of the Commercial Code was in force.

3) THE TAX INTERFERENCES IN PERIOD 1940- 1960

In the historical period analysed here (from the 1940s to the end of the 1960s), profound reforms can be identified concerning the rules governing financial reporting and the provisions relating to the quantification of taxa-ble income. Although these innovations were introduced by enacting civil and tax laws in the 1940s and 1950s, they have their roots in a changed at-titude of doctrine and jurisprudence, which arose before the reforms mentioned above came into force. It cannot be forgotten that, compared to a compact doctrinal and jurisprudential position in the first decades of the 1900s, which considered financial reporting to be a document that was entirely exempt from any external control, in the 1930s, several judg-ments began to be found that cast doubt on such a principle, at least in the case of financial statement fraud. More and more judgments conformed to the principle according to which 'it is [...] certain and indisputable that when [a] valuation, even if approved by the shareholders' meeting [...], openly or covertly contravenes the implicit precepts deriving from the ap-propriate penal sanctions of the criminal law, the resolution of the share-holders' meeting [...] may be annulled by the procedure of Art. 163 c. c.' (Css. 163 of the Criminal Code). (Css. Decree 24 June 1937n. 2072). The ju-risprudence of merit also began to hold that "in civil law, any interest [...] can have the nullity of the resolution approving false, erroneous or inaccu-rate financial reporting declared" (Milan Court of Appeal 23 June 1936). The new path taken by the judges, both of legitimacy and merit, represen-ted in part the fruit of doctrinal studies that were increasingly inclined to deny, in a firm and decisive manner, the principle of the unquestionability of financial reporting by parties external to the company.

Despite the position taken by most of the doctrine and jurisprudence as early as the 1930s, the legislative situation, both civil and fiscal, was sub-jected to the first changes only in the 1940s (amendment of the civil code) and the 1950s (tax reform).

The regulatory principles governing financial reporting and the deter-mination of taxable income, dating back to the last decades of the 1800s and the early 1900s, therefore remained in force until the promulgation, respectively, of the Civil Code of 1942 and the Vanoni reform of 1951.

In a nutshell, it can be stated that the significant changes in these fields occurred according to the following timeline:

- 1942: promulgation of the Civil Code (Royal Decree No. 262 of 16 March 1942)
- 1951: enactment of the tax equalisation law, generally referred to as the 'Vanoni reform' (Law No. 25 of 11/1/1951)
- 1954: enactment of corporate tax (L. 6/8/1954 No. 603)
- 1958: coordination of tax regulations and enactment of the Consolida-ted Income Tax Law - Presidential Decree No. 645 of 29 January 1958

In this article, we will focus our attention only on what, directly or indi-rectly, could lead to the spread of tax interference in financial statements. This is not the correct place to analyse the regulatory changes identified above, albeit briefly. Until 1972, only the balance sheet was regulated in Italy, while profit and loss were mentioned as part of financial reporting. Still, it was not controlled in any of its formal and valuation aspects. The absence of rules regulating the structure of the profit and loss account analytically allowed practices of extreme hermeticism in published profit and loss accounts to take root. In the 1950s and 1960s, many companies considered it correct to draw up extremely concise profit and loss ac-counts, which showed the net profit for the year as the algebraic sum of the gross operating surplus and very few other separately indicated inco-me components, with the

consequence that it was difficult, if not wholly impossible, to obtain meaningful information on the company's perfor-mance from these accounts.

In this regard, it must be emphasised that the doctrine firmly and deci-sively emphasised the illegitimacy of such a practice. The drawing up of a profit and loss account that was hermetic because it was too concise was considered by almost all scholars to be a factor that allowed them to affirm the absence of the clarity postulate imposed by Article 2423 of the Civil Code. Despite this, jurisprudence continued to deem the redaction of such accounts to be legally unobjectionable. In this regard, we may recall that the Tribunal of Milan in 1973 considered a profit and loss made up of only four revenue and four cost items to be legally correct. Because of this jurisprudential position and the innate tendency of companies towards confidentiality, most companies continued to publish profit and loss ac-counts with extremely synthetic gross results, which, according to many scholars, in addition to being illegitimate, were often useless or even de-trimental to the company, as the various external operators, unable to rely on precise data, made approximate estimates that could even severely penalise the company.

Therefore, the absence of an analytical regulation of the structure of the profit and loss account prevented financial reporting from fully deve-loping its role as a valuable information tool for third parties outside the company. This shortcoming was further exacerbated by the circumstance that, in the absence of specific regulations concerning the directors' re-port, it had become the practice to draw up words that did not provide any information on the company's performance.

After briefly describing the civil law situation concerning the financial reporting for the financial year and, in particular, the profit and loss ac-count, it is now necessary to carry out a similar in-depth examination of the content of the tax provisions regulating the determination of taxable income. As we have pointed out in the previous pages, the turning point in the period analysed here was represented by the promulgation of the so-called Vanoni reform, the core of which was the law on tax evasion 11/1/1951 No. 25, which overturned 'the centuries-old statist conception of the taxpayer-taxpayer relationship and, by imposing the obligation of the annual declaration, (shifted) the tax burden from the tax administra-tion to the taxpayer' (Falsitta, 2002(). This was followed in 1954 by the law establishing corporate tax, L. 6/8/1954 No. 603.

"The fundamentals of the reform concerning the direct taxation of in-come were three:

1) the unicity of the taxpayer's income declaration for direct taxation;
2) the annual obligation of the declaration;
3) introducing the concept of actual income, replacing ordinary conti-nuous income.

Following the entry into force of the reform, therefore, the taxpayer's annual declaration [...] constituted [...] the fundamental basis of the as-sessment procedure, the system of confirmation by the silence of the previous year's income having been abolished: a system that found its le-gitimacy in the provisions of art. 24 of the Consolidated Act of 24/8/1877 no. 4021' (Giorgetti, 1963).

An enormous step forward in coordinating the many tax provisions was the promulgation, in 1958, of the Consolidated Income Tax Law - Presiden-tial Decree No. 645 of 29 January 1958, which represented an element of considerable interest.

With Law 25/51 and the subsequent reforms, the doctrinal discussion and legal intervention aimed in particular at assessing the feasibility of a financial reporting system that could simultaneously meet information needs based on the principles of business economics 'introduced' in the civil code and tax requirements, without one influencing the other, with consequent damage. In other words, an attempt was made to verify the possibility of achieving a more or less stable balance between two legisla-tions characterised by different purposes and functions, at least apparent-ly. The Vanoni reform is still remembered as an element of primary impor-tance in the tri-but not so much for the changes it introduced but for the vision that permeated this law.

Remember that the Vanoni reform of 1951 laid down specific regula-tions concerning the valuation of inventory and depreciation for the first time.

From 1958 onwards, we witnessed a situation characterised by the fol-lowing:

1) Absence of any civil regulations on the content/structure of the pro-fit and loss account;
2) the presence of Article 2425 of the Civil Code, by which maximum li-mits were set on the valuation of the main assets and liabilities
3) and, lastly, the existence of T.U. L. 645/58, which governed the de-termination of taxable income sufficiently analytically, albeit deficient con-cerning subsequently enacted regulations.

From an analysis of the items governed by the tax as mentioned above legislation, it can be understood how wide the possibility and realisability of tax interferences in financial year reporting was in the 1950s and 1960s. To avoid misunderstandings, it should be mentioned again that the objec-tive of this text is to investigate the presence of tax interferences in finan-cial statements, understood not so much as simple changes in civil items motivated by 'pure' tax evasion resulting from non-invoicing and the inclu-sion or overstatement of non-existent costs, but rather as changes in in-come items resulting from valuations

dictated by tax regulations rather than by the correct civil provisions. In other words, as has already been pointed out several times, in the following pages, we will not address the issue of the financial reporting effects of 'traditional' tax evasion carried out through non-invoicing or the recognition of purchase invoices that do not correspond to fundamental input factors, but will focus our attention exclusively on the tax interference of the balance sheet and profit and loss implemented with a method that we could define as 'more refined', i.e. through the application of tax valuation criteria instead of the economic principles imposed by the Civil Code.

From what has been said above, discrepancies between civil law princi-ples and tax provisions of the time seem to be beyond dispute. The only observation that deserves to be raised is that, in reality, the provisions of Article 2425 of the Civil Code could, if misapplied, not lead to the prepara-tion of financial reporting as precisely as required by Article 2423 of the Ci-vil Code. The indication of a maximum limit that cannot be exceeded, and therefore the implicit legitimacy of valuations that are less than the 'cor-rect economic quantification' of the asset values, could represent an obstacle to the preparation of a balance sheet and a profit and loss that are genuinely 'true'. It is known that the position of the civil legislator was dictated by the objective of protecting third parties from overvaluations of assets, which, of course, seemed much more dangerous than the opposi-te. In this part of the text, we will start by accepting this assumption, abandoning any investigation of the potential lack of precision due to va-luations that do not correspond to the truth as they are significantly lower than the 'real' value of the object of quantitative determination. In the fol-lowing pages, we will focus exclusively on searching for potential and ac-tual transpositions of tax valuation criteria in the civil sphere. Our objective is, therefore, to investigate the possibility or certainty that the financial statements were drawn up by applying not civil but tax valuations. From such an 'investigation', it will be possible to understand whether or not the financial statements of the twenty years analysed here were marked by tax interference.

As a first consideration, it must be noted that in the texts and written works of the time, no particular doctrinal comparisons on the subject are to be found, just as the terms "tax interference" of the financial state-ments are substantially absent from the vocabulary of the time, a circum-stance that proves an, at least partial, disinte-rest/detachment/indifference of the doctrine on this specific issue. It is, of course, possible that a few authors have addressed the matter in que-stion. Still, in the overall doctrinal landscape, both corporate and legal, the-re seems to be no real debate on the consequences of the potential or ac-tual transposition of tax rules into the financial reporting of civil law.

We have acted in doctrinal and pragmatic circles to conduct our analy-sis. To the in-depth study of what was stated by the various scholars of the time, we added field research, i.e. the analysis of approximately 50 finan-cial statements prepared by different companies after the enactment of the Consolidated Act 645/58 and before the Visentini reform. This re-search was carried out with the absolute awareness that such an analysis could certainly not have the trappings of a statistically relevant survey. Our objective was not to achieve statistically valid results but rather, despite the apparent limitation of the sample, to understand the pragmatic impact the tax rules had on preparing financial statements.

We believe that the doctrinal analysis and the study of financial state-ments have enabled us to understand, quite clearly and faithfully, what the trend was in the 1950s and 1960s concerning the subject matter of our interest.

From a doctrinal point of view, reading the works of that historical pe-riod has allowed us to understand that, at least from a part of the doctrine, it was accepted that the valuations included in financial reporting could re-flect what was imposed by the tax law. In this regard, the position of Gian-netta-Sessa-Scandale appears attractive when they affirm that "the legi-slator, in regulating the settings of financial statement values in the civil code, was concerned with avoiding the distribution of fictitious profits [...]. For tax purposes, it is important to know the operating income that comes closest to the real value' (Giannetta Sessa Scandale 1955). From such rea-soning springs the conviction that the 'true' income is determined for tax purposes. At the same time, public financial reporting is contaminated by objectives that have nothing to do with the postulate of precision in de-termining business income and capital. In the writer's opinion, such an as-sertion seems unjustified, or, instead, if, on the one hand, it is true that the codified regulations of the 1950s and 1960s aimed to protect third par-ties by preventing overvaluations of the components of the company's capital, on the other hand, it is equally true that the tax provisions were far from permitting the calculation of a 'real' income produced by the compa-ny. In this regard, one need only think of the impossibility of deducting any provisions for future risks and charges. Therefore, the authors' position does not meet with our approval due to the apparent conflict between economic-business valuation principles and the tax provisions of the time.

After having clarified that the pure and straightforward application of tax rules in the civil financial reporting of the twenty years analysed here could hardly lead to a 'more truthful' income than that which would have been determined by following the articles of the civil code, it is necessary to understand whether the transposition of tax principles into the civil law document was constant practice or represented if it could be detected in some financial statements, a mere exception to the widespread absence of tax interferences in the profit and loss accounts and balance sheets of the time.

The Italian Case: with the New Reform, Will Interferences Taxes in Financial Reporting be Definitely Eliminated?

In our opinion, what has been stated in the preceding pages proves une-quivocally that in the 1950s and 1960s. However, there was no discussion of tax interferences in financial statements and osmosis between tax rules and civil law provisions was systematically implemented. Many financial reporting valuations were nothing more than the values deductible for tax purposes. Therefore, in the twenty-year period under review, tax in-trances in financial statements were the rule and not the exception.
The tendency to import tax values into financial statements concerned not only depreciation but also all accounting items for which a limit was set on tax deductibility. As a further example, it can be said that what was esta-blished by the Consolidation Act represented the value recorded in finan-cial reporting, even, for instance, for inventories. The LIFO valuation was by far the most common accounting method, and what was stipulated by the tax provision identified the value of the stock in the balance sheet and the profit and loss. As proof of this, we can quote the phrase in almost all of the financial statements analysed, which we have already mentioned above: 'The valuation of inventory was carried out prudently and following civil and fiscal regulations'. The continuous reference to the pairing of 'civil and fiscal provisions' makes it clear that the tax value was transferred by osmosis into the civil financial reporting, a circumstance also admitted for the warehouse by the accountants interviewed, which we mentioned ear-lier.

From examining the financial statements drawn up in the 1950s and 1960s, this, rather than being an aspiration challenging to realise, appears to be a veritable chimaera, at least in the historical period analysed here. It is, the-refore, possible to affirm that at the end of the 1960s, many steps still had to be taken to achieve complete information transparency.

4) THE TAX INTERFERENCES IN YEARS '60 TO TODAY

In the period before 1 January 2004, Article 2426, Paragraph 2 of the Italian Civil Code (introduced by Article 2 bis, Paragraph 2 of Decree-Law No. 416 of 29 June 1994) they permitted the recognition in financial reporting of value adjustments and provisions arising from the exclusive application of tax laws.
This rule made so-called 'tax interference' in financial reporting legally permissible. The provision mentioned above was supplemented by the obligation to illustrate in the notes to the financial statements 'the reasons for the value adjustments and provisions made exclusively in the applica-tion of tax rules and the relative amounts, specifically highlighted concer-ning the total amount of the adjustments and provisions resulting from the appropriate items of profit and loss' (Art. 2427 No. 14 of the Civil Co-de).

The simultaneous application of Articles 2426 u.c. and 2427 no. 14 c.c. led to the preparation of a legitimate but 'anomalous' financial reporting, in that it was characterised by the observance of truthfulness at a global level but also by the simultaneous absence of this postulate within the indivi-dual accounting documents constituting the financial reporting itself (profit and loss and balance sheet).

The possibility of legitimately recording income components of a fiscal na-ture without 'economic' substance in the profit and loss/balance sheet (according to Art. 2426 of the Italian Civil Code), together with the obliga-tion to disclose the income components of a fiscal nature in the financial statements, is not only a matter of 'economic' substance but also of 'eco-nomic' substance.), accompanied by the obligation to illustrate in the no-tes to the financial statements the reasons for such value adjustments, prevented the principle of 'economic truthfulness' of the data contained in the profit and loss and balance sheet from being considered respected, but at the same time allowed compliance with the postulate of the tru-thfulness of the financial reporting for the year, of which the notes to the financial statements (according to Article 2423 of the Italian Civil Code) are a constituent part.

Legislative Decree No. 6 of 17/1/2003, regulating the so-called company law reform (which came into force on 1/1/2004), repealed Article 2426 of the Italian Civil Code and Article 2427, No. 14, and thus put an end to the civil law legitimacy of tax interference.
Following the entry into force of the reform, each value recognised in the profit and loss and the balance sheet had to be 'economically true' with the consequence that, unlike in the period before, the truthfulness postu-late had to be, or rather, had to be respected by both the financial repor-ting in its entirety and by the individual accounting documents constituting the financial reporting itself.

As of 1 January 2004, following the entry into force of Legislative Decree No. 344 of 12 December 2003, the tax deductibility of costs provided for by tax law that were not charged or only partially recognised in profit and loss was guaranteed by the completion of the EC section of Unico, which acted as a link between civil financial reporting and the tax return.
The system that provided for the recognition of 'economically true' values in the profit and loss/balance sheet with the simultaneous possibility of tax deduction of any tax surplus not recognised in financial reporting was dismantled with the entry into force of Law 244 of 24 December 2007. This legislation eliminated the possibility of deducting costs not recognised in profit

and loss (except those deductible by law) and, consequently, made the deduction of income components not identified in statutory financial reporting inadmissible.

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

1) every income and equity/financial component recognised in statutory financial reporting must (or, instead, should) be characterised by the po-stulates of truthfulness and fairness imposed by Art. 2423 of the Civil Co-de;

2) costs not recognised in profit and loss are not relevant for tax purposes (unless otherwise provided for by law). The deductibility of any tax surplus concerning the value recorded in financial reporting may therefore be claimed in a period after the financial year of accrual. In such a case, the taxable value exceeds the income determined according to ethical busi-ness principles.

The above illustrates a clear theoretical separation between financial re-porting and tax deductible amounts. The former must, or rather should, derive from an economic valuation of the accounting entry, whereas the latter's raison d'être lies in the limitation of the taxpayer's discretion.

Convergence between the two legislations is to be hoped for. Still, it seems technically unachievable due to the objective discrepancy between the aims of the two legislations.

The taxation of economically unrealised income resulting only from 'tax ac-counting tricks' has always been stigmatised by theorists and practitioners. However, the complete overlap between taxable income and 'economi-cally correct and true' income can never be achieved due to the fear that the taxpayer can use any potential discretionary power of the tax rule for avoidance and evasion purposes. The imposition of rigid limits on the tax deductibility of costs, albeit in the context of a process of tendential ap-proximation between tax and civil law, will prevent the realisation of a concrete correspondence between the taxable base and the wealth de-termined through the application of civil law and accounting principles.

Even though the relationship between tax provisions and civil law provi-sions has been characterised by an evolution implemented with different operational methods, it must be emphasised that each regulatory passage has always been characterised by a prerequisite that has never been wai-ved, which can be summarised as follows: each accounting element, at least in theory, has always had to and must still be subject to a dual as-sessment, i.e. economic/company/civil law and tax law.

As noted above, the interrelationship between these values has been the subject of various regulations, which have periodically undergone pro-found changes.

Despite the evolution that has taken place in this matter, it must, howe-ver, be emphasised that the law and the majority of doctrine have never questioned the need to compare the economic value with the tax value, reaffirming the prohibition of automatically considering tax values as civil-law correct amounts.

This assertion, therefore, obliges a double quantification of each valua-tion/assessment: the 'true and correct' value to be entered in the balance sheet must be set against the tax-deductible amount relevant in the tax return.

This double calculation has a considerable impact on business costs. The quantification of the tax amounts and 'economic' values of each 'subjecti-ve' countable element (estimates and conjectures) and the consequent management of tax write-backs involves considerable administrative work, which has a significant impact on business costs. The coordination and management of this duplicity of values (tax and economic), therefore, directly affects the economic viability of companies.

The hypothetical correspondence between tax values and economically correct amounts would lead to an obvious simplification of administrative work with a consequent reduction in business costs.

This consideration does not, however, legitimise the hypothetical uncritical 'importation' of tax values into civil financial reporting, as this would inevi-tably lead to the preparation of false and incorrect financial reporting.

Even though most companies are aware of this, in many business realities of our country, financial statements can be identified that are characteri-sed by a tax-veracity, i.e. a 'truthfulness' influenced by tax valuations. The application in civil law of the valuation criteria determined by the tax legi-slator appears to be a widespread operating practice.

This accounting behaviour causes so-called 'tax interferences in financial year reporting', which implies a negative judgement on the osmosis between civil law and tax provisions. On a semantic level, 'interference' is associated with undue interference by a party in a field not within its com-petence.

In the case analysed here, the undue interference is implemented by the tri-tax legislation, which 'improperly' and 'inappropriately' influences the drafting of a document - the financial reporting for the financial year - whose objective is not to identify the taxable income, but to highlight the economic, financial and asset situation of the companies in a correct, tru-thful and transparent manner.

In this regard, however, one cannot overlook the injustice of a regulatory system that requires the payment of a tax calculated in part on income wi-thout economic substance. However, this unfairness does not justify, at least from a legal perspective, the application of tax principles in the civil law field and therefore does not legitimise tax interference in financial re-porting.

The practice, which is indeed widespread, of drawing up financial state-ments characterised by the presence of tax interferences resulting from the application of tax valuation rules in the civil law field must therefore be considered illegitimate.
To provide a complete view of reality, it should be noted that the applica-tion of tax valuation criteria in the civil law context occurs, in most cases, in the full knowledge that incorrect accounting behaviour is being implemen-ted. There are cases in which the party responsible for quantifying year-end valuations implements so-called tax interferences in the belief that it is adopting a legally correct principle. In such a circumstance, which is especially prevalent in small businesses, the implementation of a policy of tax interferences in year-end financial reporting occurs, albeit voluntarily, in terms that could be described as 'unconscious', i.e. in the mistaken be-lief that this corresponds to the dictate of the law governing public finan-cial reporting.

In 2008, the statutory financial reporting and tax regulations were com-prehensively reformed.The 2008 Finance Act, Law No. 244 of 24 December 2007, entitled "Provisions for the preparation of the annual and multi-year financial reporting of the State", published in the Official Gazette No. 300 of 28 December 2007, has been in force since 1 January 2008, reformed, once again, the financial reporting tax provisions, entirely and subver-ting what had been established by the previous double reform of 2003.

As noted above, the 2008 reform involved several issues that we will not consider here.
In the following pages, we will focus our attention only on the provi-sions that, directly or indirectly, caused a radical modification of the issue of tax interferences s by changing, in a tangible way, rules con-cerning the finan-cial reporting - tax return relationship. To understand the scope of the 2008 reform, it is necessary to care-fully analyse two articles of the TUIR, which, following the Finance mentioned above Act, were amended with the consequence of re-creating the situa-tion regarding the interconnection between financial reporting and Unico before the 1990s.
The two articles to which it should draw our attention are Articles 83 and 109 of the Consolidated Income Tax Law, reproduced below for the rea-der's convenience. :

"Article 83 - Determination of comprehensive income shall determine total income by adding to the profit or loss shown in the profit and loss state-ment for the fiscal year ending in the taxable period, the in-creases or de-creases resulting from the application of the criteria.

Outlined in the following provisions of this section. In the case of ac-tivities benefiting from partial or full income tax relief, the related tax losses shall be considered to the same extent as positive results. For entities that pre-pare their financial reports following the international accounting stan-dards set out in Regulation (EC) No. 1606/2002 of the European Parliament and of the Council of 19 July 2002, inclu-ding in the formulation resulting from the procedure set out in Article 4, paragraph 7-ter, of Legislative De-cree No. 38 of 28 February 2005, and for entities, other than those that prepare their financial reports by the international accounting standards set out in Regulation (EC) No. 1606/2002 of the European Parliament and of the Council of 19 July 2002, including in the formulation resulting from the procedure set out in Article 4, paragraph 7-ter, of Legislative Decree No. 38 of 28 February 2005. (121) (133) ((182))
1-bis. For paragraph 1, the provisions issued in implementation of Article 1 (60) of Law No. 244 of 24 December 2007 and Article 4 (7-quater) of Legi-slative Decree No. 38 of 28 February 2005 shall apply, mutatis mutandis, to entities, other than micro-enterprises referred to in Article 2435-ter of the Civil Code, which draw up their financial reports following the provisions of the Civil Code. ((182))
------------- UPDATE (121) Legislative Decree No. 38 of 28 February 2005 has provided (by Article 13, Paragraph 1) that "The provisions of Articles 83 and 109, Paragraph 4, of the Consolidated Law on In-come Taxes, approved by Presidential Decree No. 917 of 22 Decem-ber 1986, as amended by Article 11 of this Decree, shall also apply to components charged directly to equity in the first year of application of international accounting standards".
------------- UPDATE (133) Article 1, paragraph 34 of Law 244 of 24 Decem-ber 2007 provides that these amendments shall apply from the tax period beginning on 31 December 2007.
------------- UPDATE (182) Decree-Law No. 244 of 30 December 2016, con-verted with amendments by Law No. 19 of 27 February 2017, provided (by Article 13-bis, paragraph 5) that "The provisions of the preceding para-graphs shall be effective concerning income and balance sheet items reco-gnised in financial reporting starting from the financial year following the one in progress at 31 December 2015. The income statement and balance sheet affect the financial reporting of the year mentioned above and of subsequent years of transactions that are differently qualified, classified, valued and temporarily char-ged for tax purposes concerning the qualifica-tions, classifications, va-luations and temporal charges resulting from the financial reporting of the year in progress as of 31 December 2015 continue to be subject to the previous tax regulations". It also provided (by Article 13-bis, paragraph 8) that "The provisions of paragraphs 5 to 7 shall also ap-ply in the event of changes in accounting standards according to para-graph 3 of Article 12 of Legislative Decree No. 139 of 18 August 2015, and in the event of changes in financial reporting requirements resulting from changes in the size of the company".

"Article 109 - General rules on components of business income

1. Revenues, expenses and other positive and negative components, for which the preceding rules of this Section do not provide other-wise, shall contribute towards forming income in the year in which they accrue; however, revenues, expenses and other components whose existence is not yet particular or their amount cannot be objec-tively determined in the year in which they accrue shall contribute towards forming income in the year in which those conditions are fulfilled.

2. to determine the chargeable period

(a) the consideration for the supply of goods shall be deemed to be recei-ved. The cost of acquiring goods shall be considered to be paid at the date of delivery or dispatch in the case of movable property and the date of the conclusion of the deed in the case of immovable property and businesses or, if different and later, at the date on which the transferor constitutive effect of the ownership or other right in rem occurs. Retention of title clauses shall not be taken into account. A lease with a transfer of owner-ship clause binding on both parties shall be treated as a conditional sale;

(b) the consideration for the rendering of services shall be deemed to ha-ve been received, and the costs of acquiring services shall be dee-med to have been incurred on the date when the services are comple-ted or, in the case of services dependent on a lease, loan, insurance or other con-tract from which periodic payments are derived, on the date on which the payments become due;

(c) in the case of companies and bodies which have issued bonds or similar securities, the difference between the sums due on maturity and the sums received in respect of the issue shall be deductible in each tax period to an extent determined following the amortisation schedule of the loan.

3. Revenues, other income of any kind and inventories contribute towards forming the income even if they are not charged to the profit and loss ac-count.

3-bis. Capital losses realised by Article 101 on shares, units and fi-nancial instruments similar to shares that do not meet the require-ments of Arti-cle 87 are not taken into account up to the amount of the non-taxable amount of dividends, or interim dividends received in the thirty-six mon-ths preceding the realisation. This provision also applies to negative diffe-rences between the revenues of the assets re-ferred to in Article 85 (1) (c) and (d) and their costs. (122)

3-ter. The provisions of paragraph 3-bis shall apply with reference to shares, units and financial instruments similar to shares acquired in the thirty-six months prior to realisation, provided that they satisfy the requi-rements for exemption under letters c) and d) of paragraph 1 of Article 87. (122)

3-quater. The application of Article 37-bis of Presidential Decree No. 600 of 29 September 1973 shall remain unaffected, also concerning negative differentials of a financial nature arising from transactions initiated in the tax period or in the preceding one on shares, units and financial instru-ments similar to shares referred to in paragraph 3-bis. (122) 3-quinquies. Paragraphs 3-bis, 3-ter and 3-quater shall not apply to persons drawing up their financial reports under the international accounting standards refer-red to in Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002. 3-sexies. To disapply the provisions referred to in paragraphs 3-bis and 3-ter, the taxpayer shall apply to the authorities pursuant to Article 11 (2) of Law No 212 of 27 July 2000 on the taxpayer's rights.

4. Expenses and other negative components shall not be deducted if and to the extent that they are not charged to the profit and loss sta-tement for the year in question. The following shall be considered as charged to the profit and loss statement: components charged di-rectly to equity due to the accounting principles adopted by the un-dertaking. However, the following are deductible: ((182)) a) those charged to the profit and loss statement of a prior period, if the de-duction has been deferred following the preceding rules of this Sec-tion that provide or permit deferral; b) those that, although not char-geable to the profit and loss statement, is deductible by law PERIOD DELETED BY LAW NO 244 OF 24 DECEMBER 2007.

Expenses and charges specifically relating to revenues and other in-come which, although not included in the profit and loss statement, contribute towards forming income, may be deducted if and to the extent that they result from certain and precise elements. (121) (123) (126) (133)

5. Expenses and other negative components other than interest ex-pense, except for charges relating to taxes, social security contribu-tions and charitable contributions, shall be deductible to the extent that they relate to activities or assets from which income or other re-venues are de-rived and which are included in income or are excluded from income. Sup-pose they refer indiscriminately to activities or as-sets generating compu-table income and to activities or assets genera-ting income that cannot be included in the calculation of income be-cause they are exempt. In that ca-se, they are deductible for the part corresponding to the ratio between the amount of the revenues and other income that contribute towards forming the business income or that do not contribute towards it because they are excluded and the total amount of all revenues and income. The capital gains referred to in Article 87 shall not be taken into account for the preceding period. Without prejudice to the provisions of the preceding

periods, expen-ses relating to hotel services and the serving of food and beverages, other than those referred to in Article 95 (3), shall be deducti-ble to the extent of 75%. (133) (136)

6. PARAGRAPH REPEALED BY LAW NO 244 OF 24 DECEM-BER 2007. (133)

7. By way of derogation from paragraph 1, it shall include interest on late payments in income in the year it is received or paid.

8. By way of derogation from paragraph 5, the cost sustained for ac-quiring the right of usufruct or another similar right relating to a sharehol-ding from which profits excluded under Article 89 are deri-ved shall not be deductible.

9. Any kind of remuneration due is not deductible:

a) on securities, financial instruments however denominated, as refer-red to in Article 44, for the part of it that directly or indirectly invol-ves partici-pation in the economic results of the issuing company or of other compa-nies belonging to the same group or of the business in connection with which the financial instruments have been issued;

b) in respect of joint ventures contracts and those referred to in Arti-cle 2554 of the Civil Code where provision is made for a contribution other than works and services.

------------- ------------------- UPDATE (121) Legislative Decree No 38 of Fe-bruary 28 2005 has provided (by Article 13 (1)) that "The provi-sions of Arti-cles 83 and 109 (4) of the Consolidated Income Tax Law, approved by Pre-sidential Decree No 917 of December 22 1986, as amended by Article 11 of this Decree, shall also apply to the com-ponents charged directly to equity in the first year of application of international accounting standards". --------------- UPDATE (123) Le-gislative Decree No 247 of November 18 2005 pro-vided (by Article 6(13)) that "The provisions of Articles 86(5-bis), 87(3), first sentence, (6) and (7), 88(4), 89(2) and (3), first sentence, 95, 98, 101 and 109(4)(b), fourth sentence, of the Consolidated Act, as amended by this Article, shall apply to tax periods beginning on or after January 1 2004. The provisions of Articles 87(1-bis), 93(7), 109(4)(b), third sen-tence, 111 and 114 of the Consolidated Law, as amended by this Ar-ticle, shall have effect for tax periods beginning on or after January 1 2005. The provisions of Arti-cles 87 (3), last sentence, and 89 (3), last sentence, as amended by this Ar-ticle, shall have effect for tax periods starting from January 1 2006".

--------------- UPDATE (122) Decree-Law no. 203 of September 30 2005, converted with amendments by Law no. 248 of December 2 2005, provi-ded (by Article 5-quinquies, Paragraph 2) that "The provi-sions of Para-graph 1 shall apply to capital losses and negative diffe-rences realised as from January 1 2006". -

------------- UPDATE (126) The Decree-Law no. 223 of July 4, 2006, conver-ted into law with amendments by the Law no. 248 of August 4, 2006, pro-vided (by Article 37, Paragraph 48) that "The provisions of Paragraph 47 shall apply to expenses relating to studies and deve-lopment research in-curred starting from the tax period following the date of entry into force of the present Decree".

--------------- UPDATE (133) Law No. 244 of December 24, 2007 has provi-ded (by Article 1, Paragraph 34) that "The provisions of Para-graph 33, let-ters a), b), c), d), e), g), number 2), l), m), o), p), q), nu-meri 2) and 3), u) and aa), shall apply as from the tax period follo-wing the one in the course on December 31, 2007. [...] The provision referred to in paragraph 33 (q) (1) shall apply from the tax period fol-lowing that in the course on Decem-ber 31 2007, without prejudice to the transitional application of the provi-sions of Article 109 (4) (b), third, fourth and fifth sentence, of the afore-said Consolidated Act referred to in Presidential Decree no. 917 of 1986, in the version pro-vided for by article 109 (4) (b) of the aforesaid Consolida-ted Act. 917 of 1986, in the text preceding the amendments made by the pre-sent law, for the recovery of the surpluses resulting at the end of the tax period under way on December 31 2007".

--------------- UPDATE (136) The D.L. June 25, 2008, n. 112 conver-ted with amendments by the L. August 6, 2008, n. 133 has said (with art. 83, para-graph 28-quinquies) that "The provisions of paragraph 28-quater come in-to force starting from the tax period following the one in progress on De-cember 31, 2008.

------------- UPDATE (182) Decree-Law No. 244 of 30 December 2016, con-verted with amendments by Law No. 19 of 27 February 2017, provided: - (through Article 13-bis, paragraph 5) that "The pro-visions outlined in the preceding paragraphs shall be effective con-cerning income and equity components recognised in financial repor-ting starting from the financial year following the one in progress at 31 December 2015. The income and balance sheet effects on the fi-nancial reporting of the aforesaid year and of subsequent years of transactions that are differently qualified, classi-fied, valued and tem-porally charged for tax purposes with respect to the qualifications, classifications, valuations and temporal charges resulting from the fi-nancial reporting of the year in progress as of 31 December 2015 shall continue to be subject to the previous tax regulations"; - (by Ar-ticle 13-bis, paragraph 7, letter b) of the Consolidated Law on Finance). 38 of 28 February 2005, updated pursuant to paragraph 3 of Article 12 of Legi-slative Decree No. 139 of 18 August 2015: a) the provi-sions of Article 109, paragraph 4, of the Consolidated Act referred to in Presidential Decree No. 917 of 22 December 1986 shall also apply to the components charged di-rectly to equity"; - (by Art. 13-bis, pa-ragraph **8)** that "The provisions of pa-ragraphs 5 to 7 shall also apply in the event of changes that occur in the ac-counting standards

pursuant to paragraph 3 of Article 12 of Legislative De-cree No. 139 of 18 Au-gust 2015, and in the event of changes in the financial reporting disclosure requirements resulting from changes in the size of the company". "

Given the relevance of a provision and some deletions verified with the entry into force of Law 24 December 2007, no. 244, we have hi-ghlighted, in a relevant way, the points of our interest.

First of all, the 2008 reform reiterated the prior recognition of components in the profit and loss statement for their tax deduction. It is clear from reading Article 83 that, since 2008, negative income components are only deductible for tax purposes if they are recognised in the profit and loss statement for the financial year, with certain ex-ceptions highlighted di-rectly by Article 83.

However, the central element of the reform is the deletions, hi-ghlighted in point No. 4 of Article 109, which were made following the entry into for-ce of Law No. 244/2007.

The deleted points stipulated that:

"point no. 4

b)[...]. Depreciation and amortization of tangible and intangible as-sets, other value adjustments and provisions are deductible if the to-tal amount, the civil and fiscal values of the assets and those of the provisions are indicated in a separate statement in the income tax re-turn. In the event of distribution, equity reserves and retained ear-nings, even if ear-ned after the tax period to which the deduction rela-tes, contribute to-wards forming income if and to the extent that the amount of the remai-ning equity reserves, other than the legal reserve, and retained earnings are less than the exception of Depreciation and amortization, value ad-justments and additions deducted concerning those charged to the profit and loss statement, net of the deferred tax provision related to the de-ducted amounts. The amount of excess is reduced by Depreciation, gains or losses, value adjustments relating to the same assets and provisions, and equity reserves and distributed profit for the year, contributing to in-come formation."

The report accompanying the draft of Law 244/2007 highlighted:

"On the other hand, it should be noted first of all that in many cases, and even when they deviate, the operational measures take their cue from the work of the Study Commission on IRES reform chaired by Prof. Biasco.

In this general perspective of system evolution, the main change con-cerns the rationalisation of the discipline of non-accounting deduc-tions: that is to say, of the premises for depreciation and other costs that can make in the income tax return over and above the amount charged to the profit and loss statement. This phenomenon has now reached a level that is no longer in keeping with the function that non-accounting deductions were intended to fulfil. Suffice it to say that the amount of off-balance sheet deductions in the 2004 and 2005 tax returns reached more than 10 billion lire (and rising).

It should remember that this discipline was one of the most important in-novations introduced by the previous 2003 reform. The decision to allow the off-balance-sheet deduction of specific estimated compo-nents (amortisation, depreciation, write-downs and provisions) stem-med from the decision made in the context of the reform of company law to elimina-te the phenomenon of the so-called fiscal contamina-tion of financial re-porting, which is the result of the need to reduce the tax burden on finan-cial assets. The possibility caused this - pre-viously expressly provided for by the Italian Civil Code and other special laws - to include in the result ad-justments and provisions for risks and charges made for exclusively fiscal reasons, but without, in whole or in part, justification according to correct accounting princi-ples. In implementing the discipline of off-balance-sheet deductions of costs, Legislative Decree 344 of 2003 substantially followed the solutions indicated by the special study commission to coordinate the reform of company law with tax regulations. In particular, the com-mission made two basic choices and then implemented in the reform. The first choice was to keep the same tax opportunities previously available in the new system as well: therefore, no distinction was ma-de between subsidi-sed rules (such as, for example, those concerning accelerated deprecia-tion) and rules that provided for flat-rate criteria for determining the ma-ximum limits of deduction of negative com-ponents of an estimated natu-re (and of tax forfeits). The second choice was that of subordinating the tax suspension to a correspon-ding amount of equity: in short, while not requiring, as previously, the creation of specific reserves in the suspension of taxation, the ru-les require that the level of equity does not fall below the total amount of value adjustments and provisions deducted off the books, net of deferred taxes related to the anticipated deduction of such components. The application of these rules, as is well known, has re-vealed many problems of interpretation and a certain complexity of the mechanism. Above all, however, the scale of the deductions in question has highlighted the appropriateness of a reorganisation. It does not seem reasonable for the tax authorities to allow unlimited generalised deduc-tion of costs without economic justification. Hen-ceforth, it will pursue in-centive policies to reward virtuous business behaviour, preferably through tax credits and without interfering with income determination rules. In this context, and line to lower the level of taxation, a radical rethink of the matter has been carried out.

As a result of the amendments made to the Consolidated Income Tax Act by letter o) of paragraph 1 of Article 3 in question, starting from the tax pe-riod following the one in course on 31 December 2007, non-accounting deductions for depreciation, other

value adjustments and provisions will no longer be allowed, without prejudice to the deductibility of costs char-ged to the profit and loss statement, albeit always within the maximum limits allowed by the tax law." .

It should note that Law 244/2007 was based on a study carried out by the Biasco Commission whose report, although not adopted in all its points, formed the basis of the reform passed in 2008.

In the Biasco report, it made the following observations concerning non-accounting deductions:

"Non-accounting deductions and the restriction on reserves.

Regarding business income, one of the most important innovations intro-duced by the 2003 reform concerns the off-balance-sheet deduc-tion of specific negative components of an estimated nature of cer-tain negative elements of an estimative nature (depreciation, devalua-tions, provi-sions).

The innovation is consistent with the decision, made in the context of the reform of company law, to eliminate the phenomenon of the so-called "fi-scal contamination of financial reporting so" caused by the possibility, pre-viously granted by the Civil Code and special laws, to contribute to the re-sult for the year adjustments of values or provi-sions for risks and charges made for exclusively fiscal purposes but without, partially or totally, justifi-cation according to the correct ac-counting principles.

The choices made by Legislative Decree No. 344 of 2003, while maintaining the same tax opportunities previously used (without di-stinguishing between subsidies and rules concerning the possibility of adopting flat-rate criteria for the determination of maximum limits of deductibility of estimated components), have however made the de-ductibility of these negative items not recorded in the profit and loss statement subject to the attachment of a tax suspension restriction on a corresponding amount of shareholders' equity.

While not requiring, as previously, the creation of specific tax-suspension reserves, the regulations provide, more simply, that the le-vel of profit and loss reserves should not fall below the total amount of adjustments and additions deducted off-balance sheet, net of de-ferred taxes related to the anticipated deduction of such components.

Compared to the previous system, which limited the creation of re-serves only for the recognition of negative components induced by facilitating purposes, the interventions result in a uniformity of appli-cation, which, however, gives rise to many problems.

It has been observed that the extension of the fiscal constraint on the pro-fits in question and the consequent need to keep them with the company that made them constitutes an obstacle to the optimal real-location of re-sources, according to the needs of efficiency and com-petitiveness, espe-cially in the context of corporate groups and compe-titiveness, especially in the context of corporate groups.

From a management point of view, there is unanimous criticism of the complexity of the resulting mechanism, which requires complex monito-ring of misalignments between statutory and fiscal values of assets subject to off-balance sheet deduction. This is due both to the possible occurren-ce of differentiated misalignments, in the case of deductions relevant only for income tax, but not for IRAP, and to the operational difficulties related to the realignment of values (which the administrative instructions provi-ded so far provide that it should be implemented for all assets and funds for which there is a misalignment and in proportion to the existing misali-gnment), com-plexity exacerbated by the need to link with the adoption of interna-tional accounting standards.

Although the function of the safeguard clause mentioned above is ob-vious: it aims to keep the benefit of the off-balance-sheet deduc-tion in the company's economy, preventing it from being transferred to share-holders through the distribution of profits or reserves, the Commission considers that the widespread call for the repeal of the clause can be con-sidered. Indeed, the enabling act does not lay down strict conditions in this respect (Article 4(1)(i) of Law No 80 of 2003), so that

2003), so that a simplification of the system might be preferred, con-sidering that, ultimately, the benefit in question is still a deferment of ta-xation over time, which would be reabsorbed upon completion of the pro-cess of depreciation of the assets or their realisation; moreover, any di-scrimination that might arise between undertakings depending on the ac-counting system adopted would be eliminated (the restric-tion for simpli-fied accountants being inoperative).

The hearings have underlined the institute's low use both for the indi-cated application complexity and for the entity of the values at stake, the recovery of which could be considered sufficiently protected by the alloca-tion of deferred taxes that decrease the distributable profit. […]. "

From reading the Biasco report, it is clear that the outlines of the 2008 re-form had been outlined by the Study Commission chaired by Prof. Biasco. Consequently, it had already identified the changes in-troduced in the fi-nancial reporting and tax return in that report.

From the above, it is clear that, following the reform, it is no longer possi-ble to deduct negative income components through the Schedu-le EC me-chanism, i.e. by highlighting, in a special statement included in the Unico, the difference between the economic value recorded in financial repor-ting and the maximum limit deductible for tax purpo-ses.

This means that if the economically correct value, i.e. determined fol-lowing the provisions of the Italian Civil Code as supplemented by the OIC accounting principles, is lower than the maximum value de-ductible for tax purposes, then it must show the value of the asset in the income state-ment. Suppose the difference between the value of the asset and the value of the liability charged to the profit and loss statement is lower than the maximum limit deductible for tax purpo-ses. In that case, the repor-ting company loses the possibility of de-ducting the difference that, po-tentially, the tax authorities have con-sidered as hypothetically deductible if it had passed through the fi-nancial reporting system.

The 2003 reform was hailed as a step forward in the area of the pro-blem of tax interferences s as, in the presence of a willingness of the company to determine the two values that should always be compa-red (economi-cally correct value and tax-deductible amount), it was possible to draw up a true and correct financial reporting in all its components (profit and loss statement, balance sheet and notes) and, at the same time, there was no danger of losing opportunities for tax deductions useful to reduce taxable income. It is important to em-phasise that the tax legislator himself had envisaged these opportuni-ties to favour companies.

With the 2008 reform, this can no longer be implemented. According to the legislation passed in 2008 and currently in force (with the amendments that are made to the tax law from year to year), financial reporting must be prepared by recording only and exclusively the economically correct va-lues, while the tax return does not allow de-ductions higher than the amounts recorded in profit and loss state-ment.

It is evident that this situation places companies in a complicated de-cision-making situation:

(a) Either prepare true and fair financial reporting and forgo potential tax deductions and, as a result, pay more tax than if it had reported the maxi-mum amount deductible for tax purposes in its profit and loss statement;

(b) or prepare financial reporting that is contaminated by tax valua-tions and, as a result, unlawful, which allows total tax deductions for negative income components recognised in the profit and loss state-ment.

From a theoretical point of view, the scholar must affirm that the company must draw up a financial reporting true and correct in all its parts even if this leads to a loss of tax-deductibility of some negative income compo-nents.

From a pragmatic point of view, however, it is undoubtedly true that this situation inevitably leads to the drafting of financial reporting tainted by tax interferences s, since there are certainly few companies that give up tax deductions, paying more taxes, to draw up perfect financial reporting: understandable, true and correct as per Article 2423 of the Italian Civil Co-de.

Lupi states, in this regard, that "we are therefore back to square one, about thirty years ago, and this arouses a sense of unease in all those who have been trying to clarify the point for decades.

The books, the discussions, the conferences, the articles, the reflec-tions of some decennial seem to have been swept away abruptly. All the talks on the interferences of financial reports, the abolition of the fi-scal ap-pendix, and the different purposes of civil and fiscal laws as-sessments have been neglected as if they had been a tremendous wa-ste of time. This isn't very encouraging. Scholars should probably examine their con-sciences concerning the often unsystematic, overly self-referential, overly technical and flattened by "regulatory data" ways in which they have dealt with the subject over the years." .

However, the judgment of companies is almost permeated by a feeling of injustice. "If it is not blackmailing, it is something like this. For the theo-rists of financial reporting, it is worse than a Pyrrhic victory, but it is a real defeat since it has been established that financial reporting can only harm the company but never benefit it; on the contrary, financial reporting al-ways benefits the tax authorities but never harms them. When it conflicts with tax rules, financial reporting is a wastepaper, while when it serves to limit deductions, financial reporting is an additional fiscal safeguard." .

he elimination of tax benefits such as accelerated deprecia-tion/amortization and accelerated depreciation/amortization As a result of these deletions, the tax base increased, and companies had no inten-tion of increasing it further. As a result of these deletions, the tax base underwent an evident increase that the companies had no purpose of growing further, losing the possibility of tax deductions for preparing fi-nancial reportings with economically correct values. In essence, many companies prefer to draw up unrealistic financial re-portings with tax-related valuations to reduce the IRES tax base, knowing that this creates the basis for a challenge to the financial re-porting approval resolution. Fi-nancial reporting, if not true and cor-rect, is illegitimate, and, as a result, the resolution approving it can be challenged and, consequently, declared null and void.

Consequently, at the end of the topic concerning the 2008 reform, it must point out that Article 1 of Law 244/2007 has given the Financial Administra-tion a power previously unknown.

In particular, the Article as mentioned above 1 provides:

Art. 1, paragraph 34 of Law 244/2007

"[...] Amortisation, depreciation, provisions and other value adjust-ments charged to the profit and loss statement starting from the fi-nancial year from which, as a consequence of the amendment intro-duced by para-graph 33, letter q), number 1), the elimination of non-accounting deduc-tions takes effect, may be disallowed by the tax au-thorities if they are not consistent with

the accounting behaviour sy-stematically adopted in pre-vious financial years, without prejudice to the possibility for the company to demonstrate the economic justifi-cation of such components based on correct accounting principles [...].”

From what can be seen, Article 1 of Law 244/2007 has given the tax authorities powers to check the economic truthfulness of depreciation and Amortisation and provisions in financial reports. From the wor-ding of Arti-cle 1, it would seem possible to deduce that it could only apply these po-wers in the year when the method of preparing the tax return was chan-ged (2008).) .

The intention is clear: since until the year before the 2008 reform, non-economic differences could be deducted through the recognition of the amount only for tax purposes in the Schedule EC of Uni-co, the Tax Autho-rities wanted to avoid that after the change in the regu-lations, taxpayers, to take full advantage of the tax-deductibility of negative income compo-nents arising from subjective valuations, would record in the profit and loss statement the value of the pre-vious year supplemented by the part previously registered in the Schedule EC of Unico.

This rule, therefore, was used by the Italian Revenue Agency to avoid po-tential distortions of the repeal of off-balance-sheet deduc-tions through the recognition in the profit and loss statement of subjective valuations regarding depreciation, provisions and value ad-justments, without eco-nomic content and, therefore, about which the characteristics imposed by the Civil Code and accounting standards were absent.

It is believed that it should have only applied this rule in the year fol-lowing the entry into force of Law 244/2007.

It should note that it would be technically impossible for the Tax Au-thorities to enter into the merits of all the subjective valuations car-ried out in profit and loss statements since, to do so, it is necessary to possess specific technical accounting skills, which, in general, do not characterize the staff dealing exclusively with taxation and taxation. In this regard, Zizzo points out that the intervention in question is "very insidious, and above all of the difficult systematic collocation".

Concerning this power, both the Inland Revenue Agency and Asso-nime have intervened by making two clarifications.

In particular, the Revenue Agency, with Circular no. 12 of 19 Fe-bruary 2008, established the following principle:

Circular Italian Revenue Agency 19 February 2008 no. 12 § 7.1

"The rule provides for the possibility for the tax authorities to disal-low the recognition in the profit and loss statement of the aforemen-tioned nega-tive components if it is inconsistent with the accounting policies adopted in previous years, without prejudice to the possibili-ty for the company to demonstrate the economic justification of the recognition in the profit and loss statement.

In this regard, it is considered that the consistency of the accounting beha-viours adopted can be demonstrated by the taxpayer and veri-fied by the tax authorities using any element deemed helpful for the achievement of the purpose as mentioned above (e.g., the use of the taxpayer's financial statements).

The taxpayer and verified by the tax authorities using any element dee-med valid to achieve the purpose as mentioned earlier (for exam-ple, the indications provided in the notes to the accounts, the compa-rison with the financial reporting for previous years, etc.). However, it cannot under-stand the signals mentioned above in the explanatory notes as precluding the powers of control of the tax authorities.”

The Assonime Circular No. 22 issued on 31 March 2008 also em-phasises that, after the explanations provided by the taxpayer regar-ding the de-preciation and provisions subject to control, the tax autho-rities.

"(1) must initiate a discussion on the merits of such justifications;

2) moreover, according to Article 7 of Law No. 212/2000, it cannot fail to set out the factual reasons justifying its claims, specifying the reasons why the reasons put forward by the taxpayer should be con-sidered insufficient".

Therefore, in the writer's opinion, it limited the power to disallow fi-nancial reporting values according to Article 1 of Law 244/2007 to transition the financial reporting and tax calculation methods. It would be challenging to assume, even today, that the tax authorities can invalidate subjective evaluations of the financial reporting prepa-rer unless the technical prepa-ration of the staff of the Revenue Agen-cy is not in the future ample also in the field of financial reporting, subjective evaluations and, above all, ac-counting principles. Even in such a hypothesis, however, it should be no-ted that there would be an inappropriate invasion of the field by an autho-rity that has no di-rect powers on the preparation of financial reporting. Imagine, for example, the case of an appealed financial reporting. In the event of such a case, four parties would have to intervene, expressing an opi-nion on the truthfulness and correctness of the subjective accounting entries:

1) the plaintiff
2) the directors who drew up the financial reporting documents
3) the judge
4) the tax authorities.

There is no need to further detail to understand how such a situation would be illogical and undoubtedly inappropriate.

Therefore, it is believed that the above-mentioned rule conferring powers of disallowance of subjective values to the Tax Authorities was issued to avoid circumvention of the rules in the transitional pha-se from the pre-2007 provisions to the post-2008 rules.

In spite of the aforementioned regulations, companies have, in recent years, widely tainted their balance sheets with tax interferences by including tax items in the profit and loss and balance sheet that lack the requirement of truthfulness and economic correctness. This is proven by several researches on company balance sheets that I have carried out over a period of 20 years. The research will end in 2025, but the results obtained so far already show the presence of tax interferences in two-year budgets. The proof of this is that the civil values, in very high percentages (e.g. for depreciation: 95% of the companies), coincide perfectly with the tax-deductible percentages. This 'strange' coincidence is realised for many items such as, for example, depreciation, write-downs, valuation of receivables, leasing fees. etc.

All this is indirect evidence of the presence of tax interferences in financial statements on a massive scale.

If, in fact, it is normal that, in some years, there is a coincidence between tax values and accounting data in financial statements, the perfect coincidence of the two values in financial statements covering decades of companies' lives appears anomalous, to say the least.

As things stand at present, we can therefore state that tax interference is widespread among companies in Italy, despite the awareness of those who draw up financial statements, to include incorrect profit and loss and balance sheet values and thus to draw up financial reporting that is potentially in-valid and therefore illegitimate. And as such, potentially open to challenge by anyone who has a current interest in knowing the company's true profit and financial situation.

5) WILL THE DRAFT TAX REFORM PRESENTED ON 23 MARCH 2023 MARK THE END OF TAX INTERFERENCES IN ITALY?

On 23 March 2023, a bill was submitted by Giorgetti to the Government so that the Government could issue decrees to implement the contents of the reform contained in the document as mentioned above. The reform referred to in the bill, which we still have no implementing decree, is an extensive reform concerning the tax aspects of determining, assessing, and collecting taxes.

In particular, Article 9 addresses the issue of the relationship between tax and financial reporting provisions and highlights the desire for financial re-porting values to be, concerning certain items, considered tax deductible. As we see on the following pages, the bill refers to depreciation, contract work in progress and other unique items. There is, for example, no refe-rence to the valuation of receivables or other things that can potentially create tax interferences in financial reporting. As you will read in the bill, however, it is stated that other items, in addition to those in the state-ment itself, may be added to bring taxable income closer to that which is correct for statutory purposes.

The following is Article 9 of the bill and the explanatory memorandum to Article 9 of the bill, which makes it clear that the legislator intends to elimi-nate differences between tax and civil law values and, therefore, to elimi-nate any possibility of fiscal interference in financial reporting. This is at least an objective of the tax legislator, but we will return to this issue in the following pages.

Art. 9, Bill submitted by Giorgetti on 23 April 2023 (other dispositions):

"1. In exercising the delegation of power referred to in Article 1, the Go-vernment shall also observe the
following specific principles and guiding criteria:

.....

(c) simplify and rationalise the criteria for determining business income to reduce administrative burdens, without prejudice to the principles of in-herent nature, tax neutrality of business reorganisation transactions and prohibition of abuse of the law, by revising the definition of partially de-ductible costs and strengthening the process of bringing tax values closer to the statutory values, providing for the possibility of limiting the upward and downward changes to be made to the results of the profit and loss ac-count, such as, in particular, those concerning the
such as, in particular, those concerning depreciation, works, supplies and services with a duration of more than one year, exchange rate differences for payables, foreign currency receivables and interest on arrears. It is still possible, in some instances, to apply this approximation only to entities that submit their financial reporting to a statutory audit or own certificates issued by qualified professionals attesting to the correctness of their fi-nancial reporting.
certifying the correctness of the taxable amounts declared;

....."

In the report attached to the bill, it is pointed out that:

"Delegation to the Government for tax reform
Presented on 23 March 2023

HONOURABLE DEPUTIES! - With this bill, the Government requests the Chambers of Parliament to delegate legislation to revise the taxation sy-stem concerning the subjects and terms according to the guiding principles and criteria and with the procedure governed by the articles whose con-tents are illustrated in this report.

….Point c) empowers the Government to simplify and rationalise corporate income to reduce the administrative burdens on companies by strengthe-ning the approximation process between statutory and tax values and re-vising the rules on increases. It decreases the profit or loss for the year to determine the taxable income, adapts the current practices to the eco-nomic system changes, and aligns them with those in force in the central European countries.

Therefore, the aim is to implement the principle of enhanced derivation and to reduce the divergence between tax and civil law regulations, wi-thout prejudice to the principles of inherent nature and tax neutrality of corporate reorganisation operations and the prohibition of abuse of the law, to avoid the management of a demanding civil-tax dual track.

By way of example, time differences will be subject to revision, which re-sult from deviations from the accrual basis of accounting: (i) arising from valuation phenomena, such as for works, supplies and services with a du-ration of more than one year or for depreciation; (ii) because the time of payment is considered relevant, such as for exchange rate differences for foreign currency payables or receivables and interest on arrears.

The approximation of tax values to statutory values does not end with these cases, and the delegated legislature may determine others. In some cases, the alignment may be subject to the condition that the company submits its financial reporting to a statutory audit or owns special certifica-tes issued by qualified professionals attesting to the correctness of the re-ported amounts.

The regulation of partially deductible costs has also been revised. To facili-tate controls and reduce litigation, rules have been included in the Conso-lidated Act on Income Tax (TUIR) that determine ex-ante the deductibility percentage of certain costs relating to assets that, due to their specific na-ture, may also be frequently used for personal purposes by the entrepre-neur, the partners and their family members. In some cases, such as that of motor vehicles, the deductibility percentage is deficient, and it should be noted that the Constitutional Court has repeatedly stated that the legi-slature may, within the scope of its discretion, provide for lump-sum de-duction mechanisms for expenses, but these must not be manifestly un-reasonable.

Under the purposes set forth by the delegation criterion, the approxima-tion of the tax regulations to the civil law regulations should, as a general rule, only apply to entities that, according to Article 83 of the TUIR, apply the principle of enhanced derivation. Moreover, as stated in the letter in question, the revision of the specific tax treatment reserved for some instances could be limited, for reasons of more excellent protection of the Treasury, to taxpayers who, in addition to applying the enhanced derivation, have their financial reporting audi-ted, or acquire ad hoc documentation issued by qualified professionals certifying the correctness of the declared taxable income.

In this context, it will also be possible to revise the numerous provisions limiting the deductibility of costs relating to the employment of employees (the reference in paragraph (c) to the 'revision of the rules on partially de-ductible costs' should also be read in this sense) and which

constitute significant items that contribute to keeping labour costs high. In this regard, one thinks of the deductibility limits for companies in re-relation: to the expenses inherent in buildings granted for the use of em-ployees, to the board and lodging expenses for employee travel and, mo-re generally, to the

hotel and restaurant expenses of the employee, the costs for the use of the employee's car or the car assigned to the employee, or telephone costs.

Intending to alleviate the tax cost of labour, the provisions limiting the de-ductibility of employee costs, which generally correspond to taxed fringe benefits for the latter, are liable to be repealed or reconsidered in the light of the principle of aligning income with operating profit. Such interven-tions, again to safeguard the Treasury, should also be limited to taxpayers applying the principle of enhanced derivation and subjecting their financial reporting to statutory audit, as well as provided for only employees who do not hold the status of the partner of the employer company.

Among the guiding principles and criteria identified explicitly by this Article, point (d) includes the review and rationalisation of corporate tax incenti-ves, also in line with the provisions of Council Directive (EU) 2022/2523 of 14 December 2022, which aims at ensuring an overall minimum level of taxation for multi-national groups of companies and large-scale national groups, to coordinate and reorganise the mechanisms for determining and using tax benefits in the light of the revision of the corporate income tax system referred to in Article 6. The directive, as mentioned above, transposed the so-called Pillar Two discipli-ne. It introduced a global minimum tax intending to guarantee taxation of no less than 15 per cent of the income of the parent company - or, in some cases, the sub-holding companies - of groups that have achieved consoli-dated revenues in at least two of the four previous financial years, equal to at least EUR 750 million. This is the case if, and to the extent that, in the individual jurisdictions in which the other entities of the transnational group are located, this minimum level of imposition has not been reached.

The application of such discipline may result in the ineffectiveness, in who-le or in part, of the tax incentives currently provided for, with a possible loss of revenue for the State that fed them. Therefore, it is necessary to reconsider the stimuli in our tax system.

Point (e) includes, among the guiding principles and criteria for business incentives, the review of advantageous taxation - referring to the set of rules aimed at providing tax advantages for the conduct of economic acti-vities in particular geographical areas of the country or to specific sectors, to promote their development - in compliance with the European rules on State aid, favouring for this purpose the cases covered by EU Regulation no. 651/2014, which prohibits the use of tax incentives for the deve-lopment of companies. 651/2014 declaring specific categories of aid com-patible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union, which allow the granting of tax benefits to companies without the need to go through the authori-sation process of the European Commission."

From what can be read in the bill, it can be seen that the legislature's will is to reduce the difference between taxable and taxable income as much as possible and to eliminate, in a definitive manner, any fiscal interference in financial reporting. The will of the legislator is noteworthy, and the goal to stop, in substantial terms, any fiscal interference and to bring the taxable income as close as possible to the income produced by the company, true and correct from an economic point of view, are highly relevant elements that reflect a wish that has been expressed for decades by business and legal, economic doctrine. Only when the implementing decrees of the bill are issued, and only after the first financial statements have been drawn up, will we be able to see whether the legislator's objective has been achieved. The circumstance that the bill points out that the implementing decrees should allow for applying Article 9 to companies that have their financial reporting audited should ensure that the legislature's real goal has been achieved. We repeat, however, that we will have to wait at least a couple of years of financial reporting to see whether this objective will have been achieved in reality. If, for example, after the approval of the re-form and during the term of the implementing decrees of the bill as men-tioned above, items such as depreciation and amortisation and bad debts continue to be practically similar to those in the financial statements of the years before the reform and, 'coincidentally' coinciding with the tax-deductible values, it may be questioned whether the objective as mentio-ned above has been achieved. If, in fact, for example, the depreciation of most companies will continue to coincide with the percentages that are currently in force in the ministerial decree fixing tax-deductible deprecia-tion, and which, after the reform, will no longer have any value, one may harbour the suspicion that the objective of the reform has not been achieved.

If the preparers of financial statements, to limit their work and to avoid re-calculating all depreciation and all items subject to subjective valuation ac-cording to correct accounting principles, continue to apply the tax-deductible depreciation and amortisation amounts provided for before the reform by the ministerial decrees implementing the bill as mentioned above. Which even now should not be used when preparing financial sta-tements; it can indeed be said that the tax interferences have not been eliminated and that, despite the possibility of true and fair financial repor-ting, those who prepare financial reports voluntarily decide to invalidate it with tax values that, by the way, after the reform, will no longer have any reason to exist.
Only when the reform is implemented and only after two or three years of financial reporting will it be possible to assess the scope of the reform in this respect.

The entire doctrine hopes that the above will not happen and that the fi-nancial statements, freed from the problem of differences between tax values and economically correct values, can finally be drawn up without any tax indications having any weight. A great deal will also depend on the power that will be given to the state's authorities that perform the tax control task (revenue agency and Guardia di Finanza) regarding the inter-vention they will be able to make on the values in the balance sheet. In the decrees that will be issued to implement the reform, it will have to be explained in great detail how the assessing authorities will be able to change the values in the financial statements if they do not represent economically correct amounts and thus identify matters that have been included in financial reporting to reduce taxable income. All this can only be assessed when the reform is implemented through the decrees that will illustrate the powers of the assessing bodies in a detailed manner.

6) CONCLUSIONS

In conclusion, considering the evolution of tax interferences in Italy, it can state that the reform that is about to be implemented in this country could lead to the total abolition of tax interferences. This will only be achieved if the parties responsible for drawing up the financial reporting fully understand the importance of including economically correct and tru-thful values in the balance sheet in the profit and loss and only if the as-sessing bodies, such as the revenue agency and the financial police, have the power to intervene on the items in the financial statements. Without either of the above, the reform will fail to eliminate tax interference. Still, as has often been the case in the past, the fault will lie not with the legisla-tor but with the preparers of financial reports, which, to avoid additional work, will tend to include values in the profit and loss and balance sheet that, at the time of financial reporting, will belong to the past and will no longer have any tax value, but may continue to be used for the conve-nience of the

preparers of financial statements. If this were to happen, it is clear that the objective of the reform to eliminate any tax interference in financial reporting could not be achieved. The income shown in the sta-tutory profit and loss and balance sheet would, in fact, not be true and correct income, but rather an income tainted by tax elements that, at the time the reform came into force, would belong, among other things, to the past.

Only after the reform's entry into force and only after two or three years of re-drafting of the financial statements will it be possible to assess the impact of the reform envisaged by the bill presented by Giorgetti on 23 April 2023 on the issue of tax interference.

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