Maria Silvia Avi

# TRUTHFULNESS OR TRIB-TRUTHFULNESS OF FINANCIAL STATEMENTS?

## A Historical Analysis

I. Financial reporting
and tax regulations
from 1861 to 1960 in Italy

FrancoAngeli

ECONOMIA - *Ricerche*

 ISBN 9788835176725

Maria Silvia Avi

# TRUTHFULNESS OR TRIB-TRUTHFULNESS OF FINANCIAL STATEMENTS?

## A Historical Analysis

I. Financial reporting
and tax regulations
from 1861 to 1960 in Italy

FrancoAngeli

Isbn e-book Open Access: 9788835176725

# Table of contents

# 1.

# Financial Reporting and Tax Law: Introductory Remarks

## 1. Tax and Financial Reporting Legislation: Introductory Remarks

Financial reporting is a complex document with twofold purpose: to be a business management tool and to represent the communication element par excellence towards the company's external community. Financial reporting, interpreted as a business management tool, is not subject to any regulations, and the company can draw up this document according to the criteria it deems most correct. This is true from both a formal and a substantive point of view. However, from a substantive point of view, if financial reporting is true and correct, it is not clear how internal financial reporting could be different from financial reporting that must file with the Chamber of Commerce to become a public document. The form, on the other hand, i.e. the classification structure of the financial statements, if such a document is internal, is free. Each company may opt for the reclassification it deems most consistent with its overall situation and organisation. This text will focus only on public financial reporting, i.e. the document intended for third parties external to the company. This document has undergone considerable changes over time concerning the items' substance and the form of the financial statement structure. In the first and second volumes of this trilogy of textbooks, we will analyse the historical legislative evolution of financial reporting. This analysis will, however, be complemented by the simultaneous in-depth examination of tax legislation concerning corporate income taxation and its connection to financial reporting results. Here, too, attention will be focused not so much on the individual tax regulations that have followed one another over time but on the interrelationships that can be identified between these regulations and the content of financial reporting regulated first by the commercial code and then by the civil code. As we shall subsequently highlight, there are companies subject to IAS/IFRS, which we shall discuss in the following pages. The analysis in these texts will, however, focus mainly on the financial statements governed by the civil code and the tax legislation relating to companies that must prepare their financial reports following the civil code.

The main objective of the trilogy of texts is to identify what kind of relationship has existed and still exists between civil law and tax law. In addition, the pragmatic behaviour of the financial reporter will be analysed, since, as will be shown in the third volume, the attitude of the financial reporter does not always follow the normative dictate of civil law and tax law.

The theoretical analysis of the interrelationships between civil and tax law financial reporting will therefore be completed by an in-depth examination of the operational behaviour of those who draw up the balance sheet, the profit and loss, the notes to the accounts and the cash flow statement.

In the third volume, in which the results of 25 years of research into the relationship between financial reporting and tax law will be presented, it will note that the pragmatic behaviour of financial reporting practitioners often does not reflect the dictates of statutory and tax law.

In the first two volumes of this trilogy, however, the historical evolution of the relationship between financial reporting and tax law will be analysed up to the present day, where, if one had the will, one could comply with the tax law and apply the civil law, even if this might mean losing a tax benefit that very few wish to lose.

The following pages will analyse these issues from a theoretical and operational point of view. The analysis will begin by considering the financial reporting t relationship period at the end of the 1800s. The second volume, it will end with the current regulations regarding this relationship.

# 2.

# Financial Reporting as a Communication Tool to the Outside and/or Inside of the Company

## 1. Brief Overview of the Role of Financial Reporting in Internal and External Communication/Information

Financial reporting is often defined as «the economic-financial information/communication tool par excellence» because, historically, this document (unlike those of an "extraordinary" nature, such as liquidation, transfer, merger, transformation, etc.) has played a privileged role in the disclosure of elements/news/data of an income/financial/asset statement nature to a wide range of users.

Before embarking on a more in-depth examination of the specific subject matter of this paper (the impact of tax regulations on financial reporting), we deem it appropriate to make a few preliminary remarks on the issue of communication and information. Despite the apparent "distance" between the disciplines involved (business economics/reasoning on the one hand and linguistics/communication science/semiotics on the other), the analysis of some fundamental elements in the field of communication enables a more complete and adequate understanding of the problem of the disclosure of information on the economic and financial situation of companies using financial reporting or other accounting instruments. As will be seen in the following pages, several considerations regarding the latter subject of study also assume particular relevance in the field of our interest.

According to part of the doctrine,

> corporate communication [involves] particular classes of communication processes; these are those processes that are intentionally activated to change the attitudes of sets of people towards the company. Communication in the strict sense acts on attitudes; it is thus distinguished from information that directly feeds the company's decision-making and operational processes; sending an invoice to a customer is in-formation and only in a broad sense is communication; it is

> not communication in the strict sense because it is not intended to change the customer's attitudes. In this context, «the term communication [is used] broadly to encompass all the processes through which one thought [or other forms of communication, *ed.*] can influence another».

For other scholars, the real differentiation between communication activity and mere information is to be found in the role of the interlocutors and, above all, in the willingness to participate in the two-way exchange.

In contrast to those who interpret communication as an act aimed at influencing or at least impacting the behaviour of others (or, at least, establishing a two-way exchange), there are instead scholars who consider information and communication synonymous. For this doctrinal current, communication «creates a flow of information that improves the process of forming opinions and [...] decisions». From this perspective, communication identifies any

> transfer of coded information, i.e. of signs that express or represent a given physical or mental object on a stable basis according to certain rules, from one subject to another through bilateral emission and transmission processes, reception and interpretation.

In the writer's opinion, communication in the narrow sense aims to influence the behaviour of others or to provide the informative basis for implementing a decision-making process, the objective of which is to maximise the efficiency and effectiveness of the choices to be made. In "technical" semiological-linguistic terms, it is possible/probable that the con-concept of "information" assumes a neutral meaning or is used to indicate an element of knowledge provided to third parties in the absence of the sender's intention to influence the behaviour of others. However, it is necessary to "adapt" the meaning attributed to a term to the subject matter to be investigated without accepting the idea that gross errors are permissible. In other words, if, for example, a linguistics text stated that operating income always corresponds to a sum of money, the use of an erroneous phrase would be stigmatised. Still, if in that exact text the author, without making technical-theoretical errors, placed the term "income" in a correct, albeit general, context, he would be adopting a behaviour that, in the writer's opinion, would be acceptable from every point of view. In the same spirit, in this paper, we will address the issue of communication/information implemented through the budget. Without a shadow of a doubt, the dissemination of economic/financial information (as we shall see, intended for both inside and outside companies) impacts the recipients' behaviour. Therefore, it would perhaps be more correct to use the term "communication"; but, aware that the text does not aim to explore the specific issue of communication, but rather intends to delve into the methods of disclosure of income/financial data, the writer considers it more than acceptable to use the two terms (communication and information) in an "interchangeable" manner, possibly pointing out how, in substance, a distinction can be made between communication in the broad sense and communication in the narrow sense. However, to avoid focusing on a detail that is substantially irrelevant in the context of the overall work, we will consider the two terms as mentioned above as alternatives, albeit in full awareness of their semantic complexity[1].

From an etymological point of view, the term communication derives from the Latin word communis, which means to put in common. Even the dissemination of mere information, understood in the strict sense of the term, sets in motion a process in which a piece of news is "pooled" with others. As already made clear in the previous pages, in this paper, we will

1. For further details on financial reporting as an information tool: Branciari, *La comunicazione economico-finanziaria degli intermediari finanziari*; Giacosa, *La comunicazione economico-finanziaria d'impresa. Finalità, strumenti e comportamenti attuali e teorici in un modello "ideale" di comunicazione*; Superti Furga, *Reddito e capitale nel financial reporting di esercizio*; Superti Furga, *Il financial reporting di esercizio italiano secondo la normativa europea*; Andreaus, Costa, *Appunti di contabilità aziendale e financial reporting*; Vasapolli, Vasapolli, *Dal financial reporting d'esercizio al reddito d'impresa*; Santesso, Sostero, *Principi contabili per il financial reporting*; Catturi, *La redazione del financial reporting di esercizio*; Quagli, *Financial reporting di esercizio e principi contabili*; Colombo, *Dalla understandability e precisione alla rappresentazione veritiera e corretta*, in Palma (a cura di), *Il financial reporting di esercizio*; Colombo, *I bilanci delle S.p.A.*; Colombo, *Il financial reporting d'esercizio: strutture e valutazioni*; Colombo, Relazione di sintesi, da *Il progetto italiano di attuazione della IV Direttiva CEE*; Colombo, Portale, *Trattato delle società per azioni*; Corbella, *L'attendibilità del financial reporting di esercizio: posizioni consolidate e nuove prospettive interpretative*; Aa.Vv., *Basic financial accounting: rilevazioni per il financial reporting d'esercizio e il financial reporting consolidato*; Balducci, *Financial reporting d'esercizio: principi contabili nazionali e internazionali IAS/IFRS*; Paolone, *Il financial reporting di esercizio. Funzione informativa, principi, criteri di valutazione*; Paoloni, *Financial reporting delle piccole imprese nella prospettiva internazionale: il progetto IASB – International accounting standards for SMEs*; Milone, *Financial reporting di esercizio: normativa civilistica, principi contabili nazionali e internazionali*; Savioli, *Verità e falsità nel financial reporting di esercizio*; Balducci, *Il nuovo financial reporting d'esercizio*; Pontani, *Financial reporting di esercizio delle società di capitali. Accounting philosophy e conceptual framework: la clausola generale (art. 2423 c.c.) ed i principi di redazione (art. 2423-bis c.c.)*; Aa.Vv., *Financial reporting secondo i principi contabili internazionali IAS/IFRS*; Cerbioni, Cinquini, Sostero, *Contabilità e financial reporting*. For a more exhaustive list on the subject, the reader is referred to the references at the end of the text.

use the two terms (information and communication) in this «broadened perspective»[2] without dwelling on specialised elements not within our competence.

To conclude this brief introduction, however, we feel it appropriate to express our disagreement with those who argue that it should only address so-called "communication in the narrow sense" to sets of people and not to individual subjects[3]. Sometimes, specific data, primarily intended for use within the company, can be addressed to pre-established persons with the overt or covert objective of inducing particular subjective behaviour.

In light of these preliminary observations, we can confirm that, according to logic, albeit partially simplifying the semantic reality of the terms used, financial reporting represents a critical communication/information tool.

However, the fact that we do not wish to write a treatise on communication, but rather a text on tax interferences in the context of civil financial reporting, does not exempt us from the obligation to examine in depth certain specific considerations which, although falling within the semiotics/science of communication/linguistics, we deem to be useful or, better yet, indispensable for understanding the specific object of interest of this work.

As already set out in the preceding pages and will be discussed in more detail in the following pages, the eco-nomic-financial communication implemented through financial reporting can have two types of interlocutors: internal or external to the company. In the remainder of this paper, it will be pointed out that, externally, financial reporting is undoubtedly the information tool par excellence, whereas, within the company, this set of documents identifies only a minimal part of the data/news/knowledge/information elements intended for managers. The analysis of the main characteristics of the communication will therefore allow us to understand whether and to what extent the fact that it is intended for inside or outside the company has an impact on the disclosure process of the information we are analysing.

The starting point for any consideration of communication is masterfully expressed by Watzlawich, Beavin and Jackson when they state that

2. «Information and communication configure essential conditions of affirmation about the frequent plurality of persons in charge of the development of the activity and concerning the characteristic of an open system, whose functionality also depends on the constant activation of constructive interactive relations with the outside world. In this sense, information cannot exist in the absence of communication. Likewise, data is in danger of remaining at an end if it is not appropriately conveyed following the objectives to be achieved with the relevant preparation». Salvioni, *Comunicazione economico-finanziaria e analisi della concorrenza*, in Aa.Vv., *L'efficacia della comunicazione economico-finanziaria e l'analisi della concorrenza*, p. 4.

3. Airoldi, *last work cited*, p. 58.

> first of all, there is a property of behaviour that could hardly be more fundamental and, precisely because it is too obvious, is often overlooked: behaviour has no opposite. In other words, there is no such thing as non-behaviour or, to put it even more simply, it is impossible not to have behaviour. Now, if one accepts that the whole of behaviour in a situation of interaction has the value of messaging, i.e. it is communication, it follows that, however one tries, one can not communicate […]. To summarise, one can postulate [then] a "metacommunication" hypothesis of the pragmatics of communication: one can not communicate[4].

This theory, formulated by Watzlavich, Beavin and Jackson in 1967 after Having carried out an in-depth analysis of the subject matter, he created a true scientific revolution in the Kuhnian sense of the term. He caused a profound break with the studies that had previously developed. Indeed, the definitions of communication forged in the 1940s and 1950s, although they revealed a remarkable evolutionary process, had never explicitly highlighted this particular aspect of human behaviour.

Watzlavich, Beavin and Jackson, on the other hand, analysed the consequences of what could be termed the "passive behaviour" of an individual and asserted that every individual, irrespective of whether or not he or she has the goal of sending messages to third parties, communicates with the outside world by simply adopting or not adopting a certain behaviour.

From the hypothesis of Watzlavich, Beavin, and Jackson derives the necessity for every individual to elaborate a solid communication strategy since only in this way can subjects programme and thus somehow keep under control the messages that they voluntarily or involuntarily and continuously send to the outside world[5].

It can be understood how such statements, being of considerable relevance in every field of human endeavour, acquire particular importance in the corporate world,

> for whatever the company does or does not do, it brings a piece to the mosaic of its image in the general public […]. If an image policy is not explicitly and rationally planned, it is not [therefore] that a picture is not formed; it will simply be chaotic and uncoordinated, that is, it will ultimately be a bad image[6].

4. Watzlawick, Beavin, Jackson, *Pragmatica della comunicazione umana*, p. 40.

5. «But the other consequence that follows from Watzlavich's axiom, and which is full of meaning for the corporate world, is that, since it is not possible not to communicate, it is always necessary to set oneself the problem of communicating: one must therefore formulate strategies-gives, define objectives, plan communication activities». Damascelli, *La comunicazione nelle imprese*, p. 17.

6. Damascelli, *last work cited*, p. 54.

As confirmed in the preceding pages, financial reporting is the main instrument of corporate communication to the outside world. It is, therefore, in the company's interest to plan its communication activities, as this is the only way to avoid the danger of unwittingly sending unfavourable messages to third parties. All the general considerations that can express concerning the company's possible reticent and/or passive conduct are not explicitly connected with financial and asset communication apply.

Two examples of communication using so-called "non-communication" apparently identify the antipodes of corporate disclosure to the external environment. On the one hand, we can mention the biannual financial statements prepared before the 1942 reform (or post-reform, if the focus is specifically on profit and loss) and, on the other hand, there are the documents that we could call "socio-economic-environmental/integrated financial statements with high external visibility".

For financial statements prepared before the promulgation of the Civil Code of 1942, which we will have the opportunity to examine in more detail in the following chapters, there was no regulatory reference either concerning the formal structure of the balance sheet and the profit and loss account or about the valuation criteria applicable to year-end determinations. In almost all cases, these documents had essentially no informative value.

A similar situation was to be found concerning profit and loss in the post-1942 period: most of these documents, in the absence of rules concerning their formal structure, consisted of two/three items (generally, total revenues, total expenses and profit). Only in very few cases were there four or five profit and loss accounting items. In addition to the above, they included total overheads and personnel costs (or total depreciation and amortisation). There is no need to elaborate further to understand that, in such cases, "non-disclosure" constitutes a perfect example of communication of the company's desire to prevent the disclosure of economic and financial data.

The "non-disclosure" thus spreads a clear, forceful and perfectly intelligible message to anyone, which takes the form of a desire not to disclose information concerning the company's situation.

Apparently, on the opposite side, but aligned to the communication mentioned above strategy, are the documents that we previously referred to as "socio-economic-environmental/integrated financial reporting with high external visibility". One thinks of documents consisting of dozens of glossy pages, about 90 per cent of which contain photographs, whose only purpose is to embellish the financial reporting or graphs produced according to excellent stylistic techniques, which, by presenting the data already present in the financial reporting in a "drawn" form, add nothing to the knowledge of those who are about to read that document. If attention is focused on such documents, the non-disclosure of the elements that are of real interest to the general public and third parties outside the company identifies a perfect form of communication: they, too, inform in a transparent, clear and precise, albeit nuanced and translucent manner, of the desire to induce external parties to derive "mental well-being" from leafing through the financial statements, without, however, this being matched by a real increase in the wealth of information of an economic-financial-social-environmental nature concerning the company. Thus, with such forms of "communication", the desire not to communicate is evident, indisputable and undeniable.

Watzlavich, Beavin and Jackson have therefore identified an absolute truth: it is not technically possible not to communicate.

Let us now analyse the concept of interaction to see whether, in the broader balancing/reporting environment, the term "communication" can, in particular cases, be replaced by the concept of interaction.

> A single unit of communication [can be] referred to as a message, or, where there is no possibility of confusion, a communication. A series of messages exchanged between people [may, on the other hand, be considered] an interaction. A superficial analysis might suggest that, in financial reporting, the concept of communication is preferable to interaction. This is because the information/communication process seems eminently unilateral (from company to the third party or from company-internal to company-internal).

However, an in-depth examination of the dynamics of economic-financial co-communication reveals that, in reality, one can sometimes identify the elements constituting a real interaction.

Indeed, an interaction can be found in internal communication (often the result of questions and answers between several parties and subsequent compromises regarding the content/scope/substance of the data requested and provided).

Suppose the analysis is shifted to the external communication of economic, capital and financial data employing financial statements. In that case, the concept of communication seems to be more considered as, in most cases, there is no interaction between the company and the external environment, but only mere information in a unilateral sense (from the company to third parties). However, it cannot be excluded that, even in financial reporting (economic and/or integrated), it can sometimes identify the implementation of an interactive process. One thinks, for example, of the case in which the company, relying on direct and/or indirect responses from the outside, appropriately revises its economic-financial communication strategy. It is possible to hypothesise that the reactions of external users regarding specific financial reporting may have consequences on the informative capacity of subsequent financial statements. One thinks, for example, of the publication of a financial report that has been the subject of direct attacks by the media or organised groups of stakeholders due to its alleged lack of informative capacity and/or limited transparency. It is possible that faced with such a situation, to avoid unwelcome comparisons and/or to limit the damage to its image, the company modifies its financial communication strategy. In this sense, one could also speak of interaction concerning external financial reporting.

For this reason, the communication model illustrated by Las-swell, if applied to the field of our competence, could highlight all its inherent limits. The scholar, as mentioned above, summarised his theory in the following statement: «A convenient way to describe an act of communication is to answer the following questions: who says what in which channel to whom with what effect?».

The essential elements of Lasswell's theory are, therefore the following.:

| | |
|---|---|
| Who | Who communicates, i.e. who is the sender |
| Says what | What communicates, i.e. what is the message |
| In which channel | By which channel, i.e. which medium is used to get the message across to the recipient |
| To whom | To whom, i.e. who the recipient is |
| With what effect | With what effect, i.e. what effect the communication produces |

It is clear from the above that there is a limitation of Lasswell's theory, highlighted by most scholars of communication, which could also be grasped in the field of bilingualism or integrated communication if one agrees with the possibility of identifying, even in the latter sphere, a real interaction. The limitation is represented by the fact that Lasswell's model seems to envisage a directional uniqueness of communication; in this theory, it is not analysed how much from the receiver can return to the sender.

As has already been pointed out, in financial reporting, an interaction is not always discernible. If the communication is unilateral (from a company to an external party or from internal party X to internal party Y), Lasswell's model would acceptably describe the financial reporting /reporting. If, on the other hand, an interaction was to be found, the model, as mentioned above, would show limitations that would make it impossible to consider it conveniently applicable to the field of financial reporting and/or integrated reporting and/or eco-nomic-financial reporting in the broadest sense.

It can also be drawn as useful food for thought on economic-financial communication and on the impact/consequences of tax interferences in the field of financial reporting from the models proposed respectively by Jakobson and Shannon-Weaver, which, although dated, still represent an essential point of reference for any scholar wishing to delve into the subject of communication.

Many others have succeeded in those models. In the writer's opinion, however, the theories illustrated by Jakobson and Shannon-Weaver are the ones that most effectively capture the interest elements that are useful for an in-depth study of the particular communicational problem that is the subject of our work. As has already been pointed out, the objective of this text is not to analyse the issue of communication in the broad sense but rather to identify specific elements which, although they are the «heritage of study of this discipline, are also of interest from the point of view of economic-financial reporting/communication, in particular concerning the issue of so-called tax interferences in the financial statements». Therefore, all the considerations set forth in the following pages should be interpreted from this perspective and not as an in-depth examination of a highly complex discipline that does not fall within our specific field of competence.

According to Jakobson, the communication process is characterised by the following factors:

> The sender sends a message to the receiver. To be operative, the message requires, firstly, reference to a context (the "referent", according to another rather ambiguous terminology), a context that can be grasped by the receiver and that is verbal or susceptible to verbalisation; secondly, it requires a code wholly, or at least in part, common to both sender and receiver (or, in other words, to the encoder and decoder of the message); finally, a contact, a physical channel […] between the sender and the addressee, enabling them to establish and maintain communication. These various irrepressible factors of communication […] can be represented schematically as follows[7]. (Cfr. *Fig. 1*)

*Fig. 1 – Outline from Jakobson,* Essays in General Linguistics*, p. 185*

CONTEXT

SENDER MESSAGE RECIPIENT

• • • • • • • • • • • • • • • •

CONTACT

CODE

7. Jackobson, *Saggi di linguistica generale,* p. 185.

Against such elements characterising any communicative form, Jakobson identifies 6 functions of language, each of which, depending on the situations considered, may predominate over the others:

*Fig. 2 – Outline from Jakobson,* Essays in General Linguistics*, p. 191*

| | | |
|---|---|---|
| | REFERENTIAL | |
| EMOTIONAL | POETIC | CONATIVE |
| | FATIC | |
| | METALINGUISTIC | |

In concise terms, the above six functions are illustrated by Jakobson as follows[8]:

1. The referential function, also referred to as "denotation-cognitive" referential, focuses on the context; it often represents the principal function of many messages, but the "accessory" participation of the other parts is indispensable for the correct understanding of the message sent by the sender to the receiver.
2. The expressive or emotive function focuses on the sender, aiming at directly expressing the subject's attitude towards what they are talking about.
3. The conative function is oriented towards the receiver and seeks, through appropriate verbal forms (e.g. imperative or vocative form), to influence the receiver.
4. The poetic function is centered on the message the sender sends to the receiver; this function represents, to quote Jakobson verbatim, «the fine-tuning of the message for its own sake. The poetic function is not the only function of the art of language; it is only its dominant function […]. This function, which emphasises the evidence of signs, deepens the fundamental dichotomy of signs and objects […]. This function acquires essential relevance in complex messages or messages characterised by particular contents».
5. The phatic function focuses on the communication channel or aims at

8. The definitions of the 6 communication functions are taken from Jakobson, *last work cited.*, p. 186 ff.

verifying that the channel is open and that the recipient is potentially receptive.
6. The metalinguistic function identifies the function referring to the code used; in other words, there is a metalinguistic function in the case where the code talks about itself.

In the writer's opinion, concerning the issue at hand, Jakobson's considerations regarding the communication factor defined as "code" and the function defined as "poetic" (a term that, of course, should not be confused with the one generally used in everyday language) are of particular interest.

In the context of the balancing issue, we consider it worthwhile to analyse these elements in light of what Shannon and Weaver propose since the two theories, although different, present points of reflection, the in-depth study of which appears particularly fruitful if carried out synchronously.

Shannon and Weaver pointed out that the issue of communication (which they approached from a mathematical-cybernetic point of view but which is also perfectly applicable to the subject of our interest) cannot be separated from three specific questions:

- How accurately can the symbols of co-communication be transmitted?
- How accurately do the transmitted symbols transfer the desired meaning?
- To what extent does the intended meaning induce behaviour in the desired sense?

These observations, even though made explicit in the context of a cybernetic approach, identify the three "fundamental elements" that characterise business communication, which from mere features can, if not investigated in depth, turn into hindrances that prevent a correct communication/interpretation of the disclosed data.

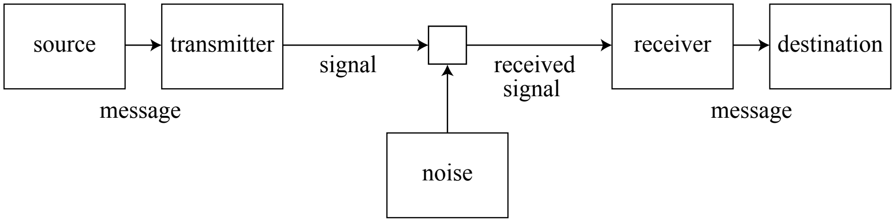
Shannon and Weaver continued their investigation by identifying what can be called a "communication system". For these scholars,

> the source of information chooses the desired message […], the transmitter converts this message into the signal, which is sent to the receiver via the communication channel […]. It is, unfortunately, characteristic that in the course of transmission, certain things are added to the signal that was not intended by the source of information […]. Every alteration in the transmitted signal is called noise[9].

9. Shannon, Weaver, *La teoria matematica delle comunicazioni*, p. 6 ff.

The communication system illustrated above was represented by Shannon and Weaver as follows:

*Fig. 3 – Diagram from Shannon, Weaver,* The Mathematical Theory of Communications*, p. 6*




The system described above was intended to illustrate communication using a cybernetic approach. The principles set forth by Shannon and Weaver can also be applied to business communication of an economic-financial nature, albeit with some force, but without distorting the system itself. The source of information, identifiable in the board of directors and/or management, focuses its attention on the message it wants to convey to the receiver. This message, in order to be conveyed, must be converted into a signal, which is then sent to the receiver through a communication channel. In the context of financial reporting, the message is represented by the company's earnings, financial and asset situation, the channel is the financial reporting, and the receiver is the recipient of the financial reporting. In the case of internal data communications, the message and the channel may be different (e.g. message alpha: the unit cost of a product, channel for message alpha: cost construction tables; message beta: comparison between target data and results achieved, channel for message beta: analytical accounting at standard charges; etc.), but the principles do not vary. In the latter hypothesis, the receiver is the internal party to whom the data are destined.

For our investigation of tax interferences in financial reporting, the concept of noise is of particular interest. In the system illustrated by Shannon and Weaver, the alteration of the signal due to noise is connected to an unintended disturbance. In the operation of "translating" the aforementioned principles, referring to a cybernetic system, to a theory of communication applicable in the corporate environment and, in particular, to the dissemination of eco-nomic-financial information, it is possible to hypothesise that noise can identify a disturbance, even if only partially voluntary, of the signal. In the presence of such a disturbance, it is evident how the signal «picked up by the receiver has attributed a meaning which is correct insofar as it is connected to the signal sent, but which in reality is distorted if read in the light of the code which, due to the use, is different from what it appears to be». Consider, for example, the issue of end-of-year evaluations. If the message contained in the communication channel "financial statements" is substantiated by this sentence: «Year-end valuations are carried out following the law and thus under the rules of the code and, by reference, with national/international accounting standards, and if, due to practice, or the will of the financial statement preparer, or even bad faith and/or good faith, these valuations are carried out with the tax rules in mind, it is evident that the signal noise prevents the message from being received correctly». The noise, which in this specific case would be the tax rules, would cause what could be called a "short circuit" of communication, the consequence of which would be that the message sent via a signal is perceived by the receiver for what it appears from the signal itself, which, however, does not correspond to the substance of the message itself. One might ask whether it would not be more correct to speak of a message "disguised" as another message instead of noise. In the following pages, it will be pointed out that, in many companies, the application of tax principles in financial reporting is erroneously considered by many operators to be correct. In this specific case, the concept of noise appears to be perfectly in keeping with the reality we wish to investigate. The noise is, perhaps, voluntary from a certain point of view, but there is not always this consciousness of error. In these cases of perfect good faith, the disturbance is exactly the noise identified by Shannon and Weaver. In the writer's opinion, in full awareness of the perfectibility of this assertion, it is nevertheless possible to assert that, in the field we are investigating, the disturbance referred to as it can also use noise in cases where there is a partial or total intention to create a micro-crash in the communication. It is evident, however, that in these cases, the dividing line between noise and "deception" is blurred, thin and often short-lived.

It should note that noise can also result from using two different codes by the sender and receiver of the message, respectively. In this respect, there is an obvious connection with Jakobson, who attributed essential importance to the code in any communication process. Jakobson states:

> A typical communication process operates with a cypher and a decipherer. The decipherer receives a message: the message is new to him, but, thanks to the code he knows, he interprets the message [...]. The receiver [then] understands the message based on the code[10].

10. Jakobson, *last work cited*, p. 12.

In order to be operational, the message […] requires a code that is wholly, or at least partially, common to the sender and the receiver (or, in other words, to the encoder and decoder of the message)[11].

Suppose the sender and receiver think they are using the same code but interpret the message employing different codes. In this specific case, the noise would be related to another code of the sender and receiver, which cannot detect as it is implicit in the message. In that case, it could identify the disturbance mentioned by Shannon and Weaver in the unconscious diversity of the code used by the sender and the receiver. Concerning the problem of tax interferences in financial reporting, it can be assumed, not differing much from reality, that the preparer of the financial report uses, as a matter of practice or misplaced good faith, tax principles to determine income and asset values, and the recipient of the information believes that the valuations are made by slavishly applying national and/or international accounting principles, as well as civil law.

Regardless of whether or not one adheres to the considerations outlined above, it is in any case well established that «to obtain helpful information, one would have to remove this false part from the received signal»[12].

Finally, it should note that tax interferences in financial reporting may also create no disturbance in the communication of company data. This is the case when both the sender and the receiver of the message are aware that, regardless of what is disclosed in the notes to the financial statements, any year-end valuation is determined by applying tax principles. In such a circumstance, which is also not far removed from the practical reality of companies, it can say that the communication is not disturbed by any noise since, even though the message has a de-terminated content, both sender and receiver are aware of the distortion (in our case, fiscal) of the disclosed data.

It must severely review these considerations if the disclosure is intended for internal company parties. Creating noise, for example, in internal financial reporting, would be absurd as it would be counterproductive. In financial reporting destined for in-house users, it is, therefore, possible to encounter:

1. "unintentional" noise: in this case, the observations made above regarding external corporate communication apply;
2. "voluntary" noise: in this case, one should assume, rather than a difference in code, a genuine intention to provide information other than what is communicated to the recipient. This occurs, for example, when the sender

11. Ivi, p. 185.
12. Shannon, Weaver, *last work cited*, p. 20.

> knows that the outgoing message is X and will be interpreted as such by the recipient but performs the sending operation in the knowledge that, in reality, the real concept sent is Y. However, in this specific case, the concept of noise does not fit well with the illustration of what is happening in the communication process. It would be better to use the terms deception, trickery or even fraud – situations, the latter extraneous to the issue we intend to address and approach.

In concluding these brief considerations on the theories of Shan-non-Weaver and Jakobson, we consider it reasonable to make one last remark, as announced in the preceding pages, on what Jakobson asserted regarding the poetic function in the field of communication. In illustrating the six functions identified by the latter scholar, it has been said that the poetic function is centred on the message that the sender sends to the receiver; this function represents, to quote Jakobson,

> the fine-tuning of the message for its own sake. The poetic function is not the only function of the art of language; it is only its dominant function […]. This function, which re-emphasises the evidence of signs, deepens the fundamental dichotomy of signs and objects […]. This function acquires essential relevance in the presence of complex messages or those characterised by particular content[13].

The difficulty of transposing a theory into fields other than those for which it was structured has already been pointed out. Despite this apparent difficulty, which, no doubt, could also distort the theory itself, we believe we can affirm that, if in the communication of financial statements, in particular those destined for outside the company, the poetic function overrides any other function identified by Jakobson, one could incur in a communication whose main objective is not the disclosure of the company's economic-financial situation, but rather the diffusion of a corporate image aimed at strategic purposes. It must, however, be borne in mind that

> in most cases […] the texts are neither entirely dominated by the poetic function [understood, of course, in a technical sense and not according to the interpretation of the term given to it in general terms and/or in common jargon, *author's note*] is entirely devoid of it[14].

We do not deem it necessary to dwell any further on this concept, as this particular communicative objective has already been the subject of

13. Jakobson, *last work cited*, p. 192.
14. Osimo, *Manuale del traduttore*, p. 19.

consideration in the preceding pages and will be taken up further in the remainder of this paragraph, albeit in synthetic terms as required by the context in which this specific issue is examined.

To conclude, we would like to recall a concept expressed by Sanders Peirce, the man most scholars consider to be one of the fathers of modern semiotics. This scholar is known, among other things, for expounding the triad concept or, instead, for illustrating various facets of this notion since, in the Collected Papers, the publication of which was posthumous to his death, it can identify multiple ideas of the triad. According to the concept most studied by the doctrine as used by the author, the so-called triad can be understood as the set of three elements: sign, interpreter and object. Without claiming to delve into such a complex subject, it is nevertheless interesting to note how the scholar de-identifies the sign (also identified with the term representamen) as

> something which stands to somebody for something in some respect or capacity. It addresses somebody, that is, creates in the mind of that person an equivalent sign, or perhaps a more developed sign. That sign which it makes I call the interpretant of the first sign. The sign stands for something, its object.

From Sanders Peirce's work, the sign identifies something second to someone in some context, aspect, or capacity. The sign is thus second to someone, and in this, someone creates what the scholar calls an "equivalent sign", i.e. a more developed sign. The latter represents the interpreter of the first sign. The interpretant or representamen stands for something: its object. The object is, therefore, what the sign stands for or, as many authors state, what the sign refers to. Signs can be of various natures: in the subject matter of our interest, such elements identify symbols, as they can only be associated with their meaning by convention. The correlation between the form and purpose of the sign is only the result of a general "agreement"/"understanding"/"compromise". This is the case with all numbers, for which it can identify no logical or explicit relationship between the structural elements of the sign and the meaning generally attributed to it.

Very relevant is the continuation of the above quotation. Sanders Peirce states that the sign «stands for that object not in all respects, but about a sort of idea, which I have sometimes called the ground of the representamen»[15]. Reading other parts of his work, one understands that the scholar believes that the sign cannot produce a direct, objective and universally accepted form of knowledge of the object. In reality, the thing of the sign must belong

15. Sander Peirce, *Collected papers*, vol. 2, CP 2.228.

to a complex of "knowledge", broadly understood, of the interpreter (who is not to be confused with the interpreter). Only when this is the case can the sign provide notions/information/communication through the interpreter. According to Sanders Peirce, this consideration makes it perfectly conceivable that a sign is "filled" with objects differentiated according to the interpreters, who are the recipients of the sign. This is the logical consequence of the fact that the different interpreters are characterised by other knowledge and experiences, which fill the object of the sign with di-different contents, despite the perfect equality of the sign itself.

From these brief considerations, it is clear that communication, understood in the broadest sense, depends on how it is disseminated and «how the interpreter receives it». It will devote a few remarks to this specific topic in Volume 2 concerning the issue of budget clarity.

At this point, we deem it appropriate to emphasise how co-disclosure and any tax interferences (fiscal or non-tax), which may affect the disclosure of corporate financial information in various ways, are closely interconnected with the sender of the data but also with its recipient. Such a consideration also implies that the impact of noise within the communication process depends, at least in part, on the interpreter and the data interpreter. «Meaning is thus nothing precise but an attempt to generalise specific experiences with the meaning of something. This is why it is clear that sense (and the interpreter) evolves with time»[16].

The intertwining of subjects, disciplines and theories appears inextricable. Financial and other communication, whether it is intended for inside or outside the company, must therefore be interpreted in the light of what we might call the "points of meditation" mentioned above. However, only a global view of the communication/information problem makes it possible to address the subject matter of our interest in a conscious manner and, above all, in the certainty that nothing is, on the one hand, disseminated and, on the other hand, interpreted in an objective, neutral manner and without reference to the recipient's knowledge/experience of the overall subject matter of the news/data/knowledge elements being disseminated.

After this brief introduction to communication, it is possible to start addressing the specific topic of our interest. The deepening of tax interferences on the values composing the financial reporting and the theoretical-pragmatic consequences of such tax interferences requires some preliminary considerations on financial reporting as an information and communication tool.

16. Osimo, *La traduzione totale, spunti per lo sviluppo della scienza della traduzione*, *www.scribd.com*.

In this regard, it should recall that, in the first historical phase, the economic entity was the only recipient of the information results derived from financial reporting, understood, in its narrowest sense, as a natural person and/or group of natural persons who impart their will to management[17].

Thus, in such a context, the only information function of financial reporting was eminently internal at an accounting and legal level.

With time, the internal information function was first accompanied, and later almost superordinated, by a communication purpose intended for parties outside the company. Financial reporting nowadays identifies the only document appointed to communicate to external users a mass of information t, at least in theoretical terms, should guarantee third parties a correct understanding of the company's economic-financial-equity situation[18].

17. In addressing this issue, it is essential to set aside what has been interpreted, by various scholars, as mere wishful thinking to anchor oneself, on the contrary, to the factual reality present in our country. In the context of this work, the economic subject, therefore, identifies the person (or group of persons) who, in operational and pragmatic terms, imposes their line of thought and action within the company. The economic subject determines the company mission; sets the strategic and operational objectives; makes the organisational choices, expressed in terms of both structural options and the evaluation of the subjects participating in the company's economic life; designs the management plans and finally performs checks on the company's activities. The economic subject, seen from the perspective adopted by this text, includes the persons who, in practice, exercise the control as mentioned above. If, in a company, the governing body was composed of, for example, representatives of the capital contributors, employees and consumers, and all of these persons had the pragmatic power to intervene in the company's management decisions, it could be said that the economic subject is made up of the shareholders of my-rank, the employees and the consumers. If, as is the case in Germany, the workers' representatives can, by law, substantially influence company decisions, it could be said that the economic entity consists of venture capitalists and workers. If, however, this form of governance represents only the personal wish of scholars and not the condition implemented by the company, the writer believes that the economic entity cannot be said to be formed by anyone other than the venture capitalists or, rather, by the majority of them. The economic subject, therefore, disregards ideology and looks at the substance: those who, on a practical level, decide, and identify the economic issue. On the other hand, those who would like to select identify only a category that each author can identify as essential to the unfolding of the company's life, but, not for this reason, determine what is commonly referred to by the term "economic subject". See in this regard the observations of Airoldi, Coda, Brunetti, *Lezioni di economia aziendale*, p. 145. Therefore, one disagrees with Piccinelli, who states that the economic subject is made up of the «components of the so-called internal corporate interests, i.e. the shareholders (or, more generally, the holders of capital shares, especially controlling ones, so-called "shareholders"), the employees (employees and self-employed) and the statutory auditors appointed to exercise legal control (in some cases also of legitimacy) of management». *The Financial Reporting in Tax Law*, p. 76. This, in fact, in the opinion of the writer, does not identify the economic entity but represents mere wishful thinking on the part of the scholar.

18. «The enterprise is defined as an integrated system of dynamically interacting elements

As far as the internal information function is concerned, there has also been a profound change in the information role of financial statements. If, in fact, in the beginning, the privileged user was only the economic subject, with time, the concept of "internal information tool" has substantially expanded the group of issues that are potentially recipients of the economic-financial communication that can draw from the document under review. From the very economic subject, we have moved on to the group of company managers or the part of them with real decision-making powers. With the passing of decades, the number of users interested in financial reporting as an internal information tool has increased exponentially, even though, as the following pages will show, at the management level, financial reporting represents only one of the many information-management tools useful for internal decision-making purposes.

This document must be integrated/complemented with many other instruments, from which the necessary information must be derived to conduct the company management effectively and efficiently. The financial statements, considered in their parts and accounting projects, are only one element of a broader economic/financial reporting system designed to meet the many information needs of an internal nature.

The objective of financial reporting is to analyse the corporate entity's economic, financial and asset results as a whole[19].

This analysis, while on the one hand representing a necessary condition for business management, on the other hand, identifies a condition that is insufficient for business management to be carried out in full awareness of what is happening in the business environment.

Therefore, to manage companies consciously, it is necessary to understand that financial statements, despite their relevance and absolute necessity, are characterised by two features that represent both their main strengths and their most relevant "limitations":

aimed at achieving an overall economic goal and subject to a survival constraint […] since the enterprise system is not a biological organism but a teleologically ordered system […], it lacks natural memory and consequently the ability to communicate». MATACENA, *Introduzione al financial reporting d'esercizio*, p. 10. Hence the need to draw up an information document for third parties outside the company.

19. «Regardless of its variable content, which will discuss below, and its structure, all financial reporting is a summary document, both because it uses a set of magnitudes to express one or more results or judgements on the company's performance and because it usually gathers and classifies the elementary data into homogeneous classes whose numerical balances it highlights». CATTANEO, *Il financial reporting di esercizio nelle imprese*, pp. 15-20.

1. Firstly, financial reporting captures values at the company level. The company is interpreted as a single entity; consequently, the accounting data covers the entire corporate structure.
2. Secondly, financial reporting contains only consumptive values. By definition, no forward-looking and/or planned values can be included in such a document (even if considerations regarding the company's future influence part of the balance sheet and income figures – think, for example, of depreciation, closing inventories, provisions for future risks and charges, etc.).

To maximise management effectiveness and efficiency, it is therefore indispensable, on the one hand, that decisions are based on analytical data concerning individual objects of interest (e.g. products, departments, etc.) and, on the other hand, that management can rely not only on actual data but also on planned values without which the decision-making process takes dangerous paths that are not in keeping with the real needs of the company.

To ensure effective and efficient management, it is, therefore, necessary to interpret the company not only as a unitary entity but also as a sum of "molecular" elements, whose correlations and inter-dependencies constitute a fundamental element of the company's success.

In delving into such "corporate cells", financial reporting amounts to the "intrinsic" limits of an information tool whose primary objective is to highlight the company's financial/equity/income situation as a single entity.

Very frequently, the above statement is accompanied by the wish that it could implement a system in the company. According to some scholars, it is to be understood as almost "opposed" to financial reporting and its analysis. In this distorted view of the information system, management control is erroneously interpreted as a practically antithetical system to that connected to financial statement data, which, beyond the intrinsic limitations of this document, allows for the in-depth analysis of the "fractional" management of a company.

Such a view is highly incorrect. While it is true that the above observations contain elements of truth, it is equally valid that the same statements are also characterised by an erroneous, obsolete and outdated view of the concept of control.

To understand the limitation of the above doctrinal thinking, it should emphasise that the study of the individual products placed on the market of the company, of the respective departments constituting the company and of the different activities developed in the business environment is only one of the primary objectives of management control. This system, with its logic of planning coupled with the calculation of values, allows entrepreneurial energy to be channeled towards the constant increase in the company's overall profitability and the search for its financial and equity balance. From this perspective, management control is not an academic or didactic tool but an indispensable element for all companies, including small and medium-sized ones, to improve their performance.

The need to rely on analytical data concerning individual objects (e.g. products, departments, lines, activities, etc.) is accompanied by the need for managers to be able to make their decisions based not only on actual data but also on planned values.

In recent years, given the complexity of the economic environment in which companies operate and the frenzy of the markets, the budget and the concept of planning itself have been the subject of questions from both scholars and operatives as to their real usefulness in a historical moment characterised by the substantial impossibility of a certain and precise "forecast" (if it can be said that, in other historical epochs, this was possible). Undoubtedly, the information gleaned from financial reporting cannot be considered exhaustive, as the conciseness, the precision implemented to the detriment of timeliness, and the inclusion of exclusively actual values make this document insufficient to evaluate the information needs of company managers fulfilled. In times of uncertainty, the management of a company must instead be based not on improvisation but on a set of cognitive elements that allow managers to develop the decision-making process in full awareness of the income, financial and asset consequences of such decisions.

Notwithstanding the above considerations, the contrast that some authors propose between the control system and the financial reporting analysis system is, in our opinion, misleading, incorrect and potentially a harbinger of inefficiency and ineffectiveness in management.

To avoid misunderstandings, it is, therefore, appropriate to point out that, as far as internal information processes are concerned, the writer believes that the doctrinal position characterised by the interpretation of management control as a system «partially detached from the set of information, accounting and otherwise, related to the analysis of the company considered in its entirety and unity, is understandability and decisively outdated». In addressing the problem of control, many authors erect a virtual "wall" between financial reporting analysis and the information structure connected to the individual analytical objects, such as products, departments, etc. This position is not reflected in business reality, as the management of a company/company perceives the need to be able to rely on a range of information that can globally provide useful tools for improved decision-making. In this sense, interpreting management control as "something separate" from the set of all other information means at the company level and, as such, difficult to integrate with the latter, means laying the foundations for:

1. creating information duplication;
2. setting up a system characterised by the absence of information concerning specific areas not explicitly covered by the individual parts of the broader information structure, which is also fractioned in organisational terms;
3. setting up an information superstructure that feeds on itself through the production of data that is often useless and, therefore, potentially misleading;
4. forming organisational figures that could conflict due to the diversity of roles played within the company organisation concerning the organisational sub-system (understood as the complex of operational responsibilities assigned to individual managers) connected to the company's integrated information structure.

From this, it follows that the system supporting management decisions cannot be limited to the so-called management control. Still, it is opportune, or rather indispensable, that it be interpreted as an integrated analysis and planning system. This vision, of course, does not prevent management control from being interpreted as a part of the broader corporate information system. Still, it avoids the danger of considering the latter as pre-eminent over any other form of economic and financial communication.

For this reason, when dealing with the problem of the information structure necessary for management to prepare the decision-making process most suited to the company's reality, one must not limit oneself to discussing management control, but, dropping useless and misleading labels, it is also opportune, or rather, indispensable to refer to a broader "integrated analysis/programming/control system", within which a privileged place must certainly be recognised for the information system with financial reporting as its founding nucleus.

From the above, it can understand that the financial statements, understood as a company's internal information tool, represent a helpful management element, which must be supplemented/integrated/accompanied by a set of other communication media concerning the company's economic/financial aspects.

The situation is partially different if financial reporting is analysed as an information tool for external third parties. In this case, financial reporting represents the primary means of conveying data concerning the income, equity and economic aspects of company management – i.e., at least in a partial manner, the profitability of the company[20] – or the only official means of communicating such information to non-internal management users.

This is not the appropriate place for an in-depth examination of the topic of communication and the characteristics that must be present for the information provided to be correctly understood by the recipient. In a highly concise manner, however, it can be recalled that «the value of data lies first and foremost in its ability to reduce ignorance and uncertainty concerning a given object and phenomenon. This implies that the value of information is not absolute but depends on the subjective characteristics of the recipient»[21]. We will return to this subject in Volume III, in particular by discussing the doctrinal and jurisprudential development of the postulates of clarity, truthfulness and fairness. At this stage, it is sufficient to point out that communication, also implemented by means of a technical instrument such as the financial statements, necessarily also requires special attention to the target audience. Without such consideration, communication itself is likely to be useless, ineffective and potentially harmful to those being reported on.

As is well known, financial reporting is often supplemented by a series of documents, more or less "voluntary", concerning the socio-environmental impact caused directly or indirectly by the company/company. Hence the preparation of what used to be called "social financial reporting", which was later transformed into social and environmental financial reporting and finally identified with the term "integrated financial reporting".

The integration of financial reporting with information of a non-income/financial/equity nature is, without a doubt, to be judged positively, as guaranteeing extensive information, not only on income/equity, but also on social and environmental aspects, represents added communicative value.

Of course, the judgement on additional information of a social/environmental nature can only be fully positive if the real objective of the communication is the expansion of the quantity and quality of the information that is deemed appropriate to disclose outside the company.

Often, however, we see an increase in information that can be interpreted exclusively or predominantly as a mere corporate marketing tool; in fact, green washing seems to be an increasingly used and widespread means of communication.

20. «There are different synthetic representations of cost-effectiveness: the income balance or profitability model; the monetary balance and related financial management model; the institutional balance/return model; the competitiveness model; the skills and resources model; the asset value model». Airoldi, Brunetti, Coda, *Corso di Economia Aziendale*, p. 180 ff.

21. Dameri, *I siti web e la comunicazione ai mercati finanziari. Gli strumenti e gli intermediari*, a cura di Quagli A. e Teodori C., p. 3.

There is no need to elaborate further in order to understand the substantial informational irrelevance of such communication aimed at the outside world, which would be more correct to define as pure and simple institutional publicity; In fact, at times it is expressed with promotional spots and/or videos, at other times it is implemented with an annual document on the "socio-environmental impact" of the company's activities, which, more than a true and proper means of information, is a mere communicative means characterised by purposes of a strategic nature, aimed at "creating" the image that the company wishes to be perceived by those outside the company.

In this regard, however, it must be pointed out that what has been said above can occur not only with integrated financial statements, but also in the context of financial/equity communication.

> A first and obvious raison d'être of financial reporting [in the broad sense, *ed*.] is […] to comply with legal requirements and requests for information that cannot be avoided […]. It is, however, far from exhausting the role of economic communication, which is also a very important instrument that management can use to gain trust and consensus on the strategic direction it intends to follow. Economic communication, in fact, by its very nature lends itself to soliciting the consent and cooperation of the interlocutors it addresses […]. It is thus that [such] communication appears to us to be vitally embedded in the process of corporate governance and functions as a consensus management mechanism around a strategic direction […]. The consensus management model can [be implemented] with various logics: persuasion, self-rarity, manipulation, antagonism […]. In all four models of in-fluence, therefore, economic communication is a tool to obtain consensus and to implement the chosen strategic direction[22].

In the following pages, we will focus on financial reporting and, in particular, on the possibility of osmosis between tax regulations and the provisions of the code (firstly of commerce and then of civil law) over time. This analysis will be carried out without forgetting, however, how

> on the one hand, it is essential […] a constant orientation towards the overall effectiveness of the company […] and, on the other, [there is] the need to prepare appropriate information sources aimed at facilitating the perception of the various expectations associated with the activity, to allow the appreciation of the internal and external constraints and conditions against which to rationalise the development of the multiple organisations, to select valid models of interaction aimed at constructively combining tangible and intangible componentsi.

22. Coda, *Comunicazione e immagine nella strategia dell'impresa*, p. 44 ff.

And, of course, bearing in mind that «information management constitutes a service with a high strategic content, with an enabling and supporting character for the correct and cost-effective development of business processes»[23].

Over time, financial reporting has been transformed from an accounting document, by definition removed from the technical and legal possibility of analysis by parties external to the company (including magistrates), to an external communication tool, whose information content has undergone a constant and progressive qualitative and quantitative increase. However, this evolution must be read and interpreted in light of the fundamental principle that financial reporting is characterised by limitations that cannot be overcome because they are intrinsic to the document. «Among the principles of good interpretation [of financial statements, *ed.*], there is, therefore, also that of not pretending to read (in such a document) what they cannot in any way make known»[24].

Since the objective of this work is not to examine the historical evolution of the informative capacity of financial reporting but rather to analyse the interrelationships that can identify between civil law provisions and tax provisions, a detailed examination of the phases that have followed one another over time and that, directly or indirectly, have marked the evolution and/or the historical involution of economic-financial reporting to third parties outside the company will be omitted.

On the other hand, to be able to understand the intertwining of statutory provisions and tax regulations on the subject of financial reporting, it is essential to understand the role that national and/or international accounting standards have played and continue to play in the context of the issue of the correct, truthful and clear preparation of financial statements. Since such an in-depth examination requires a preliminary analysis of the postulates imposed by Article 2423 of the Italian Civil Code and reiterated in both the OIC and IAS/IFRS standards, the reader is referred to the following paragraph for an analysis of the issue as mentioned above.

At the end of these brief remarks on the external information/communication function of financial reporting for the financial year, it is necessary to recall a principle that, in the opinion of the writer, should always be the "beacon" of those who are preparing to disclose, in a more or less compulsory/voluntary manner, a set of information of interest to a plurality of parties: if the real intention of those who are deputed to inform is "not to inform", the most effective way is to provide such a mass of information that even the

23. Salvioni, *last work cited*, p. 5.

24. Onida, *Il financial reporting d'esercizio nelle imprese. Significato economico del financial reporting. Problemi di valutazione*, p. 130.

"physical" identification (and, obviously, the consequent comprehension) of the, perhaps accurate, news/data/information contained in the "folds" of the document being disclosed is substantially impossible. "Over-informing" is the most common norm for not informing at all. Therefore, the writer is critical of financial statements and/or other documents characterised by an abnormal dimension and suspicious analytical. To educate means to be able to pass on the relevant data to the recipients of communications. And, to carry out such an "operation", such values mustn't be dispersed in hundreds of pages and thousands of information that is perfectly useless or deliberately characterised by misleading analyticity.

Providing correct information, including through financial reporting, does not, therefore, mean flooding the user with micro-information that, if interpreted atomistically, does not help to understand the company's real economic-financial and equity situation but rather presupposes a real desire to communicate meaningful data that enables the user to achieve the desired objective[25].

The culture of financial reporting appears, in such a context, as an element of essential importance. It often shows slow and uneven progress due to prior mandatory regulatory intervention. Therefore, the law hardly guarantees an improvement in financial reporting if it is not accompanied by a change in the financial reporting culture. Still, unquestionably, the latter does not have the "autonomous" strength to create and impose itself on the mass of companies. To think that the approach of companies towards external communication could be modified by improving and increasing disclosure with a consequent voluntary reduction of the scope of company confidentiality seems to be more of a mere wish of scholars than a working hypothesis, not shared, for obvious reasons, by companies of any size.

A final consideration must be made concerning the relationship between the so-called "financial reporting as a management tool" and the public financial reporting governed by civil law.

It is possible to assume that the difference between the two financial statements is eminently formal. In other words, the two financial statements may only be formal differences concerning the reclassification structure. When such a circumstance occurs, the discrepancy between formal schemes is physiological, as statutory aggregations have different objectives from those desirable for internal reporting purposes. Therefore, structural differences are not only not surprising but, in the writer's opinion, even desirable, as the financial reporting schedule provided for in Articles 2424, 2424-*bis*, 2425 and 2425-*bis* does not permit an adequate analysis of the company data.

25. On the information function of financial reporting, see the scholar cited in footnote 6.

Consequently, it appears reasonable and necessary to restructure the schemes according to different logics that allow for the performance of economic-financial-equity studies useful for internal decision-making and, therefore, for management purposes.

It is a different matter if differences of a substantial nature are found. The presence of different values between the two financial statements could be attributable to a phenomenon whereby economically inaccurate and/or incorrect data is included in the public financial reporting, which, on the contrary, is included in the financial report used for decision-making purposes by company managers.

There is no need to go into detail to understand how such behaviour is to be criticised since the drafting of an illegitimate public financial report due to the lack of truthfulness/correctness, even disregarding ethical-moral considerations, creates the basis for legal action by anyone who has an interest according to Article 100 of the Code of Criminal Procedure, a circumstance that, precisely because of the diversity of potential plaintiffs, is certainly not desirable in the corporate sphere.

Finally, it must be remembered how Kafkaesque appears to be the situation, more widespread than one can imagine, of "internal" financial statements "polluted" by accounting elements taken from documents intended for third parties and drawn up in a manner that is neither neutral, nor correct, nor, finally, truthful. Although it might seem absurd to assume that it would analyse such financial statements in such cases, reality shows how this can happen. The absurdity of such conduct does not appear worthy of analysis, which must be stigmatised concerning the drafting of biannual public accounts lacking compliance with the three basic postulates imposed by Article 2423 of the Civil Code. Still, it must also be subjected to "logical" censure from the unreasonable attitude of those subject to analysis employing indices, flows and other corporate analysis tools. These data do not agree with the reality that, in theory, they should represent.

## 2. The Financial Statement Postulates: Truthfulness, Clarity and Fairness: Food for Thought

We want to begin this paragraph with a quotation from Gino Zappa, who summarises a fundamental principle of financial reporting in a very effective manner:

> From the preceding, it is evident […] the considerable difficulties which the determination of income presents and which cannot always be easily overcome.

> This determination reflects all the uncertainties that make the costs and revenues pertaining to each successive financial year not understandability discernible. The lack of chronological coincidence between costs and related revenues, costs or otherwise suspended values […] The lack of chronological coincidence between costs and correlated revenues, the costs or anyhow the suspended values […], the revenues at future cost, the expectations and the elements of all costs and revenues that are not annually verifiable, that, by presumption, the restricted accounting conception of costs and revenues, the variable value of money, the operations in progress at the end of the financial year; these and other elements, not a few of dubious attribution or complex recognition, make evident to everyone the close coordination of the income recorded in a given company in the various periods in which the company's life, which has no breaks, must be distinguished. The systematic determination of income and, especially, the conscious recording of statistical data of estimated values overcome not a few of the difficulties of applying unrealistic conceptions of income that could hardly overcome: but, of course, not every obstacle can be removed or overcome. Without a larger or smaller error coefficient, it can never ascertain gains and losses annually. Depending on the varying nature of the account values, the degree of accuracy one can aim with income determination will generally change. […]
>
> Moreover, it must not be forgotten that even if the determination of income in each financial year could be achieved with complete accuracy, knowledge of the income would not yet make the results achieved in managing the different financial years fully known. The change in the economic situation of an enterprise, or, to put it more understandability, its changed earning capacity, cannot be deduced from the accounts. Nor can the statistical records show the changes in the financial situation of a given company during the financial year: a position which, as it is commonly understood, offers the ability of the company to meet its financial outgoings with sufficient income in specific future periods, possibly without loss of profit, but on the contrary with economic advantage for the company[26].

Zappa's statement highlights how financial reporting, understood as an instrument to qualitatively and quantitatively determine a company's income and operating assets, can never, by definition, identify the "true" income and "true" support of a company.

Therefore, the truth of the financial statements, regardless of the motives of those who draw up the document, can never be achieved. The objective impossibility of determining the wealth produced in a given period and the wealth existing at a precise moment in time does not depend on "bad faith" or the desire to create false expectations in those reading the financial statements, but rather on the simple and trivial technical impracticability of such an objective.

26. Zappa, *Il reddito di impresa*, p. 338.

Any consideration of financial reporting must therefore be made with this impossibility in mind. Otherwise, the statements could be tainted by inferences due to the inadequacy of those who, improperly, would like to deal with a complex issue without the indispensable technical skills that should constitute the indispensable cultural background of those who wish to deal with such issues.

This consideration was also taken on board by the legislator. In the Ministerial Report issued in connection with the Legislative Decree implementing the Fourth EEC Directive concerning Article 2217, paragraph 2 of the Civil Code, it is pointed out that

> the use of the adjective truthful, referring to the representation of the patrimonial, economic and financial situation, does not mean expecting from the editors of the financial report or promising to the readers of it an objective truth of the financial statements, unattainable concerning the estimated values, but requiring that the editors of the financial reporting correctly make the estimates and represent the result.

Such a consideration should not lead to the assumption that the veracity of financial reporting is an unattainable goal. Such a statement would represent a false reality.

The truthfulness/correctness of financial reporting must unequivocally, identify the objective of the preparer of such a document to be pursued together with the clarity of the document.

Truthfulness, on the other hand, is not attainable, as it is not within the technical possibilities of the preparer of the balance sheet, profit and loss and notes to the financial statements.

As stated by Sostero-Santesso,

> the requirement of true and fair representation must therefore be understood in the dual meaning of:
>
> - truthful representation of objective, incontrovertible data, which need not be subject to valuation because they derive from transactions concluded during the period – for such values, truthfulness is a must;
> - correct valuation process that results in reliable values based on clarity and consistency in the formulation of estimates and conjectures used for the valuation of ongoing operations that have not yet been defined with certainty[27].

27. Sostero-Santesso, *I principi contabili per il financial reporting di esercizio*, 2011, p. 14. «With reference to subjective quantities, it is therefore possible to speak, not of truth, but of a "greater or lesser degree of approximation to the true"». Onida, *Economia d'azienda*, p. 558.

Against this background, it is necessary to examine the correct meaning of the truthfulness postulate. Since the aim of this paper is to analyse the relations that can be identified between this postulate and the so-called tax interferences, the concepts of truthfulness and correctness of financial statements will be examined in detail. The postulate of understandability will be illustrated in an extremely synthetic manner and according to an expositive modality that allows for an in-depth study, in a privileged manner, of the specific problematic subject of our interest.

Before embarking on this in-depth study, it should be recalled that the above postulates are often contrasted in a "content" sense. On the one hand, correctness and truthfulness are identified as elements concerning the quantitative "substance" of the financial statement data, while on the other hand, understandability is identified as a postulate related to the form of this document. Substance and form understood as interconnected but distinct and distinguishable elements.

There is a minority doctrinal current on the Italian scene that does not adhere to this view of "structural distinction of postulates". On the other hand, Superti Furga adheres to this view, pointing out that, in his opinion,

> the three requirements of understandability, truthfulness and fairness of financial reporting tend to be traced back to the more general and more meaningful concept of intelligibility, which represents the true purpose of preparing financial reporting for the financial year. In fact, the term understandability is impracticable by default with respect to its possible use in the preparation of financial statements, since it is not possible to establish, either naturally or conventionally, precise rules to be followed. The reference to truthfulness is also […] scarcely usable, but in this case by excess, since [it] […] constitutes a sort of limiting concept or regulatory idea, to which financial reporting must strive without ever being able to fully achieve it. The re-call to fairness must then be understood in a strictly eco-nomic sense, with all the margins of discretion that any eco-nomic assessment necessarily entails. […] Consequently, it would seem that it is only possible to attribute a relative homogeneity of meaning to these three concepts by considering them as three different specifications of the broader notion of intelligibility [of financial reporting][28].

Therefore, this author's opinion is attributable to the existence of a single postulate (intelligibility) arising from the logical interconnection between the three principles listed in Article 2423 of the Civil Code. According to this doctrinal current, understandability, truthfulness and correctness, being logically interrelated, present such a connection as to deny the existence of a substantial diversity between the three principles mentioned. Therefore, for

28. Superti Furga, *Il financial reporting di es. secondo la normativa europea*, p. 45 ff.

Superti Furga, the three postulates imposed by Art. 2423 integrate the so-called intelligibility of financial reporting. Due to the liaison that indissolubly binds them, they "only" identify three different specifications of this concept.

As mentioned above, his opinion has remained substantially isolated despite the scholar's authority.

Even the writer believes that, despite the undeniable interrelation that can identify the three postulates imposed by Article 2423 of the Civil Code, II c., it can locate a structural diversity between understandability and truthfulness/correctness. As shown in the following pages, correctness is a postulate on the substance of which the doctrine appears to be divided. The majority, however, is the current that connects correctness to the concept of truthfulness. In the remainder of this work, therefore, we shall stick to this theory, i.e. substance and form as interrelated but distinct elements and, as such, connected to different postulates: truthfulness and correctness on the one hand and understandability on the other.

As is well known, the postulates of financial reporting are legally established by Article 2423 of the Civil Code. The second paragraph of this provision states that financial reporting must be prepared with understandability and give an accurate and fair view of the company's financial position and results of operations for the financial year. This standard represents a provision that is superordinate to any other civil law provision and, as such, constitutes the core reference basis by which every financial reporting writer must be inspired.

For an accurate understanding of the role of such rules, of particular interest are the considerations set forth by Cagnasso in work dedicated to the illustration of the legal relationships that can identify between functionally oriented laws and rigid provisions with provisions for typified conducts or clauses.

Cagnasso points out how

> the elastic character of a rule may concern the identification of the case itself or the title of the relative discipline […], but it is above all the elasticity in identifying the field that constitutes the most widespread and most relevant phenomenon. In particular, imposed or prohibited conduct may be rigidly identified or present characteristics of indeterminateness or even accentuated vagueness. In this second case, the techniques for constructing the rules can be varied: imposed or prohibited, it can identify conduct according to the modalities that must be used in carrying them out (think, for example, of the criteria of behaviour, such as that of prudence), or of parameters with a flexible content (such as, for example, correctness, good faith) or that refer to extra-legal criteria (such for example, adequacy), or even of the result to be achieved or avoided[29].

29. Cagnasso, Obblighi funzionalm. orientati e principi generali in tema di financial reporting di esercizio, *Rivista dei Dottori Commercialisti*, n. 2, 2011, p. 319.

On the basis of these contrasts, the aforementioned scholar emphasises how, in a clear and evident manner, functionally oriented norms can be contrasted with rigid provisions indicating conduct or clauses subject to legal typification.

Cagnasso's analysis is of particular relevance and interest when the author delves into the coexistence of functionally oriented norms and rigid provisions or other functionally oriented norms:

> Obligations and prohibitions of a functional character may be provided for by the legislature in an autonomous manner or may be included in a context of norms and, in particular, of obligations or prohibitions of a rigid character. Coexistence implies that functionally oriented obligations or prohibitions may have a dual type of effect, requiring, depending on the specific case, either to supplement those of a strict character or to derogate from them. This is a mechanism that appears to be of particular interest, inasmuch as it makes it possible to combine the certainty that derives from the presence of precisely identified obligations (prohibitions) with the possibility of adapting the required (prohibited) conduct to the individual case by means of the corrective factor constituted by the application of functional duties (prohibitions), so as to impose, again in relation to the particularities of the concrete case, something "more" or something "different" than what is expressly provided for. The grafting of functional obligations on rules that are themselves flexible in character means that the obliged party, in identifying the conduct due within the space of discretion granted to him, must nevertheless pursue the objectives set forth by the functional rule[30].

Since this work focuses on the legal provisions concerning financial reporting, the question arises as to whether the opposition between functionally-oriented norms and rigid/typical conditions can also be found in the context of the legislation we are interested in.

The answer is undoubtedly positive since the provisions imposing and regulating the financial reporting postulates identify functionally oriented norms, which, however, as the author mentioned above, present evident interconnections with flexible, rigid and, finally, functionally oriented criteria. In particular, Article 2423 of the Italian Civil Code regulates the

> final objectives of the financial statements, which can identify in the clear, correct and truthful representation of the company's equity, financial and economic situation. The articles regulating the formal structure of the balance sheet and the profit and loss, in particular Articles 2424, 2424-*bis*, 2425 and 2425-*bis*, can be considered rules that impose typecast and rigid behaviours, with the consideration,

30. Cagnasso, *last work cited*, p. 320.

however, that «the connection between the two systems, structurally different, is in part expressed by the legislator himself, who identifies the "integrative" and "derogatory" function of the general principles». The latter requires that the rigid rules be adapted to the concrete case, in particular by requesting further information where the information expressly provided is insufficient or, in exceptional circumstances, by forcing the non-application of the evaluation criteria in particular, where the objective of truthfulness is compromised. In this way, the coexistence of specific rules with determining content on the one hand and principles of a flexible nature on the other is possible. The identification of the content of the latter is then left to the interpreter, who in turn may, and indeed must, resort to extra-legal technical rules[31].

The third paragraph of Article 2423 of the Civil Code reads as follows: «If the information required by specific legal provisions is not sufficient to give a true and fair view, additional information necessary for the purpose must be provided».

The derogatory value of the general principles is referred, according to the letter of the provision, to all the articles that follow it and therefore would seem to be valid also for the rules of structure; but in reality, being flexible rules, it does not seem easy to imagine a derogation to them. It does, however, consider the valuation criteria and determines in practice the obligation to disregard the historical cost criterion in exceptional cases […]. In a somewhat reversed perspective, the general principles interact with the specific rules as possible instruments for selecting the relevant defects. Even if the legislature does not expressly provide for such an effect, the latter may also be used as a tool to identify any substantively irrelevant financial reporting flaws. As is well known, the information provided by financial reporting is primarily in the interest of shareholders and the market. The relevant rules are, therefore, mandatory as they are intended to protect a general interest. Their violation entails the unlawfulness of the object of the resolution approving the financial reporting and, therefore, its nullity. However [the financial reporting irregularities are of varying importance, *ed.*]; they do not affect [the invalidity of] the shareholders meeting resolution [as it is now generally accepted that irrelevant irregularities do not cause the financial statements to be void, *ed.*] […]. In order to identify "irregularities" of minor importance, it seems necessary to use the general principles in the negative: such will be those that do not jeopardise the fundamental objectives of understandability and true and fair representation. In this perspective, general principles can play a further significant role as limits to the relevance of financial reporting irregularities. Some rules concerning the structure of accounting documents are elastic. In particular, Art. 2423-*ter* of the Civil Code, in its second

31. On this statement, the reader is referred to the following pages.

> paragraph, provides that items preceded by Arabic numerals may be further subdivided; that it may add other things; and that they may be adjusted when the nature of the business activity so requires. The elastic character of several rules governing consolidated financial reporting is even more pronounced. Since the general principles of understandability and true and fair representation are also envisaged, as already noted, for its preparation (albeit with the necessary adaptations), even in this case, the objectives indicated therein represent a tool for guiding the concrete application of the flexible rules. The grafting of applicable law on rules of an elastic nature means that the former represents the criterion to be followed for applying the latter.
>
> More precisely, the possible articulations of items and adjustments must be directed, with reference to the concrete case, to pursue the objective of understandability. Concerning both structures and valuation criteria, the legislator sometimes introduces alternative options. Thus, "smaller companies" may prepare their financial reports in an abbreviated form; furthermore, the preparers of financial statements may choose between the cost or equity method in the valuation of fixed assets consisting of participations in subsidiaries or associated companies. In such cases, the general principles act as negative limits to the choices they can make, in the sense that it cannot use the option which, regarding the concrete case, prevents or jeopardises the achievement of the objectives of understandability, true and fair representation. This conclusion is of particular relevance concerning financial reporting in abbreviated form. The possibility of adopting such simplified "structures", which is envisaged for social enterprises of a size not exceeding certain thresholds, is, in any case, limited by applying the general principles. Therefore, where the simplifications permitted by the law may jeopardise the achievement of the objective of understandability in a specific case, the financial reporting must be drawn up in ordinary form, or the simplifications themselves must be reduced[32].

The author considers Cagnasso's intervention extremely relevant as the scholar succeeds in clearly and comprehensively highlighting the interconnections, apparent overlaps and univocal and/or bi-univocal relationships between "rigid/standard" civil financial reporting rules and "functionally oriented" civil provisions. For this reason, we felt it only right to cite one of his works at length. Indeed, it is only by slavishly quoting his words that one can comprehend the complexity of the complex subject of the above analysis.

After this necessary introduction, it is essential to focus our attention on the postulates of truthfulness and fairness to be able, in the continuation of the work, to understand what can identify relationships between the reliability of the financial statements legally imposed by Article 2423, paragraph 2, of the

32. Cagnasso, *last work cited*, p. 323.

Italian Civil Code, and the presence, in the balance sheet and/or profit and loss, of items of a tax nature.

To address this issue, it is necessary to recall an element that has already been highlighted in the preceding pages. Given its relevance, it must transform into the core of this work.

As we have already pointed out, applying the postulates of truthfulness and correctness requires the implementation of an as-solute truthfulness of objective values and the reliability of the so-called estimates and conjectures, i.e. the matters that require subjective evaluation. In other words, the preparer of financial reporting must determine the personal values (which identify estimated quantities where the determinations are approximations to the truth, whereas they are conjectures[33] if they are «hypotheses of subjective representation of the truth»[34]), adopting correct valuation criteria and taking care, at the same time, not to disregard the actual objectives of these principles. This entails the use of legally (and, as we shall see in the following pages, corporately) correct "valuation principles" implemented according to the so-called good faith expressed in legal terms[35].

The presence of items whose quantification requires a subjective evaluation process that identifies reliable values in relation to the economic and financial reality that financial reporting must reflect[36], emphasises the technical impossibility that it can precisely identifying a set of criteria for "measuring" the value of non-objective data in legislation.

33. «Estimated values refer to quantities for which it is possible to "wait" for the event that will make it possible to verify the outcome (e.g. the amount of receivables that can be collected); "conjectured" values refer to values when the event can only be "imagined" as if, based on certain assumptions, it should occur, even if this will never happen (e.g. the "value" of depreciation). Thus, financial reporting for the financial year does not only include recognised (known) results but also results that are the subject of an essentially forward-looking appreciation, so that the financial reporting for the financial year is not so much a "defined" report but rather a report that is conceived». MAZZA, *Problemi di valutazione per il financial reporting di esercizio*, p. 12.

34. FERRERO, *La valutazione del cap. di financial reporting*, p. 29. «It is not infrequent in exercise determinations that the estimate offers an obvious basis for conjecture». MASINI, *I bilanci d'impresa*, p. 64.

35. This text will focus only on the issue of the legitimacy of financial reporting under civil law, leaving aside any consideration of possible criminal aspects of false corporate communications.

36. «It is not correct to speak of truth in financial reporting. Still, it is appropriate to talk about the reliability of which what we have called truthfulness is only a particular moment. The values that make up financial reporting are only partly objective and can express truth in an absolute sense. Instead, in most cases, they are subjective values for which any claim to accuracy is absurd». BRUSA, *Veridicità, attendibilità e chiarezza del bilancio di esercizio*, p. 26.

The determinations' subjectivity implies an implicit and inevitable degree of flexibility regarding the quantifications themselves. In other words, the lack of absolute objectivity requires acceptance of the principle that the subjective role of the evaluator must be as limited as possible but, at the same time, cannot be eliminated. This also entails accepting that a "truthful" datum identifies a quantity that can be placed within an in-turn value that cannot be objectively determined. The personal datum thus identifies a quantification that is "close" to a quantity, which falls within an in-turn.

In this regard, Giunta-Pisani point out that «in any case, estimates and conjectures must not be the result of the arbitrariness of the preparer of the financial statements. That is, they must not express an absolute subjectivity and, as such, incomprehensible and unquestionable. On the contrary, they must express a rational subjectivity, i.e. they must be the result of an ordinary and rigorous "logic-applicative" process». This process presupposes:

- The definition of congruous premises, feasible hypotheses and well-defined cognitive objectives concerning the quantities being assessed.
- The awareness that the quantities to be measured are expressed not by a number but by a range of numbers. From there, it must choose a value based on the premises and hypotheses formulated using a specific criterion or method. In other words, it is a matter of setting a precise standard, i.e. a way of processing the previously defined assumptions and conditions and translating them into balance sheet values.
- The constant verification of the consistency and compatibility of the assumptions, criteria and conclusions reached at the end of the estimative reasoning.

Truthfulness in the subjective sense is thus to be understood as the rationality of the valuation process followed by the preparer of the financial report and as the consequent credibility of the results obtained[37].

Therefore, as Colombo states, «no one can guarantee (with the exception of certain values) the absolute accuracy of the judgement»[38].

The imposition of the postulate of truthfulness, therefore, requires not the impossible search for an "objective" and objective datum but rather a

37. Giunta Pisani, *Il financial reporting*, p. 38.

38. Colombo, *La clausola gen*., in Aa.Vv., *Il bil. d'es*., a cura di Palma, p. 29. «While it is understood that the precept of true and fair representation is translated into the obligation to make rigorous, technically impeccable, documented and justifiable estimates and evaluations, truthfulness becomes especially relevant where the law provides for recourse to a plurality of abstractly usable criteria» or «attributes more or less technical discretion to the directors». Bianchi, *La disciplina giuridica del financial reporting di esercizio*, p. 60.

"mental attitude" that must at the same time be neutral, impartial, diligent, accurate and based on a value-seeking activity, both of specific values and estimates and conjectures[39], That completely disregards objectives other than the representation, as close as possible to "reality", of the company's economic, financial and asset situation[40].

From reading Articles 2423 et seq. of the Civil Code, it is clear that the Civil Code has identified a set of theoretical reference elements to which the financial reporting preparer must necessarily refer without, however, entering into the analytical merits of each issue.

Such considerations apply only to subjective accounting elements since, for objective data, the truth is absolute and specific; it follows that, for such accounts, any emotional component of the financial reporting preparer is nullified. On the other hand, the quantification of subjective items requires the personal intervention of the person who determines the valuations and, consequently, implies the need for reference principles to refer to in order to identify values as close as possible to the unattainable "truth" that characterises valuation data.

Having clarified the concept of integrity (i.e. "subjective truth")

39. «Based on their relationship with market prices, financial reporting values can be classified as 1) specific values, 2) estimated values, and 3) conjectured values. Definite values exist when the correlation with prices formed on the markets is possible; think of a purchase cost incurred or a sales revenue realised. These values are thus objectively determinable and can therefore be considered true or false based on their correspondence with specific facts. Sometimes, although it is possible to perceive a direct correlation between financial reporting values and specific market prices, it is not possible to have certain values because the prices referred to are of future occurrence; there is then an approximation of a particular value as it can estimate only the magnitude of this quantity. Estimated values, which are based on forecasts, admit verification when the forecast values manifest themselves. In financial statements, estimated values are the assumed numerical values and the corresponding economic values manifest themselves during and at the end of the administrative period. The economic-business theory defines conjecture values as the values attributed to various objects as a division of unique values common to those objects of imputation. The typical values that are to be split can be costs, revenues, and partial results obtained by combining specific costs and revenues. Conjectured values can thus be considered neither true nor false according to a semantic conception of truth as a correspondence between language and facts, in this case, between values and prices; they only require consistency with the remaining values of the system and with the assumptions assumed for their determination». Superti Furga, *Reddito e capitale nel financial reporting di esercizio*, pp. 43 ff.

40. «The clause seems to be relevant from the point of view of the behaviour required to realise the regulatory precept, but this is in the sense that the clause is addressed to the preparers of financial reporting and requires them to make choices that are as truthful as possible, not in the mind that the legislator has intervened to privilege the moment before and after the valuation, rather than addressing the false problem of valuation itself». Colombo, Portale, *Trattato delle società per azioni*, p. 63.

of financial statements, it is necessary to emphasise a different legal characteristic that distinguishes this document. From a reading of Article 2423 of the Italian Civil Code, it is clear that imposing the three postulates of financial statements creates a legally relevant correlation, albeit only indirectly, between legislative norms and principles that are not purely legislative in nature.

An analysis of the code's provisions shows that our legislator deals with the issues concerning preparing financial reporting in a highly concise manner. In a few short articles, the regulation provides the essential elements that the preparers of financial reporting must observe for such a document to be legally truthful and understandable.

However, even to a non-expert, it is evident that the civil code rules only give a set of fundamental principles but do not provide detailed elements to "fill" the rules with operational content.

It is in this context that the problem of the so-called "accounting principles" comes into play, i.e. those «criteria/principles that, while not forming part of the civil code and, consequently, while not being able – jurisprudentially – to be considered sources of law, are not part of the civil code[41], identify indispensable tools for the preparation and drafting of financial reporting».

The actual identifiable relationship between accounting principles and legal rules has been the subject of in-depth investigations by business and legal experts.

Understanding the correct role of these accounting rules, which are not among the regulatory sources, is an essential step in assessing the relationship between these accounting standards and legislation, which have the common characteristic of regulating the preparation of financial reporting.

In the area of financial reporting, it should be borne in mind that while it is true that legal provisions play a role of primary importance, it is equally valid that they cannot, due to their intrinsic limits, regulate this topic in an analytical and specific manner. Even in the laws of the most advanced countries, one does not find rules that, in addition to dictating the "framework principles" to which the preparers of financial statements must refer, establish thoroughly and analytically the provisions to be followed in compiling the report in question. The fact that the law never specifically and analytically regulates every subject concerning financial reporting is a positive element, as a certain elasticity and adaptability

41. It should note that, at present, concerning the consolidated financial reporting and financial reporting of listed companies and others mentioned in the relevant legislation, the international accounting standards do not merely supplement the legislation but rise to the role of mandatory standards and, thus, albeit indirectly, represent legal accounting sources.

must characterise this subject to the changes occurring both in the external world and within each company, things that legal regulations cannot necessarily have. Indeed, one of the distinguishing features of a lawful provision is its immutability for a generally not short period. However, the legal regulation of financial reporting cannot disregard the principles of business economics, even if these are not incorporated into legally binding provisions.

Therefore, accounting principles play a supplementary role in the legislation governing financial statements. For this reason, those dealing with this issue must necessarily refer to the so-called "accounting principles", once identified with the term «generally accepted accounting principles as they were authoritatively endorsed by both the most evolved accounting doctrine and economic operators, to become generally accepted». Accounting principles have developed in a more timely and organic manner in countries characterised by the presence of an authoritative and, above all, well-organised accounting profession. This, in essence, has been a "self-sustaining" process: accounting standards were only formulated if there was a vital accounting profession, and the latter became increasingly authoritative through applying those standards.

The United States and Great Britain are the countries that first saw the birth and development of accounting standards. Therefore, accounting standards are indispensable in preparing legally legitimate and economically correct financial reporting. As far as our government is concerned, the need to fill the gap caused by the lack of uniform accounting standards began to be felt as early as the 1940s, which is why the Uniconti Commission was created in 1942. However, this body failed to achieve the purpose for which it had been set up, as the practical implementation of the accounting unification it had proposed was essentially null. After the Uniconti Commission's unsuccessful experience, it no longer considered the accounting unification issue in Italy for some time.

It was only in the 1960s that this topic began to be taken up again following the imposition of a compulsory financial reporting structure on electricity companies. In that decade, an increasing number of scholars and operators perceived the lack of "correct accounting principles" to which reference could be made.

The issuance of accounting standards was now a requirement that could no longer postpone.

In addition, the lack of "generally accepted accounting principles" was destined to become a true "historical anachronism" since, following the legislative evolution that had taken place in our country during the 1970s, it was the legal regulations themselves that presupposed the existence of a series of correct accounting principles. In fact, in 1975, with Decree No. 136, the Italian legislature made explicit reference to the criteria as mentioned above for the first time, stating that

> The auditing company, if the financial reporting and the profit and loss account correspond to the results of the accounting records and the assessments made and complied with the rules for the preparation of the financial reporting and the profit and loss account, and if the operating events are accurately recorded in the records following accounting principles, shall issue a certification.

At the time of enacting this legislation, however, despite the precise reference, no national body had yet prepared to give those criteria which, from the letter of the law, seemed to have become Italian cultural heritage.

In 1975, the Order of Certified Public Accountants finally undertook to form a commission whose task was to formulate, similarly to what had already been happening for more than four decades in the United States, the so-called "correct accounting principles". In 1982, Consob, with its resolution No. 1079 of 8 April, considered that

> the set of accounting principles prepared by the National Council of Chartered Accountants for industrial trading companies should be considered as a point of reference for both companies with listed shares and auditing firms, respectively, the preparation and certification of financial statements.

The regulatory introduction of the explicit reference to accounting standards is characterised by considerable temporal variability since the law has repeatedly made explicit reference to such standards but subsequently, in some cases, deleted any reference to such standards.

For example, Article 4 of Decree No. 136/75 deleted every reference to correct accounting principles in 1991. The third paragraph of Article 4 of the decree, as mentioned above, was amended as follows:

> The auditing firm, if the management facts are accurately recorded in the accounting records, if the financial reporting corresponds to the results of these records and of the checks carried out, and if the financial reporting complies with the rules governing financial reporting, issues a certificate.

The economic doctrine, however, even after the elimination of the term "accounting principles" from the article, as mentioned earlier, has consistently held that the reference to economically correct principles must, in essence, be considered implicit in the legal regulations governing financial statements.

For several years, the term “accounting principles” was no longer included in any legal regulation. Thus, the doctrinal discussion on the fundamental role of accounting principles in the legal rules concerning preparing financial statements continued during this period. The situation changed radically when the regional tax on productive activities (IRAP) came into force. In Article 11 of the Legislative Decree. 446/97 instituting IRAP, the “correct accounting principles” explicitly regained the role of auxiliary instruments and, consequently, interpretative of the civil code and, mediately, of tax regulations, provided that there was no apparent incompatibility between legal principles and technical-business rules, in which case, since the economic principles did not represent sources of law, the only applicable regulation in the preparation of financial reporting would necessarily remain the legislative provision. In particular, Article 11 of Legislative Decree 446/97 stipulated that «Regardless of the classification in profit and loss, it shall ascertain a positive and negative item based on their classification according to correct accounting principles».

The situation, however, changed again over time.

As was the case with Article 4 of Presidential Decree No. 136/75, also concerning Article 11 of Legislative Decree No. 446/97, the legislature went back on its heels. It removed the reference to “correct accounting principles” from that article. In fact, in 1999, Article 11 of the decree establishing IRAP was amended as follows: «Regardless of the placement in profit and loss, positive and negative components are ascertained based on their correct reclassification». Here again, the economic doctrine could only reiterate the observations made when it removed the reference to accounting principles from Article 4 of Presidential Decree 136/75.

The fact that the accounting principles are not explicitly mentioned in the law does not imply the abandonment of the view that they must necessarily be interpreted as supplementary and complementary rules of legal legislation.

Whether or not there are explicit references to them in civil law, accounting principles must therefore be considered as tools for interpreting and supplementing legal provisions in an economically correct manner.

It is well known that cost means the quantitative-monetary value of a production factor entering the company. However, there is no single conception of this concept. Depending on the type of configuration adopted, one speaks of prime cost, industrial cost, total cost, economic-technical cost, etc. Furthermore, reference can be made to the actual cost, standard cost, average cost, marginal cost, etc. As an example, consider how often the concept of cost is repeated in the civil code articles.

From this simple example, it can understand that knowledge of the accounting principles defining the concept of cost mentioned by the legislator is not only reasonable but indeed indispensable for the financial reporting editor to be able to draw up an intelligible document with economically correct values.

The accounting standards, therefore, supplement and complete the legislative regulations, filling in those gaps that intricately characterise the legislative norm.

Until 2001, the panorama regarding accounting standards was characterised as follows:

- at the national level, accounting standards were issued by the Commission for the Adoption of Accounting Standards, a body created by the National Council of Accountants and the College of Accountants;
- at the international level, on the other hand, accounting standards were issued by the IASC (International Accounting Standards Committee), which, in addition to giving existing accounting standards, also issued documents called SIC, whose function was to interpret the published accounting standards.

Since 2001, the situation has undergone a radical transformation because the bodies responsible for issuing accounting standards have undergone modifications and changes.

Regarding the Italian situation, in November 2001, the Accounting Standards Commission ceased to operate. On 27 November 2001, the Organismo Italiano per la Contabilità (OIC) was created, representing the Commission's evolution as mentioned above.

The OIC has the task of issuing national accounting standards. It arose from the need, felt by the leading Italian private and public parties, to establish a national standard setter with broad representativeness to express national instances in accounting matters. The OIC was shown in the legal form of a foundation on 27 November 2001. It prepares the accounting standards for drafting the annual and consolidated financial statements of enterprises and the preliminary and final financial reporting of non-profit enterprises and of national and local public administrations. In addition, the OIC, coordinating its work with the activities of other European standard-setters in compliance with current laws and regulations, provides technical support for the application in Italy of international accounting standards and European accounting directives. The OIC also assists the national legislator in issuing regulations on accounting and related matters to adapt internal financial reporting regulations to the European directives and international accounting standards endorsed by the European Commission. Finally, the OIC promotes accounting culture and the progress of corporate and professional practice by publishing documents and research on the subject and organising conferences, seminars and study meetings. To achieve the assigned tasks, the Founders have conceived and implemented an institutional set-up capable of ensuring, in the Foundation's governing bodies, a balanced presence of private and public partners interested in accounting information and, at the same time, capable of guaranteeing the fulfilment of the requirements of impartiality and independence of decisions. The authoritativeness required to effectively influence the regulation of accounting information at the national and international level is, in fact, more extraordinary the broader and more representative the composition of the decision-makers.

For companies obliged to prepare civil-law financial reporting, the OIC principles represent an indispensable knowledge tool so that the legislative criteria can be "supplemented", "integrated" and correctly "interpreted" from an economic-corporate point of view. Civil law must, therefore, always be read and applied with the principles issued by the OIC in mind. However, since the latter do not represent a source of direction, in the event of a discrepancy between the civil law and the accounting principle, it is evident that what should be applied is the article of law. However, such a situation appears more like a theoretical hypothesis than a concrete danger.

The role of the OIC has also been the subject of a specific regulatory intervention highlighting the relevance of the national accounting standards issued by this body. Legislative Decree No. 38 of 28.2.2005 (Official Gazette No. 66 of 21.3.2005) – Exercise of the options provided for in Article 5 of Regulation (EC) No. 1606/2002 concerning international accounting standards established that:

Art. 9-*bis* – Role and functions of the Italian Accounting Board:

1. The Italian Accounting Board, the national accounting standards institute
   a) issues national accounting standards, inspired by best practice, for the preparation of financial statements following the provisions of the Civil Code;
   b) provides support to the work of Parliament and the Governing Bodies on accounting regulations and expresses opinions when required by specific legal provisions or at the request of other public institutions
   c) participates in the process of developing the international accounting standards adopted in Europe, maintaining relations with the International Accounting Standards Board (IASB), the European Financial reporting Advisory Group (EFRAG) and the accounting bodies of other countries.

   About the activities under a), b), and c) coordinate with the national authorities competent in accounting matters.

2. In exercising its functions, the Organismo Italiano di Contabilità shall pursue public interest purposes, act independently, and adapt its statute to the canons of efficiency and eco-toxicity. It reports annually on its activities to the Ministry of Economy and Finance.

Also, the situation in recent years has shown a profound evolution concerning the international scene. First, it should mention that the IASC, established in 1973 by the IFAC (International Federation of Accountants), underwent a structural change in 2001. In 2001, the IASC Foundation was established, responsible for both the body that issues accounting standards and the body that gives interpretative standards for the accounting standards issued. The body formerly called the IASC changed its name to the IASB (International Accounting Standards Board). The accounting standards issued by the IASB are no longer called IAS standards but rather IFRS standards (International Financial Reporting Standards). The IASB also continues to give IFRS Interpretative Standards, which are called IFRICs.

As already highlighted above, the IAS/IFRS, like the OIC standards, do not represent binding rules, except for the companies indicated by Legislative Decree 38/2005, in respect of which the international standards become mandatory provisions. As things stand, therefore, with specific regard to the preparation of consolidated financial reporting and financial reporting for the financial year of particular categories of companies indicated in Legislative Decree 38/2005 (a decree issued in implementation of the options provided for in EU Regulation 1602/2002), the IAS/IFRS do not merely supplement the regulations, but also identify principles that those preparing financial reporting must observe. The IAS/IFRS, in the context of drafting the consolidated financial reporting and financial statements of the companies listed in Legislative Decree 38/2005, therefore become elements having the status of a "legal-accounting" source. Concerning the relationship between IAS/IFRS principles, OIC principles and civil law, it is, however, helpful to emphasise that the evolution of accounting principles and, in fact, also of legislative regulations tends to "introduce" the essential criteria illustrated in the international accounting principles into the national sphere. There is still a long way to go in this direction, but considering the events of the last few years, it can be said that there is a tendency to make more and more references to the IAS/IFRS.

Concerning this trend, one must remember that its beginnings go a long way. The origins of this evolutionary path can be traced back to Consob Resolution No. 1079 of 1982, according to which national accounting standards were to be considered as the point of reference for listed companies and auditing firms for the preparation and certification of their financial statements, while international accounting standards were to be considered for matters for which it had not to issue national accounting standards. In addition, Document No. 18 of the Auditing Standards issued by the Certified Public Accountants in the 1980s stated that

> the term "proper accounting principles" refers to the principles defined by the Commission for the Establishment of Accounting Principles of the National Council of Certified Public Accountants and, to the extent not yet issued by the National Council of Certified Public Accountants, by the IASC.

Concerning the issues that have not yet been addressed by the CNDC-CNR commission and the commission of chartered accountants in charge of issuing auditing standards, reference should therefore be made to what has already been discussed by the IASC since «the Consiglio Nazionale Dottori Commercialisti adheres to this organisation and is therefore […] committed to following its guidelines». From what has been said above, one can thus understand how, for decades now, the IAS/IFRS principles have represented useful tools of knowledge even for those companies that are not legally obliged to apply these criteria.

In this regard, however, one cannot overlook the perplexities that various authors and numerous companies have begun to advance concerning the evolutionary trend that leads to international standards being considered indispensable points of reference. In fact, in recent years, some companies, supported by the opinion of a part of the doctrine, have shown a desire to revalue the provisions of our civil code and the national accounting principles of the Italian Accounting Standards Board (OIC) as opposed to certain fundamental principles of the IAS/IFRS. And, precisely because of these problems, information documents are increasingly being issued (by the OIC and other bodies) that are useful for so-called "return companies", i.e. companies that want (and can) return to the national OIC standards from the IAS/IFRS.

After this brief introduction, it can therefore state that knowledge of the vast financial reporting issue could not disregard the contextual understanding of both accounting standards (national and international) and the legal aspects inherent to such a document.

It is, therefore, possible to consider that the so-called "point of no return" has been reached and largely exceeded, i.e. the historical moment in which no one can any longer consider it reasonable to propose the "surpassing/uselessness" of such documents.

If incorrectly interpreted, such an assertion could lead to the drawing up of financial statements considered by the courts to be illegitimate and, therefore, radically null and void.

To avoid problems of a legal nature connected to the preparation of financial reporting for the year, the writer considers it appropriate that the relationship between accounting principles and civil law be subject to further brief analysis in the light of a judgement issued in 2010 by the Court of Verona, specifically concerning the interconnections that can identify between financial reporting postulates and the role of national accounting standards. If, in fact, it is correct to speak of unanimous acceptance of the integrative and complementary role of the accounting standards concerning what is established by the legal provisions, it is equally valid to point out how an erroneous interpretation of the fundamental role "assigned" by the judiciary to the accounting standards themselves and/or to the content of the legal provisions can lead, inevitably, to the declaration of nullity of financial reporting. A circumstance that occurred precisely in action brought before the Court of Verona, which ruled to the issuance of the judgement of 18 September 2010 stating that an "erroneous concept of reference", implemented in the notes to the financial statements, to accounting principles and/or to the content of specific legal provisions can be grounds for the radical nullity of financial reporting itself.

To fully understand the issue at hand, it is necessary to briefly develop some preliminary remarks on the potential connection between the individual financial reporting postulates and the concept of «correct reference – implemented in the notes to the financial statements – to accounting principles and/or civil law provisions», to establish whether an incorrect inter-prescription of such a reference can be considered as a misapplication of understandability or truthfulness/correctness or even of understandability and, at the same time, truthfulness/correctness.

Only the knowledge of the "principles" that the judiciary considers to be pivotal elements of the legitimacy of financial statements makes it possible to perceive the true scope of the ruling of the Court of Verona, which we will discuss in the following pages. Concerning this issue, it is necessary, before carrying out any further analysis, to understand which postulate can be considered incorrectly applied in the presence of a misinterpretation of the concept of «a reference to accounting principles (and/or to the content of specific legal rules concerning financial statements)». At the operational level, a twofold situation may arise:

1. In the first hypothesis, it is possible that a particular accounting standard establishes the substantive obligation to observe a specific valuation criterion, pointing out the incorrectness of other alternative measures. Consider the case of depreciation. OIC Standard No. 16 (a document currently being revised) establishes the possibility of determining annual

depreciation by applying the criteria of increasing and/or decreasing rates while highlighting the substantial impropriety and, consequently, accounting inaccuracy of the measure of rising rates. Suppose a preparer of a financial report was to state that he had applied the accounting standard and subsequently assert that he had determined the amortisation of deferred costs using the criterion of increasing or decreasing rates without a technical-operational explanation that would make such values acceptable for specific reasons (a circumstance that, in the writer's opinion, could be considered permissible under Art. 2423 IV c. c.c.). In that case, the "disapplied" postulate would be truthfulness (unless it can conclusively demonstrate that the increased quotas in that specific case identified, for contingent and non-generalisable reasons, precisely the "real use and consumption" of the long-term asset). The amount entered as a cost in the financial reporting would not be valid as it is clearly in conflict with what is indicated as "correct" by the same principles and, indirectly, by the implicit reference to the latter by civil law. Therefore, in the event of such a situation, the potential nullity of the financial report would result from the non-compliance with the postulate concerning the "substance" and thus the truthfulness of the data recorded in the profit and loss and/or balance sheet, despite the formal reference to what is contained in an accounting standard. There is a consensus as to whether the presence in financial reporting of a legal relationship to the application of an accounting standard with a concomitant objective non-compliance with the criteria contained therein is a valid reason for declaring the financial reporting untrue. However, such a situation appears to be unrealistic or, in any case, not particularly common, as the lack of truthfulness would manifest itself in too obvious a manner; therefore, such a contingency would appear to be dictated more by an error or, instead, by a lack of knowledge of the accounting standards than by a concrete intention to include an untrue figure in financial reporting.

2. The other hypothesis that, unlike the previous one, is more commonly encountered concerns what we might call the "blank reference" to what is laid down by accounting standards and the content of specific legal rules concerning financial statements, with no, at the very least, blatant error in their application. Take, for example, the case of capitalisation of borrowing costs. The accounting standard OIC No. 16 (cf. also IAS No. 23) states that borrowing costs, as a rule, constitute an expense for the financial year and, as such, are to be recognised directly in the profit and loss of the financial period in which they arise. Since, however, property, plant and equipment identify assets that are used for the permanent organisation of the enterprise and generate income only when in use,

borrowing costs incurred in their acquisition (purchase and construction), in specific and well-defined circumstances, may be capitalised in the value to be attributed to the fixed assets. However, such an operation can only be carried out upon a set of circumstances indicated explicitly by the same accounting standard. In particular, the latter states that capitalisation of borrowing costs is only possible if:

a) it is not implemented to carry forward losses
b) it is made on a prudent basis
c) it is determined based on the interest expense incurred on borrowed capital specifically for the acquisition of fixed assets, provided that the borrowing was used for the purchase of the fixed assets
d) is measured by calculating the interest accrued during the "construction period", i.e. the period from the disbursement of funds to the suppliers of the assets until the time when the asset is ready for use, provided that this period is significant;
e) is measured at the interest rate incurred on the medium- to long-term loan used to pay for the tangible fixed assets;
f) the value, including interest, does not exceed the value recoverable using the same fixed assets.

Only when all of the above circumstances coincide does OIC Accounting Standard No. 16 permit the capitalisation of borrowing costs as an economically sound practice[42].

As we pointed out in point 1, if the notes to the financial statements were to refer to the provisions of the International Accounting Standards Board's standard No. 16, and it is evident that a calculation method contradicting the requirements of the standard has been applied, the financial reporting could be declared null and void for non-application of the truthfulness postulate. Let us now assume that financial reporting merely makes what we have previously referred to as a "blank reference" to the provisions of the accounting standards and the content of specific legal rules concerning financial statements. Let us assume that the notes to the financial statements do not state anything contrary to the accounting standards but instead show that the capitalisation of borrowing costs has been implemented because the prescribed conditions have been met. Since the requirements for implementing such capitalisation are laid down concisely by civil law and analytically by

42. The accounting standard OIC No. 16 illustrates, in great detail, the conditions that must observe for the conditions set out in sub-paragraphs c), d), e), and f) to be deemed to apply. For an exhaustive analysis of these conditions, the reader is referred to D.V. of the standard mentioned above.

the accounting standards, it is evident how such an affirmation represents, in essence, a "blank reference" to what is laid down by the legal regulations and the OIC documents concerning the specific subject matter of accounting valuation. In such a case, there would not be an obvious contrast between the methodology applied in financial reporting and the content of an accounting standard to which the Civil Code implicitly refers, but rather, there would even appear to be a perfect coincidence between the data contained in the profit and loss/balance sheet and the amounts determined through the application of the law and the correct accounting principles.

Such a "blank reference" to the content of an accounting standard, be it national or international, and to the content of specific legal rules regarding financial reporting, however, stems from a misinterpretation of the role that the judiciary, or part thereof, believes that such principles – accounting and legal – should play in the preparation of financial reporting.

And it is precisely on this point that the Court of Verona's ruling 18 September 2010 focuses its attention, explicitly stating that if the notes to the financial statements merely say that «during the financial year, capitalised financial charges for euro […] because the requirements were applied» without any further specification or illustration of the characteristics indicated in the accounting standard OIC No. 16, it must declare that the understandability principle is not applied. A mere blank reference to what is summarised in the civil law and detail in the accounting standards, therefore, does not appear sufficient for the financial reporting to be considered clear and understandable.

It is true that in the explanatory note to the financial reporting challenged before the Court of Verona, the sentence considered "unclear" does not make an explicit blank reference to the content of accounting standard No. 16 but instead merely asserts the existence of the requirements that allow the capitalisation of financial expenses. This statement, however, in the opinion of the writer and as has already been pointed out in the preceding pages, is to be understood, without a shadow of a doubt, as a blank reference to what is stated in Civil Code Article 2426, paragraph 1, no. 1, and what is detailed in the following paragraphs, No. 1 of the Civil Code. What is illustrated in detail by OIC Principle No. 16, since the sources from which the indispensable requirements for capitalisation are identified are illustrated concisely by Art. 2426, I c. of the Civil Code and analytically by OIC Document No. 16. This demonstrates incontrovertibly how the mere blank reference – without further illustration of the reasons – to the valuation criteria contained in an accounting principle and in a legal norm can be considered, by jurisprudence, a sufficient element to be able to declare the non-existence of the postulate of understandability.

The preceding considerations clarify the issue raised in point 1) above concerning the potential connection between compliance with financial reporting postulates and reference to accounting principles and statutory rules. In extremely concise terms, one can conclude this analysis by stating that the "disapplied" postulate is:

1. truthfulness, where there has been a misapplication of the content of an accounting standard in determining financial reporting items;
2. understandability if the notes to the financial statements merely refer in blank to the provisions of the Italian Civil Code and the accounting principles without a further detailed explanation of the methods of determining the red-book, equity and financial values contained in the profit and loss and balance sheet.

To avoid a challenge to financial reporting, it is, therefore, necessary that, in the face of a reference to legal provisions and accounting principles, not only the regulatory and accounting connection be present, but also a broad and detailed description of the quantitative calculation methods and the reasons that led the authors of the financial reporting to apply certain valuation criteria or specific presentation logics of the economic-financial values. This applies to any issue related to financial statements since the Court of Verona analysed the case subject to civil action. Still, by analogy, the general principle that led to the issuance of the judgment can be applied not only to the specific issue addressed (capitalisation of financial charges) but also to all other balance sheets and profit and loss items.

To understand the exact scope of the previous judgement, it is now opportune to briefly anticipate what will be analytically explored in the following pages concerning the scale of priority/subordination assigned by case law to the postulates connected to the "substance" (truthfulness and correctness) and "form" (understandability) of financial reporting. An in-depth examination of this particular issue appears to be of fundamental importance to understand whether an erroneous interpretation of the concept of «a reference to accounting principles and the content of specific legal rules concerning financial statements» may have different gradations of consequences depending on the impact on the postulates imposed by Article 2423 of the Italian Civil Code. In other words, it is necessary to understand whether the non-application of the postulate of truthfulness (which is the case if there is a misapplication of the content of a civil code article and an accounting standard) has similar or profoundly different consequences from those which arise if the financial reporting is actual in substance, but unclear in form (which is the case if there is a «mere reference in white» to the content of a civil code article and a standard).

As already announced, this topic will be dealt with in greater detail, as only a precise understanding of these issues makes it possible to understand the actual scope of the judgment in question. In this part of the work, we only wish to recall how the weight assigned to these postulates by case law has evolved radically over time. From a situation in which jurisprudential understandability had no relevance to the present condition, which is characterised by the unanimous opinion that interprets the precepts of understandability and truthfulness/correctness as postulates characterised by equal judicial dignity.

According to this guideline, the financial reporting of a limited liability company is unlawful not only when the breach of the relevant regulations leads to a discrepancy between the actual result for the financial year (or the figure intended to represent the company's overall asset value) and that of which the financial report gives an account, but also in all cases in which it is not possible to deduce from the financial report itself and its annexes the full range of information that the law requires to be provided in respect of the individual items to be reported. Having emphasised the essential nature of the informative function of the financial statements, the guideline in question recognises the unlawfulness of the financial statements whenever the violation of the mandatory legal precepts governing their preparation does not make it possible to perceive with sufficient understandability the specific information that the reading of the document and its annexes must provide concerning each of the items from which the financial report is formed. The principle of understandability, therefore, does not remain subordinate to the direction of truthfulness, as financial reporting that does not provide sufficiently understandable information cannot be regarded as valid merely because, in the final analysis, the data contained therein are not, in their accounting expression, contrary to the truth. Such an opinion would be manifestly untenable after the formal reception in the Italian legal system, with the enactment of Legislative Decree No. 127 of 1991, of the dictates of the Fourth Community Directive on Companies, which are inspired by the maximum enhancement of the so-called principle of transparency of financial statements. Suppose it is true that Community directives, before their formal transposition, are not susceptible to direct application in relations between private individuals. In that case, it is also true that – as the European Court of Justice also had to affirm in its judgment of 14 July 1994 in Case No. 91-94 – the judge, «when applying provisions of national law, whether prior or after the directive, is obliged to interpret them as far as possible in the light of the purpose and the letter of the directive». It does not, however, appear to be admissible even in the light of the previous legislation in force at the time of the drafting of the financial reporting under review, the interpretation of which, moreover, cannot be unrelated to the principles long since enunciated by the fourth directive itself, the enactment of which dates back to July 1978. Furthermore, Article 2423 of the Civil Code (old text) placed the precept of understandability on the same level as that of accuracy, without suggesting any ranking of importance and without subordinating compliance with the former to compliance with the latter or any other precept. Moreover, the opposing view did not consider further provisions, such as those governing the content of the directors' report, which testify to the utmost importance attributed by the legislature to the understandability of the individual items of information to be guaranteed to the recipients of the financial statements. It, therefore, risks betraying, in essence, the very raison d'être of the rules in question since it is pretty evident that the lack of understandability in the individual items into which the financial reporting is articulated fatally compromised that informative function (also outside the company structure) that we have already seen to be one of the primary purposes pursued by the legislature in regulating the accounting profile of company law[43]. According to this approach, now unanimously shared by doctrine and jurisprudence, the postulates of understandability and truthfulness are therefore characterised by mutual autonomy and an analogous "weight". Violation of even a single postulate thus unequivocally results in the radical nullity of the resolution approving the financial statements.

According to this well-established jurisprudential orientation, at the level of the invalidity of the resolution approving the financial statements, the non-application of the postulate of understandability, therefore, causes consequences entirely analogous to those determined by the non-observance of the postulates of truthfulness and correctness[44].

According to this approach, now unanimously shared by doctrine and jurisprudence, the postulates of understandability and truthfulness are

43. Cass. 21 febbraio 2000, n. 27. So also Cass., 14 marzo 1992, n. 3132; Cass. 30 marzo 1995, n. 3774; Cass. 3 settembre 1996, n. 8048; Cass. 8 agosto 1997, n. 7398; Cass. 3 settembre 1996, n. 8048; Cass. 29 settembre 2005, n. 19097.

44. See the considerations of Musumeci, La mancanza di understandability e precisione dei dati contabili. Il commento, *Le soc.*, 2002, p. 757. «The orientation that subordinates the relevance of the precept of understandability to compliance with a superordinate principle of truth can (therefore) no longer be followed, as if financial reporting that is not capable of providing sufficiently readable information can be considered valid merely because the data it contains are not, in their accounting expression, contrary to the truth». Cass. 3 September 1996 no. 8048. «The principle of understandability (therefore) is in no way subordinate to that of correctness and truthfulness of financial reporting […] but is endowed with autonomous value, since the fundamental objective of the legislature is to guarantee not only the truthfulness and correctness of the accounting results but also the widest transparency of the financial reporting data that those results lead to». Cass. 2 maggio 2007, n. 10139.

therefore characterised by mutual autonomy and an analogous "weight". Violation of even a single postulate, thus unequivocally, results in the radical nullity of the resolution approving the financial statements.

According to this well-established jurisprudential orientation, at the level of the invalidity of the resolution approving the financial statements, the non-application of the postulate of understandability, therefore, causes consequences entirely analogous to those determined by the non-observance of the postulates of truthfulness and correctness[45].

After this brief examination of the postulates of understandability, truthfulness and correctness, some points for reflection can therefore be drawn, which will be further analysed in the following pages to be able to go deeper into the subject matter of this work:

1. While on the "content" of the postulates of understandability and truthfulness, there is unanimity of opinion, the doctrine's precept of correctness is variously interpreted.
2. Notwithstanding the previous, all scholars agree that the violation of even only one of the three postulates imposed by Article 2423 of the Civil Code implies radical nullity of the financial statements, even in the hypothesis that the non-application of one of them can be ascertained.
3. Understandability has the same legal standing as truthfulness. Its non-observance, therefore, entails the same consequences as those resulting from the non-observance of the precept concerning the substance of the values (truthfulness).
4. The correct application of civil law provisions requires knowledge of the accounting principles since, by their very nature, legislative requirements only identify the framework principles and not the individual application rules, which can only be deepened and analysed by the accounting as mentioned above principles.
5. The accounting standards identify rules for the preparation of financial reporting, which supplement and complement the statutory provisions, although they do not represent sources of law.
6. Notwithstanding the unanimous recognition of the supplementary and complementary role of the accounting standards concerning what is regulated by the civil code, the mere blank reference to OIC/IAS-IFRS principles is considered by the judiciary to be grounds for the radical nullity of the resolution approving the financial statements. Therefore, if, on the one hand, it is true that the accounting standards represent an essential point of reference for the correct quantitative determination

45. Tribunale Verona, 18 settembre 2010.

of the economic-financial-equity values, on the other hand, it is equally valid that the financial reporting must analytically illustrate the reasons that led to the various subjective quantifications in the balance sheet and profit and loss. On the other hand, it is equally true that financial reporting must analytically illustrate the reasons that led to the various subjective quantifications in the balance sheet and profit and loss. Otherwise, the mere reference to rules identified by national and international accounting standards leads to the drafting of a financial report that could be subject to challenge, with the consequent declaration of nullity of the resolution approving this document.

# 3.

# Financial Reporting and Tax Law between the Principle of Autonomy and the Concept of "Logical Interconnection"

## 1. Tax Regulations and Financial Reporting: Interrelations, Overlaps and Contrasts: Introductory Remarks

The analysis of the interrelationships that can identify between civil law and tax provisions is, in a broad sense, part of the problematic of the concept of the "tax system". Tax provisions are not a set of stand-alone rules but constitute a system of "elements" that, directly or indirectly, are connected. Or rather, being part of the Italian legal system, they are a constituent part of the national legal system. This issue has been the subject of in-depth studies, which are beyond the scope of this work. However, it is essential to note that

> the system of relations of the tax system is destined to constantly change due to the tax policy considerations formulated in a given economic and social contingency. It is thus significant, in this regard, that even in ancient and recent studies of tax law, the analysis of the system is carried out precisely from a dynamic perspective, i.e. by highlighting the relations that exist between the different levels of the legal system according to the historical period of reference[1].

Moschetti, who states that «the comparison with other norms and, in particular, with those indicating the basic principles of the legal system ensures that the individual precept harmonises with all the others and with the general spirit that characterises and unifies the system». Moschetti makes an explicit reference to supra-ordinate norms concerning tax provisions, but the principle set forth by the author emphasises the need for the legal system to be, of course, characterised by harmonisation to respect «the general spirit that unifies the system».

1. Boria, *Il sistema tributario*, p. 8.

Sometimes such coordination is, at least on an interpretative level, absent or minimal. Take, for example, what happened in the 1980s concerning the issue of early depreciation. Following the enactment of the Consolidation Act on Income Taxes, Presidential Decree No. 197/86, expenses and other negative components were not deductible unless and to the extent that they were charged to the profit and loss account for the year in which they were incurred. However, income components, although not attributable to the profit and loss account, were deductible according to Article 75(4) of Presidential Decree 197/86. Much of the doctrine interpreted this rule as a legislative element favourable to the so-called double track. By permitting the deductibility of costs that are not attributable (due to the provisions of Art. 2423 et seq. of the Civil Code) to the profit and loss account, the tax legislature had, in fact, implicitly admitted that financial reporting could continue on a "track" other than that of the tax return[2]. In reality, the situation turned out to be far more complex than a superficial reading of the civil and fiscal provisions concerning the subject of accelerated depreciation, i.e., depreciation not connected to the actual use of long-term assets but considered deductible under a mere tax concession. Faced with the interpretation mentioned above, the judiciary, or rather, part of the judiciary, began to think it illegitimate to recognise such negative income components in the statutory profit and loss account. According to this jurisprudential current[3], accelerated depreciation, lacking the substantive element connected to the use of the asset and representing a mere tax concession, could not be considered in conformity with the provisions of Articles 2423 et seq. of the Civil Code, an interpretation that was, however followed by the contextual «refusal of the tax authorities to allow accelerated depreciation not recorded in the profit and loss account as a deduction from business income». Considering the illogicality of this situation (the taxpayer either filed a legitimate financial report and waived the deductibility of accelerated depreciation, or he deducted this income component for tax purposes but

2. «The two annual accounts, the profit and loss account and the tax return proceed in parallel on their track and do not get mixed up. Moroni, Comment al TU. delle imposte sui redditi, in Il sole 24 ore, 2/1/87, p. 39. Contrary to this opinion was Bafile, who observed "that it is certain, however, that the rule cannot be used to re-propose the hypothesis of a double track by claiming formalistic difficulties in placing in the profit and loss account items permitted by the tax legislation"». However, the scholar later stated «while the rule of the actuality of expenses and other negative components remains unchanged, which suffers no exceptions, the existence of non-attributable and yet actual negative items are indeed problematic». Reddito di imposta e financial reporting nel nuovo TU. delle imposte sui redditi, *Rassegna tributaria*, n. 9, I, 1987, p. 378.

3. Trib. Milano, 3/9/78, *Foro.it*, 1980, I, p. 441; *Giur. comm.*, 1981, II, p. 1019; Trib. Milano, 10/9/1981, *Giur. comm.*, 1982, II, p. 276.

filed an illegitimate and therefore contestable financial statement), the judges were essentially forced to sanction the legitimacy of the inclusion of depreciation in public financial reporting, believing – despite the contrary opinion of numerous scholars – that these values could be interpreted as portions of profits set aside as a reserve[4].

This is not the place to delve into the solutions that, in the 1980s, doctrine and the judiciary managed to identify to put an end to an objectively paradoxical situation. However, the short-circuit created in those years between the regulatory system and the persons charged with interpreting the rules, which in turn derived directly from a prominent and absurd inconsistency between civil and tax provisions, is evident.

Regulatory harmonisation, while thus representing a "logical" element with an almost disarming obviousness, sometimes appears obscured or limited by regulatory contrasts that remain latent until the moment of jurisprudential impact. As can easily be guessed, this causes a point of "dislocation" within the much-vaunted overall legal harmonisation.

The study of the interconnections between norms is not one of the objectives of this work, as our interest is limited to an in-depth examination of the relationship between civil law and tax provisions. This analysis, however, cannot disregard a more comprehensive view of the harmonisation issue mentioned above. Without this view, any consideration appears to be of limited relevance as it is eminently theoretical and essentially inapplicable and inapplicable.

In this context, and leaving aside any ambition to study the interrelationships that can identify between individual rules and general principles of a constitutional and super-legislative nature, it is interesting to consider the relationships that have been created over time by the legislature or have been generated due to case law and pragmatic interpretations of persons operating in companies, between rules concerning financial reporting and provisions governing the determination of taxable income.

This issue represents one of the most controversial topics on which doctrine and case law have expressed widely divergent opinions. Our primary interest is to verify to what extent the postulate of the truthfulness of financial reporting is implemented and feasible. To do so, however, it is necessary, as shown in the following pages, to consider the relationship between civil law and tax provisions.

For decades now, scholars, both corporatists and jurists, have expressed various thoughts, often pointing to a substantial irreconcilability with corporate practice.

4. Trib. Milano. 12/1/84, *Giur. comm.*, 1984, II, p. 286; *Dir. e prat. trib.*, 1984, II, p. 1313.

The study of the various doctrinal positions regarding the issue that is the main subject of this text shows that the multiple analyses carried out at the doctrinal level show, albeit with differentiations, com-patible and similar elements. In the face of such converging theoretical features, the comparison with what is implemented at the practical level by the majority of companies, on the other hand, reveals evident and frequent points of substantial irreconcilability between company practice and mere legal and company theory.

An element in most of the studies carried out by these describes that can be considered a "connecting link" between the various theories expounded by the scholars is the alleged clash between civil- and tax-related objectives. The predominant part of the doctrine, while highlighting many differences in terms of the analysis of the individual legal provisions, agrees that the two regulations (civil and fiscal) are characterised by distinct objectives that justify the existence of different principles related to the determination of income and, consequently, financial/asset relevant in the two areas. The obvious consequence of such a statement is the inherent impossibility of assuming a "translation" of tax rules into the civil sphere.

In anticipation of what will be discussed in the following volumes, it is necessary to emphasise that, although most authors agree with the above, there are nonetheless eminent scholars who approach the subject of our interest in a completely different manner. For some scholars, the discrepancy between civil law and tax provisions is not as apparent and inevitable as many authors claim.

Even if this is true, it is possible to state that, in reality, the predominant part of the doctrine identifies a problematic relationship between civil provisions and tax rules. We refer the reader to Volume II for a more detailed analysis of the various doctrinal positions on the interrelationships that can identify between civil law and tax provisions.

For the time being, it is essential to note that, for decades now, the relationship between tax law and civil law provisions has almost always been interpreted as an "improper" interrelation that has been criticised, which may go from being merely theoretical to the hypothesis that such a connection can be considered grounds for invalidating the resolution approving the financial statements.

Reference has already been made in the past to the «considerable violence» that the statutory model of financial reporting «suffers from the confluence of tax provisions» having «conflicting or, at least, in many cases, incompatible interests»[5].

5. Savioli, *Verità e falsità nel financial reporting di esercizio*, p. 114; Id. *Il financial reporting di esercizio, strumento di informazione esterna dell'impresa in funzionamento*, p. 72.

As far back as the 1970s, the existence of

> tax regulations that were the cause of the mixing of values of a fiscal nature (concerning the "declaration") and values of an economic-legal nature (concerning the "financial reporting") was already being pointed out, but this demonstrated precisely the tendency to want to transplant provisions of a tax content into the fabric of civil-law rules. According to these authors, this phenomenon of legislative brandism had to be promptly circumscribed and eliminated if one did not wanted to run the risk of being subjected to a hybrid discipline devoid of foundations on the level of legal theory and irrational on the level of business economic theory[6].

As can be seen from the tone used by some of the doctrines, the relationship between civil provisions and tax regulations was, and still is, considered conflictual with the consequence that any use of tax data in financial-civil reporting is deemed improper, inappropriate and, therefore, to be criticised. This position is also evidenced by the term logy used to describe the phenomenon discussed here.

In this regard, the etymological analysis of the terms "tax interference" highlights the attribution of a negative connotation to the identifiable relationship between civil law and tax provisions. On a semantic level, the term "interference" is associated with negative and undue interference by a subject in a field, not within its competence.

In the context of the subject matter of our interest, interference is implemented by tax legislation and, if interpreted in this sense, would "improperly and inappropriately" affect the preparation of true and fair financial reporting.

The following pages will analyse the various evolutionary stages of the identifiable relationship between civil and tax rules. The second volume of this work will set some considerations forth concerning the possibility that, at the regulatory level, strict tax rules may assist in reducing the untruthfulness of financial statements. On this subject, we prefer to refer the reader to the following pages, as any anticipation would inevitably have to be synthetic and, as such, could give rise to incorrect and misleading interpretations.

As mentioned in the preceding pages, for the time being, we intend to limit ourselves to pointing out that, for most business and legal experts, the objectives of civil law differ, at least in part, from those of tax provisions.

The profound discrepancies between the two regulations are, therefore, intrinsic to the provisions.

6. Mazza, *Il financial reporting e la dichiarazione dei redditi*, in Aa.Vv., *Il financial reporting d'esercizio. Problemi attuali*, p. 294 ff.

The doctrine has always hoped for an ever-closer approximation between civil law and tax law, as eliminating the discrepancies between the two principles should, at least theoretically, reduce the differences between taxable income and operating income. The need for taxable income to come closer and closer to economic gain appears to be particularly pronounced. Only when the two values coincide perfectly does the taxpayer determine a tax[7] calculated on the actual wealth produced during a given administrative period. In all other hypotheses, however, the amount paid to public entities by way of income tax is determined based on a taxable income that, representing a different value from the revenue identified according to correct accounting principles, does not necessarily re-specify the amount of wealth created ex novo by the company. If the two values (taxable income and economically correct income) do not coincide, it is clear that the taxable base on which the tax is determined may be lower or higher than the wealth produced. Experience shows that, in most cases, precisely because of the mechanisms put in place by the legislature to safeguard the payment of due taxes, the probability of the taxable income exceeding the economically correct income is decidedly higher than the probability of the opposite occurring.

It has already been pointed out on several occasions in the past that the payment of a tax calculated on a higher amount than the economic income produced by the enterprise does not merely result in a temporal shift of the tax payment. The advance payment of taxes, as well as, for example, the failure to timely reimburse undue taxes, prevents new investments, slows down entrepreneurial activity, blocks payments due to suppliers, and creates a series of problems that absorb resources in terms of consultancy and legal, etc. From these brief considerations, it is easy to understand how the payment of taxes in periods unrelated to the actual production of wealth can potentially destroy essential ganglions in entrepreneurial activity, a circumstance that, as can be seen in this historical period, not only causes temporary problems with consequent reductions in profits but is also the harbinger of a concatenated series of financial and income elements that can bring the life of the enterprise itself to a definitive halt.

The advance payment of sums which, according to the postulate of truthfulness and fairness, should be postponed is far from in-fluent. This is why, for decades now, most scholars have considered a progressive approximation between economic and taxable income indispensable.

From these brief considerations, it can understand that irrespective of the position taken by the various scholars concerning the identifiable relationship between economic operating and taxable income. This is a personal opinion

7. In this part of the text, reference is made exclusively to income tax.

on the potential identification of discrepancies and overlaps between tax-relevant income components and costs/income determined following correct business principles; the in-depth examination of the legal relationship that has developed over the years between civil law provisions and tax rules is an issue of considerable interest.

To conclude these brief introductory remarks, it is appropriate to set forth a reflection that, while it cannot be apodictic, nevertheless seems to be congruous. In addressing the issue of tax interferences and the identifiable relationship between financial reporting and taxable income, the main subject of our interest is the possible parallelisms/disagreements/interrelationships/contradictions between business valuation principles and the rules dictated to determine taxable income. The relationship between financial reporting results and amounts declared for tax purposes is particularly interesting from this perspective. Of little relevance to our analysis is the overlap between costs and revenues related to operating income and tax-relevant income components if these are objective values. It is obvious that in the presence of tax evasion resulting from the failure to account for revenues or connected to the re-learning of non-existent costs, dealing with the issue of tax interferences in the financial reporting of the financial year appears to be an activity devoid of relevance and logic.

However, this is not the subject of our interest. In the following pages, therefore, even though reference will inevitably be made to such practices and the consequent tax influences on financial reporting resulting from such accounting behaviour, the focus will be primarily on the issue of tax interferences resulting from the osmosis between the two documents (financial reporting and tax return), for estimated and conjectured valuation items. Therefore, subjective values will be the privileged object of our analysis concerning tax interferences in financial reporting.

# 4.

# Historical Evolution of the Relationship between Taxable Income and Operating Income from the Unification of Italy to the End of the 1960s

## 1. Tax and Financial Reporting after 1860: from Nothing to Little until the De Stefani and Thaon De Revel Reforms

As well summarised by Bernardi, the tax system can be divided into "pre-modern" and "modern". He states that the pre-modern system

> in Italy [lasted] until the 1972 reform […], [while] in many developing countries, which had inherited it from the colonial domains, it was only very recently that it was gradually abandoned. The pre-modern system is based on three cornerstones. Direct taxes are multiple and single-taxed, accurate and with little or no element of personalisation, with little or no coordination between them, rarely accompanied by a complementary unifying tax, i.e. secondary and devolved only to a few taxpayers wealthy enough to be subject to it, not rich enough to evade it. The pluralism of taxable persons also characterises indirect taxes, which are applied uncoordinatedly on a large number of heterogeneous products and consumption: sometimes with a broad base and low rates (essential goods), sometimes with a narrow base and high speeds (luxury goods). The general trade tax's more straightforward, distorting forms are just beginning to emerge. Finally, the revenue from customs and internal duties is high, the former motivated as much by fiscal reasons as by the protection of the national economy […]. The pre-modern system thus gradually gave way to the modern design, which gradually formed in the more developed countries around World War II, arrived in Italy with the 1972 reform, and is now spreading among developing countries.
>
> At the heart of the modern system is the Comprehensive Income Tax with its three classic attributes: the generality of the base, which tends to include every form of income, monetary or otherwise, and every variation in wealth, realised or not; personalisation, to better tailor the levy according to horizontal equity to the contributive capacity of the subject, beyond the superficial characteristics of income and assets; high progressivity, intended for vertical equalisation

purposes. Income tax is flanked by a robust corporate levy, autonomous and not easy to coordinate with those individuals[1].

The objective of this paragraph is not to analyse the peculiar characteristics of the evolution of the Italian tax system but rather to understand what were, in the pre-1951 period (Vanoni reform), the relationships between tax rules and civil law provisions concerning financial reporting. Since the purpose of this work is to examine in depth the so-called tax interferences in financial reporting, an understanding of the historical development that has led to the current situation appears essential to correctly interpret the inter-relationship that can identify today between the fiscal aspect of income and the economic-civil-law determination of income.

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

To understand what overlaps and interrelationships existed in the past between taxable income and income for the year that can deduce from the financial statements, it is necessary to briefly examine the evolution of the two regulations and then verify the existence of any points of convergence – legally regulated and/or unregulated – that can be identified between the taxable base (with further analysis of what the legislator intended by this) and income that can be deduced from the financial reporting for the year.

In the Albertin code of 1842, derived from the Napoleonic Code de Commerce, we find the first actual reference to a part of the balance sheet, the so-called "inventory". This document in the code, as mentioned above, was not the subject of specific and rigid rules but only of a generic provision, according to which «the merchant is obliged to make an inventory every year of his movable and immovable objects, debts and credits of whatever 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).

Only in the 1865 code are explicit provisions relating to the financial reporting of companies to be found. In particular, Art. 147 prohibited directors from voting in the meeting to approve the financial statements, and Art. 121 stated that «if the limited partner (of a limited liability company) (has) been paid interest on the capital promised in the deed of partnership or shares in the profits, he is not obliged to return them when the annual accounts made in good faith show sufficient profits to pay them».

An analysis of the 1865 code shows that, at that time, there was a lack

1. Bernardi, Note sull'evoluzione recente e sulle prospettive future dei sistemi tributari, *Studi e note di economia*, n. 1/2000, p. 27 ff.

of minimal regulations governing financial statements. This document was only the subject of references, more or less explicit, to other law articles. This circumstance demonstrates the absence of any regulation of financial reporting, not even briefly sketched out.

Colombo[2], citing the most obvious limitations of this abnormal absence of regulatory provisions on financial reporting, highlights, in particular:

1. the lack of imposition on joint-stock companies of a provision similar to that in force for limited liability companies;
2. the absence of a clear and definite fixing of an annual deadline for convening the shareholders' meeting, the purpose of which was the approval of the financial statements;
3. and, lastly, the content of the provisions which, while prohibiting the payment of dividends to shareholders «except for profits earned» and while sanctioning the liability of directors concerning the «real existence of dividends paid», were characterised by a total absence of express reference to the approved financial reporting.

This clearly shows, without the need for further proof, that the concept of financial reporting in 1865 was not yet evident in the legislator's mind.

Legal developments, historical progress, the change in the concept of the role of the shareholder, the inevitable social transformation and the development of economic-business studies led to the enactment of the Commercial Code of 1882, which, despite its regulatory limitations on financial statements, is remembered as a milestone in the disclosure of information to third parties outside of companies.

For the first time, the legislator perceived the need to regulate certain aspects of financial reporting, albeit concisely, lacunar and partially. This is why 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 statements. With the enactment of the Commercial Code of 1882, the situation improved slightly, as the legislator imposed, albeit briefly and generically, several 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 balance sheet lacked the depth that would guarantee the preparation of financial reporting that could be qualified as a proper management and communication tool. The vagueness, conciseness and, above all, the ambiguity of the postulates and principles underlying its

2. Colombo, *Il bilancio d'esercizio delle S.p.A.*, p. 34 ff.

drafting meant that, pragmatically, financial reporting was often a document without a real informative function on the assets, economic and financial situation of companies.

As mentioned above, therefore, from nothing to little.

It should be noted, however, that the transition from the regulations of 1865 to those promulgated in 1882 undoubtedly shows a slight tendency to improve the informative capacity of financial statements, which in itself is an indication of progress in nuce.

In particular, Art. 22 of the Commercial Code stipulated that «The merchant shall each year take an inventory of his movable and immovable property and his debts and credits of whatever nature and origin. The stock shall be closed with the financial reporting and the profit and loss account 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. However, these articles did not reference the structure and regulation of financial reporting.

The most relevant article on the subject of financial reporting for the financial year was undoubtedly Art. 176, which imposed the following obligations:

> The directors must submit to the auditors, at least one month before the day fixed for the general meeting, that is to discuss it, the previous financial reporting with supporting documents, indicating separately therein:
>
> 1. the share capital existing;
> 2. the sum of payments made and payments in arrears.
>
> The financial reporting must clearly and truthfully show the profits made 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 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 shall be deposited in copy, together with the auditors' report, in the offices of the company during the 15 days preceding the general meeting and until it is approved. Anyone proving his status as a shareholder could examine the one and the other.

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

Of particular interest is Art. 181, which stipulated that it could provide no dividends to shareholders except for profits that had been made and were shown in the approved financial reporting. The provision also stated that shareholders were not obliged to return the dividends paid to them. This provision also prohibited companies from mentioning, in their deeds of incorporation, articles of association or other documents, interest to be distributed on the capital represented by shares. At most, the payment of interest, to be deducted from the capital, could be agreed upon in those industrial companies for which a period was necessary to establish the business object, but no longer than three years and in an amount not exceeding five per cent. In this case, the amount of interest was to be calculated among the expenses of the first establishment and apportioned with those to be borne by the budgets that would have actual dividends.

Lastly, Art. 182 regulated the compulsory allocation to the legal reserve of a portion of the profit realised by the company.

From the brief excursus of the rules directly or indirectly connected with the problem of financial reporting, it is evident that the legislature of 1882, although addressing this problem in a more structured manner than previously, had certainly not set itself the objective of regulating the formal and substantive aspects of the balance 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 clearly and truthfully demonstrate the profits made during the year and the losses incurred, 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, there is, however, one provision which, analysed in the light of the experience of the last decades, during which accounting principles have increasingly become points of reference for the preparer of financial statements, may leave the reader astonished: Article 89 stipulated that the memorandum or articles of association of public limited companies or limited partnerships with share capital had to indicate, among other information, the rules by which the financial statements were to be drawn up and the profits calculated and distributed. Each company could therefore identify the methods of financial reporting that closely resembled its idea of «evidence and truth», thus implementing a complete blanket reference to the «good accounting rules»[3], which, moreover, because of the silence of the legislature

3. Ceccherelli, *Il linguaggio dei bilanci*, p. 275 ff.

on this issue, could be "subjectively" interpreted by any company without this in any way suggesting that the financial reporting itself was incorrect. This view is, moreover, also emphasised by the report attached to the draft law of the Commercial Code, which stated that

> the draft is limited to giving a generic and safe guide and leaves it to the estimation of the special circumstances of time and place and the relationships of each company to decide in what way it should appreciate the individual corporate values.

The consideration permeated the logic behind this legislation that financial reporting was, in reality, an "internal" document of the company, on which no one had the right to intervene in a mandatory and regulatory manner. As pointed out by Bocchini, the justification for such a position is to be found in the

> liberalist ideology that made any external scrutiny of management performance inadmissible […] and (in the circumstance) that the joint-stock company phenomenon was, in 1882, a relatively new phenomenon[4].

Regardless of the historical and/or political motivations of the time, there is no doubt that, in the period after 1882, the drafting of financial reporting was left completely and utterly in the hands of the directors, who[5], pragmatically, they could at best rely on what the aziendalist scholars illustrated. There is no need to dwell on the fact that, in the absence of organisational regulations There is no need to stay on the fact that, in the lack of organic laws concerning financial statements, the documents drawn up by companies were synoptic and, above all, compiled in a highly superficial manner. What is certain is that these prospectuses were considered internal company documents. Consequently, any semblance of the concept of «financial reporting as an instrument of information directed externally» was absent.

This situation was also influenced by jurisprudence that, interpreting judicial control as an objectionable intrusion into company management, considered good resolutions of financial statements declared false in the judgement itself, arguing that financial reporting had to be regarded as an internal act of the

4. Bocchini, Understandability e precisione nel financial reporting nell'evoluzione della dottrina e giurisprudenza, *Rivista delle società*, 1972, p. 374

5. «Is found in the Commercial Code of 1882, which, inspired by the liberalist theories of the period, disregarded any rules on the "minimum" contents of the document and the criteria for valuation, relying on the directors' and auditors' sense of responsibility in making the right assessment». Bocchini, *last work cited*, p. 375.

company and, as such, removed from any external control (including in such "unenforceable controls" even those carried out by the judiciary)[6].

Regardless of any consideration of the informative capacity of the financial reporting prepared under the 1865 and 1882 regulations, it should be noted that, in both codes, the patrimonial view of the document prevailed decisively.

The financial reporting, derived indirectly from the 1842 Code de Commerce inventory, became, albeit without specific regulations, a pre-eminent document concerning profit and loss. This led to the diffusion, at the level of both business practice and, to some extent, 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, more accurately, the profit and loss account) played only a parting role, almost completely lacking in actual relevance. The profit and loss account, therefore, even in the 1882 code, seems to have only a position as a mere appendix of far less significance than the document which, according to this theory, constituted the "true financial reporting" (i.e. financial reporting).

From the considerations outlined above, it can be understood why the analysis of potential "tax interferences in financial reporting" can only be, in essence, an in-depth study that is in any case "limited" precisely by the historical-doctrinal context to which the analysis itself refers.

This situation changed radically over time since, especially in the early 1900s, legal and corporate studies concerning financial reporting flourished and developed considerably. However, this was not followed by a change in the legislation. The 1882 code, at least in part concerning financial reporting, was only revised and amended in 1942, the year in which promulgated the civil code currently in force.

At this point, to understand any potential "intersections" between civil law and tax provisions, it is necessary to consider, in extremely synthetic terms, the salient features of the tax legislation in force in the last decades of the 19th century.It is not possible to begin any analysis, however partial, synthetic and transversal, of the evolution of the Italian tax system without quoting the considerations, now entered into history, that Quintino Sella made in his famous speech to the Chamber on 7 June 1862:

6. «The profit or loss of a financial report of an industrial or commercial company relates […] to the problem of the valuations of the elements making up the assets: a predominantly subjective problem, the solution to which does not admit of even judicial review, since, as a rule, the valuations are entrusted by the articles of association to the prudence of the directors, who are answerable to the shareholders' meetings, to which the law authorises the task of approving the financial report». Sampieri Mangano, *L'imposta di ricchezza mobile e le società commerciali per azioni*, p. 79.

We, with the most remarkable indifference, without ever taking into account our liabilities and assets, without ever worrying about how it will meet. Regarding our expenses, we will vote a billion in costs against half a billion in revenues! Will we continue to have a financial report of one billion against an asset of half a billion? Or has the time not come for us to seriously think about putting our finances in order and not to make expenditures until we are sure that we have the means to do so until we have made reasonable provisions for these means? Has not the time come to say: we must seriously reduce the ordinary to the necessary; we must add to this necessity the interest on the sums extraordinarily needed for national defence and public works, and we must provide for these recurring liabilities with a sound system of taxes? Has not the time come to examine this system of taxes, to organise them definitively, and, when they are organised, to see whether we can expect them to develop in such a way as to equalise, within a reasonable time, the ordinary liabilities by a given amount?[7]

In another speech on the problem of the cost of public indebtedness, Sella emphasised:

If you resort to extraordinary means if you turn to capital to provide for the deficit, then you must undergo such severe burdens, that I have no hesitation in saying that every prudent Italian citizen must declare to us: ask us for what is necessary, but do not continue with this system, [because, *author's note*] what you do not ask of us today, you will ask of us tomorrow with a much more significant increase than we must bear today. I, therefore, believe that it must provide this too considerable deficit. For, and that there is no other way to provide for it to the country's benefit than by increasing existing taxes or establishing new ones[8].

This is not the right place to dwell on the topicality of such considerations. Indeed, our intention is not to delve into the historical evolution of the Italian tax system since its inception but to focus on a specific part of this issue. In particular, the aim of this work, as has already been pointed out several times, is to analyse the relationship between the determination of the tax base and the results of financial reporting. All of this represents a tiny part of the subject matter of the Italian tax system. Still, even with this in mind, it was impossible to embark on our research without mentioning what was valid a century and a half ago and still represents the central element of any economic-tax discussion.

Concerning tax interferences in financial reporting, it is possible to state that it can identify the turning point in post-unification tax legislation in Law

7. Sella, *Speech read in the Parliament on 7 June 1862*, in Izzo, *La finanza pubblica del primo decennio dell'Unità di Italia*, p. 192 ff.

8. Sella, *Speech in the parliament on 13 December 1865,* in Izzo, *last work cited*, p. 279.

no. 1830 of 14/7/1864, which currently can locate the law instituting the tax on mobile wealth[9]. It should remember that the mobile wealth tax was levied on income other than that already 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 later, part of it) of income not linked to land possessions.

Here again, Quintino Sella succeeded in capturing, in a few lines, the characteristics that made the mobile wealth tax a tax element of primary importance. Sella, in his report to the bill presented to the Chamber of Deputies on 18 November 1862, wrote:

> Of the means which could be resorted to, with great probability of happy success, to achieve the end which so much, and with such a good reason, preoccupies the financial reporting of the State today, a tax on the income from movable wealth was that which most readily offered itself and seemed to deserve preference. Two titles of great moments recommend to your attention, and they were decisive for me. In the first place, the principle from which it starts, considered theoretically, makes it the only one among the many kinds of taxes that have prevailed in the world, which comes close to the fundamental concept of public contributions. The taxation of income proceeds logically and clearly; it abandons the ancient circuitous routes; it does not seek the taxable thing independently of man; it does not seek to protect industries or favour social classes, nor oppress others; but, basing its calculations directly on the real figure of wealth, instead of groping around for the often fallacious evidence, it poses the specific problem of finance: given an expense to be borne in common, he demands from each citizen his share, […] according to the annual income that each one possesses, according, that is, to the only title by which the citizen may feel bound to contribute in an annual expense that is made for the benefit of all. It may be said that the taxation of incomes is the inauguration of truth in taxation; it is perhaps the only case in which the happy expression that our fathers used when they gave the title of "gabbanti" to those taxes which the modern States have called simply indirect, cannot be applied. And because of that inevitable concatenation that dominates human affairs, the logical evidence of this mode of taxation is connected with effects of another sphere, to which a government

9. «In the discussion in the Chamber of Deputies, it was pointed out that this was a new tax for many regions since it did not exist in Sicily, in the Neapolitan area and in the papal state; it lived instead, under different forms and in unequal measures, in the other provinces. The commission preferred the extension of the Piedmontese system and the multiple taxes, the method of single and direct taxation on movable rents, burdened uniformly in all regions of the country […]. Having established that the tax was levied on income and not on capital, that it was single and not multiple, the legislator emphasised the residual nature of the tax, a characteristic that remained even afterwards. Income from immovable property, which was to be taxed with the land tax, was not affected, but the non-land income of taxpayers was affected». Balletta, La finanza pubblica e il Mezzogiorno d'Italia al momento dell'Unità, *Rivista di storia finanziaria*, p. 179.

cannot be indifferent, and among which first of all is the political moralisation of the masses, in the sight of that inexorable equity from which an income tax arises and with which it is sensibly apportioned, learn the practice of their monetary obligations to the State, gradually cease their ordinary antipathies to the taxman and become accustomed, without realising it, to succour him instead of suffering him as a scourge. Secondly, this theoretical merit has its natural counterpart in practical administration. Grouping the various forms of annual production to hit them with a single tax not only simplifies the collection method but, more importantly, also lessens the inconvenience for the taxpayers. […]. Only one objection seemed to weaken the reasons for favouring the principle of an income tax, and that is the difficulty, real or feared, of its practical implementation. I will confess to the House that, in the face of this doubt, I also somewhat hesitated […]. But, looking around at the world and history, I have found that Italy today would be the only country in which the principle of an income tax, in any form, pure or disguised as a tax on capital, established perpetually or temporarily, under one title or another, does not yet appear explicitly in financial legislation[10].

To understand the possible connections between the code's provisions on financial reporting and the tax legislation governing the determination of companies' taxable income, it is appropriate to recall some fundamental articles of the law establishing the tax on movable wealth.

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

Art. 6

The following shall be considered as income from movable wealth existing in the State.

a) income registered in the mortgage offices of the Kingdom or otherwise re-established by public deed made in the Kingdom;
b) Salaries, pensions, annuities, interest and dividends paid anywhere and by any person on behalf of the State, provinces, municipalities, public establishments and commercial, industrial and insurance companies having their seat in the Kingdom;
c) income from an ecclesiastical benefice paid as aforesaid by one of the funds mentioned in the preceding paragraph;
d) income from industries, trades, employments and professions exercised in the Kingdom;
e) and, in general, any non-land income produced in the State or payable by persons domiciled or resident in the State.

10. Sella, *Relazione al progetto di legge istitutiva dell'imposta di ricchezza mobile presentato alla Camera il 18 novembre 1862*, in S. Buscema, D'Amato (a cura di), *Documenti e discussioni sulla formazione del sistema tributario italiano*, p. 44.

In particular, it must emphasise that

> a structural aspect of the tax on movable wealth concerned the existence of subsystems. Within the scope of the tax fell, in fact, a plurality of manifestations of wealth, which were grouped into income categories, each distinguished according to the source of production of the income itself. Thus, one could identify income derived from capital alone (interest on public debt, premiums, other income from the use of capital: cat. A), mixed-income produced by a combination of capital and labour (industrial and commercial income: cat. B) and income from labour alone (income from art or profession or personal occupation: cat. C)[11].

As can be understood from reading the article mentioned above, income from the operation of businesses became, for all intents and purposes, part of the tax base for the tax on mobile wealth. Unlike in present times, Article 14 of the 1830 Act required that uncertain and variable income, such as that from the exercise of industry, «be calculated according 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 stipulated 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 Consolidation Act No. 4021 of 1877 (in the execution 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 determined according to the arithmetic mean of the two preceding years[12].

This rule (calculation of income tax according to the average of the two preceding years) did not apply to joint-stock companies, credit institutions and savings banks, which were not obliged by their statutes to compile half-yearly financial reporting. For such companies, under Article 25 of Consolidation Act 4021/1877, the tax on their income had to be calculated based on the financial reporting and the accounts for the calendar year preceding the year in which the reports had to be submitted.

Article 30 T.U. 4021 also provided that the income of public limited companies and limited partnerships limited by shares, including mutual or fixed-premium insurance companies, was to include indiscriminately all sums distributed under any title to the shareholders and those used to increase the capital or the reserve and depreciation fund, or otherwise used to extinguish debts.

11. Boria, *Il sistema tributario*, p. 39.
12. On this subject, the reader is referred to the following pages.

Regarding determining the tax base and the relationship between it and the financial reporting, it is necessary to analyse Article 15 of Law 1830/1864.

Art. 15 L. 1830/1864

For the industrial income class, expenses inherent in production, such as the consumption of raw materials and tools, workers' wages, rent of premises, sales commissions and the like, will be taken into account as deductions.

These expenses shall not include the following:

1. the interest on capital employed in the business, whether owned by the merchant or borrowed, subject to Art. 32 for the latter;
2. the remuneration for the work of the taxpayer, his wife and those of his children who are employed in the business and to whose support he is obliged by law to pay when they live with their father
3. the expense of housing the taxpayer and his family.

The tax on movable wealth was therefore also levied on companies, as holders of industrial income to the production of which capital and labour contributed together (category B of taxable income)[13].

Law 1830 does not contain any explicit reference to financial reporting. Still, the doctrine is essentially unanimous in its opinion that the tax determination is based on the latter document for companies subject to the preparation of financial statements[14].

Scholars, therefore, agree that the taxable base connected with the operation of a company, provided that the latter was required to prepare a financial reporting, could only be determined based on the results of the profit and loss account, from which the amounts that the law itself stipulated had to be deducted from revenue could be deducted[15].

Articles 16 and 17 also seem to confirm this interpretation.

13. Padovani, *Investimenti in società di capitali e imposizione sul reddito*, p. 7.

14. Ivi, p. 8.

15. It should note that taxation based on financial reporting did not represent a unanimous doctrinal and operational position. Meda, in 1919, in his report on the bill to modify the Italian tax system (which, as will be noted in the following pages, did not become a law of the State, highlighting the difficulties involved in determining taxes based on this document, stated: «On the assets side, what value should be given to year-end inventories; what current and prudential prices should be assigned to each asset? On the liabilities side, what allowances are to be made for depreciation? Which depreciation allowances are legally permissible, and which are denied? Which taxes and expenses are admissible as deductions, and which are to be excluded?». Meda, *Relazione al disegno di legge presentato alla Camera nella seduta del 6 marzo 1919*, in Buscema, D'amati (a cura di), *Storia della finanza pubblica*, p. 283.

Art. 16 L. 1830/1864

> The income of joint-stock companies and limited partnerships with share capital, including insurance, mutual or fixed-premium companies, shall include indiscriminately all the sums distributed under any title among the shareholders and those used to increase the capital or the reserve and depreciation fund or otherwise employed even in extinguishing debts.

Article 17 L. 1830/1864

> General partnerships shall be considered a single taxpayer, except for the payment of the solidarity of the individuals that make them up, and for each of them the obligation to contribute because of other income they possess to part of the company's interest.

In the articles relating to the determination of the taxable base of the tax on movable wealth connected with the exercise of business activities and the performance of activities by companies, although no explicit references to the financial statements appear, there are references to income and asset items that could only be deducted from the financial reporting.

In this context, it is, therefore, possible to state that, albeit indirectly and not explicitly in the legislation, financial reporting was the preferred reference for those charged with determining the tax base for the tax on movable wealth.

The doubt, as mentioned above, was, in any case, resolved with the reform of 1877, which led to the enactment of the T.U. of movable wealth No. 4021[16]. In particular, Art. 25 of the said Consolidated Act provided that

16. With regard to the progressive extension of tax legislation beyond the boundaries of income-product in the strict sense indicated by the 1877 Consolidated Act and subsequent legislation, see, for all, Paolo Ferrari's lucid analysis developed in "Il concetto di tributo nella legislazione e nella legislazione italiana dall'Unità d'Italia al secondo dopoguerra", *Rivista scuola superiore e economia e finanze*. This author states: «The notion of income-product, as we have seen, has permeated the theoretical framework of the direct tax system and has inspired – but not conditioned – the tax legislator, from the 1877 Consolidation Act onwards. However, the 1877 Consolidation Act lacked a definition of income that would positively link the object of the levy to the product of a generating source. This shortcoming, together with the non-exhaustive nature of the list of income from movable wealth contained in Article 3 of the Consolidation Act, allowed the tax to be applied even in hypotheses that did not strictly comply with this definition. In particular, increases in wealth due to mere increases in the value of real estate and securities were also subject to tax by the jurisprudence, regardless of whether they were attributable to the taxpayer's speculative activities. However, this did not prevent the doctrine – always in search of a precise notion of income – from adhering to the theory of income-product in terms of tax law. The Legislator of 1877 thus expanded the concept of income beyond the boundaries of income-product in the strict sense in some provisions. Among the regulatory ideas oriented towards the taxability of increases in wealth

public limited companies, limited partnerships limited by shares, credit institutions and savings banks, which were not obliged by their statutes to draw up half-yearly balance sheets, had to commensurate their tax based on their financial reporting for the calendar year preceding the year in which the reports were to be filed. As already mentioned, Art. 30 of the Consolidated Law 4021 also provided that the income of companies limited by shares and limited partnerships limited by shares, including mutual or fixed-premium insurance companies, was to include indiscriminately all the sums distributed under any title among the shareholders and those used to increase the capital or the reserve and depreciation fund or otherwise used to extinguish debts.

Sampieri Mangano, outlining the orientation followed by the doctrine and jurisprudence of the time and by the administrative practice itself, noted that, according to the prevailing opinion, «finance could not impose its own

unrelated to a genetic cause, one can point to Article 16 of the 1864 Law, later transfused into Article 30 of the 1877 Consolidation Act. Article 30 provided that "in the income of joint-stock companies and limited partnerships with shares, including mutual insurance companies or fixed-premium companies, all sums distributed under any title among the partners and those used to increase the capital or the reserve and depreciation fund, or otherwise used also to extinguish debts, shall be calculated indiscriminately". This provision at least gave pause for thought as to whether the legislature had considered it irrelevant to fix a specific source of the increase in wealth occurring within the companies mentioned above. The acts of the utilisation of this wealth in the corporate sphere (allocation to capital or funds, distribution to shareholders, extinguishment of liabilities), by rendering sure of its existence and traceability to the collective entity, automatically made it possible to overcome the problem of identifying and recognising the taxable income, which was otherwise solved by the criterion of the link with the genetic source. Notwithstanding the Legislature's evident expansion of the concept of income-product and the attempt to overcome it by employing a more elastic conception, doctrine judged this provision to be poorly formulated, superfluous and even devoid of normative meaning and preceptive force. In particular, the prevailing doctrine, firmly anchored to the concept of the source of production, asserted that taxable income could only arise from the exercise of the activity and, therefore, came to restrict the scope of the provision to hypotheses in which the sums divided among the partners nevertheless had the requisites of income-produced. Moreover, in the order of ideas we are following, we must cite Article 15, second and third paragraphs, of the 1877 Consolidated Act, which required that premiums drawn on loans issued by any entity be subject to withholding (subject to recoupment). In the subsequent evolution of the rule, the equivalence between these prizes and lottery winnings became clear; however, in both cases, it was a matter of hypotheses that could hardly be ascribed to the concept of income as a product in the proper sense and in particular as the fruit of employment of capital. We can, instead, deduce that their inclusion in the list of taxable incomes was simply due to the simplicity and rapidity of the recording and consequent taxation of these proceeds, as well as, before that, the possibility of identifying and typifying such incomes through their connection with certain economic transactions (lending or gaming). Finally, again concerning the 1877 Consolidation Act, we must recall the provision of Article 3(f), which mentioned "any kind of non-land income which is produced in the State, or which is payable by persons domiciled or resident in the State".

rules»[17]. Concerning the preparation of financial reporting as a point of reference for both the calculation of the securities tax and for the valuation criteria adopted for the determination of the income for the financial year, thereby implying that the reference to the private law rules contained in the Commercial Code was to be regarded as implicit. The author, as mentioned above, pointed out, however, that there were no codified rules concerning the principles of financial reporting for the valuation of year-end items. For such accounting items, the directors had to apply the rules «which, however uncodified, constitute rules of ordinary conduct, to which almost all well-ordered commercial companies conform»[18]. It is important to note that such references implicitly referred interpreters to the principles set out

The reference to the objective "being produced in the State" which, literally at least, disregarded human action as an efficient factor in the increase of wealth made one think of an expansion towards hypotheses characterised by the objective emergence of new wealth, whatever it is proof. Concerning this doctrinal interpretation, the jurisprudence on several occasions posed the problem of taxation of wealth increases in themselves, regardless of the source. And it is no coincidence that this jurisprudential development occurred precisely and above all on the subject of capital gains – on which we will shortly begin to dwell – on account of the immediate contributory nature of the same. The tendency to extend the concept of movable income was always present in the jurisprudential interpretation and, in particular, in some recent decisions of the Supreme Court at the time. In this regard, the Court of Cassation in Rome, in its sentence of 20 May 1910, stated that the concept of movable income was "the general and very broad concept of profit also drawn in a contingent and adventitious manner from one's material goods, from one's intelligence and activity and fortuitous circumstances, up to and including sums earned as premiums on loans for lottery winnings"». Of course, there were also some decisions to the contrary, which showed that they accepted a narrower concept of income, affirming the principle that income, for the tax on movable wealth, should be considered to be that which constitutes new wealth produced by a pre-existing wealth and which, acquiring the character of economic autonomy, is, in turn, capable of producing other wealth. Finally, it should note that a precise definition of income is also lacking in the Consolidated Act no. 645 of 1958 and Presidential Decree no. 597 of 1973, transposed and amended by the current Consolidated Act of 1986. A careful examination of the Presidential as mentioned above Decree No. 597/1973 has, however, led some authors to believe that the legislator of the 1973 tax reform also intended to confirm the principle – almost universally accepted by the doctrine and jurisprudence formed during the validity of the previous single texts – according to which the taxable income is only the income produced. This conclusion was supported by an analysis of the individual income cases under Article 6 of the Presidential Decree of 1973, classified according to the production source. Some authors have, moreover, pointed out that even specific provisions of Presidential Decree No. 597 seem to deviate from the notion of income-produced, thus giving normative support to the theory of legislative dilatation.

17. Sampieri Mangano, *L'imposta di ricchezza mobile e le società commerciali per azioni*, p. 79.

18. *Ibidem*.

in the accounting texts of the leading scholars of the time, who dealt in detail with the issues to which the law had not even dedicated an explicit article.

For the jurists, therefore, what had been illustrated by the economic-business doctrine became a fundamental element for the correct drafting of financial reporting in a secondary/indirect manner, according to Article 25 of the Consolidated Act, for the determination of taxable income.

Therefore, for various scholars,

> in the force of the Commercial Code of 1882 and Consolidated Act 4021 of 1877, the fundamental interrelation between tax profit and statutory profit was thus fixed in the following terms: the tax profit had as its basis the financial reporting profit that was valuable to the shareholders. The latter was determined under the valuation principles and criteria laid down not by the Commercial Code but suggested by economic science and business economics[19].

In the case of companies, unlike for individuals,

> as an organic entity, the total income produced, which represented the sum or resultant of all the income from the various forms of activity carried on by the companies themselves in the year or period of operation to which the taxation relates. This principle […] is the logical consequence of the system of tax imposed by the law because one, single and inseparable is the financial reporting […] and therefore one, single and not multiple must be the taxation of what has been produced in every financial year of the company[20].

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 reform of 1923 and the Thaon de Revel reform of 1940. However, these reforms did not affect corporate income and its relationship with the profit and loss account. It could have identified a turning point in the so-called Meda reform, which was never implemented. In 1913 Meda proposed, in short, a radical modification of the tax on mobile wealth.

> In fact […] the previous legislation provided that joint-stock and limited companies were taxed based on the financial reporting, while it assessed the income of individual entrepreneurs and partnerships according to presumptive criteria; this way of proceeding was, according to Meda, profoundly inequitable because in the first case it affected actual income, while in the second case it

19. Falsitta, *Il bil. d'es. delle imprese*, p. 219.
20. Sampieri Mangano, *last word cited*, p. 8.

> taxed a presumed economic entity […]. Meda proposed to proceed in a twofold direction: on the one hand, by submitting to impose on entrepreneurs and partnerships the same accounting obligations (insofar as they are compatible) as those set on joint-stock companies, and on the other hand, by modifying the system of taxation of the latter[21].

The reform hypothesised by Meda[22] It did not implement, but in 1923 De Stefani succeeded in intervening, albeit only partially, in the tax system in force at that time. However, the objective of De Stefani's reform was not a structural change of the tax structure but a rebalancing of taxation at the level of individual taxpayers.

It introduced the progressive complementary income tax with Royal Decree No. 3062 of 30 December 1923. The report attached to the law states that the objective of this tax was

> first and foremost […] to replace the current complementary tax on the total amount of income assessed and registered on the rolls exceeding 10,000 pounds, as well as the current progressive rates of the three fundamental direct taxes that must, due to their partial and analytical nature, be applied with only proportional rates. The current complementary tax (instituted by Decree-Law No. 1835 of 17 November 1918) constitutes a rudimentary and inequitable form of global tax because it is limited to the pool of income tax based on roles, does not allow for deductions for liabilities and family loads that reduce the subject's ability to contribute, and is also applied to joint-stock companies and other collective entities. In this respect, therefore, the new tax represents a tax relief and a considerable technical improvement compared to the existing institutions and regulations it replaces. But the complementary tax has a more general function, which is the main reason for its spread in the finances of states with analytical and proportional direct taxes, i.e. to supplement the individual partial direct taxes by tracing them back to the total income of the taxpayer or family group, introducing the personal element that is missing or secondary in them, allowing for the progressivity of rates that, in some instances, is pushed to harmful or demagogic limits, but, contained

21. Padovani, *last word cited*, p. 10.

22. «In particular, the "Meda project" envisaged a "normal" income tax to absorb all other direct taxes (on land, buildings and income from movable wealth). This tax was to be supplemented (for equity and qualitative discrimination) by a complementary tax on total income, a wealth tax, and a tax on capital gains and bearer bonds. These plans were never realised. It is well known that unification was implemented with the reform drawn up by the Cosciani Commission in 1971, except for the first step already taken with the "reform Vanoni" of 1951, which introduced the obligation of a single declaration of the various income». Ferrari, Il concetto di tributo nella dottrina e della legislazione italiana, dall'Unità d'Italia al secondo dopoguerra, *Rivista della scuola superiore dell'economia e delle finanze*.

> to a moderate and rational extent, sets the direct tax system on the road to the ideal of tax equity[23].

The report on Royal Decree No. 3062/1923 also pointed out that the object of the tax was narrower than in previous bills. In particular, 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 complementary is thus limited to the more reliable and easier-to-determine pool of well-founded incomes, eliminating those presumptive assessments based on inductions and indirect indices, which the Meda and Soleri projects accepted, but which may lend themselves to more arbitrary and excessively burdensome assessments for taxpayers. The exclusion in the present decree of the taxation of capital gains on assets, for the tax of which all the previous projects had dictated general and repeatedly varied rules, is not only inspired by the enormous practical difficulties of correct determination but also by the continuous and unforeseeable intertwining of purely monetary influences with the intrinsic causes of value fluctuations and the frequency of oscillations for the various assets constituting the assets, which can annul the increases in value that have occurred for specific taxable values within a short period[24].

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 further specified that moral bodies, commercial companies, bodies and associations of all kinds did not constitute taxable persons for the additional tax. According to the same Article, income received by natural persons from the companies mentioned above and bodies such as employees, wage earners, pensioners, allottees, partners, shareholders, directors, bondholders and for any other reason, was taxed directly in the hands of the recipient.

> With the new tax […] the legislator [had] made it clear and unmistakable that only each individual and physical person [remained] subject to [the tax], thus excluding legal persons from the scope of the tax[25].

23. Relazione al R.D. 30 dicembre 1923, n. 3062.

24. *Ibidem*.

25. Boidi, *Commento alla legge sulla imposta complementare progressiva sul reddito*, p. 39.

Furthermore, since it is the same law (Art. 3) that reiterates that «corporations, commercial companies and all bodies and associations of any kind shall not be taxable persons for supplementary 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 linked together by a bond of joint ownership or common interests[26].

It can understand from the above that the De Stefani reform, considered 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. In fact, since the object of the reform was the determination of the taxable income of natural persons and, by the express will of the legislator, any form of company was divorced from the modifications of the progressive complementary tax on income, the substance of the De Stefani reform did not affect the problem relating to the interrelation identifiable between taxable income and income deductible from financial reporting, much less did it influence anything that could approach to the issue of so-called tax interferences.

We also owe De Stefani the introduction in 1923 of the single tax on trade, which is 1940, with the reform wanted by Thaon de Revel, was replaced by the general revenue 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 exchanges increased so did the tax to be paid.

Here again, the De Stefani and Thaon de Revel reforms did not cause any change in the tax-income ratio. These new provisions, therefore, had no impact on the issue at hand.

Therefore, as far as the analysis of the subject matter of our interest is concerned, 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 regulations and the possible presence of so-called tax interferences can only refer to the Commercial Code of 1882 and the Consolidated Act 4021 of

26. Bompiani, *L'imposta complementare progressiva sul reddito*, p. 104. In maniera analoga si esprimono anche Clementini, Bertelli, Scandale, *Imposta di ricchezza mobile*, p. 139.

1877, supplemented and amended by Law no. 1231 of 8 June 1936. It is only by comparing these regulations that it makes observations as to the presence of any tax "pollutions" in the financial reporting of the time.

At this point, however, a question arises spontaneously: in a regulatory, 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 «basic document to determine the tax base»? The answer is obvious: its relevance could only be minimal.

As has already been pointed out, even the case law interpreted any external control of the financial report as an objectionable intrusion, even going so far as to explicitly declare the falsity of a financial information and the simultaneous impossibility of sanctioning its invalidity as 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 confirmed 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[27].

This ruling was echoed by numerous other court decisions, which reaffirmed the principle that «the judicial authority may not exercise a review of the merits of the formation of budgets and the ensuing resolutions of the shareholders' meeting, but must limit itself to a review of legitimacy»[28], because such an intervention «would imply a review of the merits by the judge of what is most delicate in the operation of commercial companies; a review of merits which, if allowed, would wound to death any company, no matter how well administered»[29]. Often such a position resulted from a "peculiar" interpretation of the shareholders' meeting resolution and financial reporting. Various judgments state:

> The resolution of the shareholders' meeting must not be confused with the financial statements. The resolution of the shareholders' meeting, even if it approves the

27. Corte di Cassazione di Firenze, 19 dicembre 1832, *Foro italiano*, I, c. 500.

28. Corte Appello Milano, 22 gennaio 1926, *Rivista di Diritto Commerciale*, 1926, II, p. 155.

29. *Ibidem*.

> financial statements, may be challenged by the individual shareholder if it contains some formal defect as a legal transaction in itself; the financial statements, which are the work of the directors and auditors, can typically only be challenged by bringing an action for liability against the persons who drew them up, an essentially social action, which is the responsibility of the shareholders' meeting and not of the individual shareholder […]. [Also for this NOA], the control of the judicial authority over the resolutions of joint stock companies, according to Art. 163 of the Commercial Code is purely formal and is limited to ascertaining whether the resolution is manifestly contrary to the memorandum of association, the articles of association and the law and cannot also extend to the technical and administrative content of the resolutions themselves, which for this part are as a rule left to the sovereignty of the shareholders' meeting, which is free to administer them according to its criteria that are unquestionable to the judicial authority[30].

Some scholars supported this position[31], while many others strenuously opposed it[32]. The doctrine was therefore divided, but until the 1930s, the judiciary formed a united front against any possibility of pronouncing judgments of nullity of financial reporting dependent on hypothetical decisions on the merits of the financial reporting itself by the judicial authority. In such a context, it totally removed the financial reporting from any power other than the shareholders' meeting, which, for obvious reasons, did not represent all the shareholders but the relative majority of them, and which was invested with the power to approve the financial reporting[33].

It is evident that, in such a situation, the profit and loss account, while constituting a compulsory reference for the determination of the tax base, was a document that could easily be "made-to-measure" for any need, be it "external" and tax information.

With this situation, dealing with the issue of tax interferences in financial reporting appears to be a pure waste of time, primarily because the issue as mentioned above does not concern the possible implementation of tax

30. Corte Appello Milano, 20 maggio 1932.

31. Scialoja, Commento alla sentenza del Tribunale di Genova 9 maggio 1905, *Rivista Diritto Commerciale*, 1905, II, p. 503. It should be noted that, in fact, what the Milan Court of Appeals was a passage taken from Schialoja's commentary cited above.

32. De Gregorio, Commento alla sentenza della Corte di Appello di Milano 2 giugno 1910, *Giurisprudenza Civile e Commerciale*, 1910, I, p. 376.

33. For a detailed analysis of the development of case law concerning the principles of understandability and accuracy of financial reporting, see Bocchini, La chiarezza e la precisione dei bilanci delle spa nell'evoluzione della dottrina e della giurisprudenza, *Rivista delle società*, 1972, n. 1, p. 373 ff. On this topic, see also Patroni Griffi, *Il controllo giudiziario sulle società per azioni*; Jaeger, *L'interesse sociale*.

evasion, e.g. through non-recognition of revenues or potential inclusion of non-existent costs[34], but is linked to the much more complex issue of applying tax valuation principles in preparing financial reporting. A prodromal circumstance to this is that, of course, the case of valuation criteria for estimated and conjectured values represented, in the historical period under review, an object of interest – at both “civil” and tax level – of doctrine, jurisprudence and practice.

As has already been pointed out 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 joint-stock companies, limited partnerships limited by shares, credit institutions and savings banks that were not obliged by their statutes to draw up half-yearly balance sheets was to be calculated based on the financial reporting and accounts for the calendar year preceding that in which the reports were to be submitted.

An interconnection between financial reporting and the determination of taxable income is evident from Article 25.

The 1877 Consolidation Act was revised by Law No. 1231 of 8 June 1936. However, Article 13 did not change the principle of deriving taxable income from financial reporting. Article 13 provided that:

> The preceding Articles 11 and 12 are applicable for the taxation of income […] earned by provinces, municipalities and corporations of all kinds required to file financial reports. Where such Entities 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 business 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 taxable income from financial reporting. Article 12 read:

> Article 7 of Royal Decree-Law No. 1643 of 20 September 1928, converted into Law No. 833 of 2 June 1927, is amended as follows 833, shall be amended as follows: The taxes levied, for the tax on mobile wealth, on the income of joint-

34. However, it should note that tax evasion in the broad sense was, even in the historical period analysed here, very widespread. Indeed, Pedone points out in this regard: «The extent of evasion, even in the field of direct taxation alone, appeared very high from the very beginning». PEDONE, *Alle origini del persistente alto livello del debito pubblico italiano*, Intervento alla Riunione Intermedia SIEP 2012 “La gestione di elevati debiti sovrani in contesti di crisi finanziaria: quali insegnamenti dalla storia”, Banca d’Italia, Roma, 2 marzo 2012.

stock companies, limited partnerships limited by shares, credit institutions and savings banks following the provisions of Article 25 of the Consolidated Law, approved by Royal Decree No. 4021 of 24 August 1877, shall be provisional. The standard taxation shall be carried out annually on the results of the relevant financial statements. Then, on the basis thereof, the additional tax or the refund of the extra tax that is not due shall be recorded, following the rules contained in Article 109 and, respectively, in Article 120, last paragraph, of the regulations promulgated by Royal Decree No. 560 of 11 July 1907. To obtain the reimbursement provided for in the preceding paragraph, the interested party must present the declaration within the terms prescribed in Article 11 above. The non-submission or late submission of the statement shall, moreover, extend to the following year the provisional liquidation previously assessed without prejudice to any more significant provisional assessments on the Office's initiative. For companies and establishments whose business year does not coincide with the calendar year, financial reporting for the year ending in the year shall be deemed accrual accounting for this Article. Adjustment taxation under this Article shall commence from the year 1935.

In highly synthetic terms, it can be stated that

until the publication of Decree 1887 of 24 October 1935, the taxation of the income of so-called. Until the publication of decree 1887 of 24 October 1935, the taxation of the income of the so-called usually produced collective entities (excluding, therefore, the exceptional, economically different from the trade or industry exercised […]) was carried out with the system of pure rotation of the financial statements, i.e. the financial reporting, for example, of 1933 (financial reporting of circuit or commensuration) served as the basis of assessment for the taxation of 1935 (financial reporting of accrual to which the tax referred), that of 1934 for 1936, and so on […]. The different system that came into force with Royal Decree No. 1887 of 24/10/1935 could […] instead be defined as provisional taxation by the rotation method, subject to adjustment based on the accrual financial reporting. Employing Article 12 of that decree, which [supplemented…] Article 25 of the Consolidated Act, the system received a more appropriate arrangement […]. With the Royal Decree of 1935 […], the basis for the definitive assessment of income changed utterly: the tax is paid yearly on the income earned in each financial year[35].

Beyond the problem of the rotation of financial reporting, it is, however, sure that

35. Buzzetti, *L'imposta sui redditi di ricchezza mobile*, p. 118. See also: D'Angelillo, *Accertamento induttivo e in base al bilancio, in Trattato della imposta di ricchezza mobile*, p. 274; Di Paolo, *Imposta di ricchezza mobile. La rotazione dei bilanci nella tassazione delle società azionarie*, p. 3 ff.

from Articles 25 and 30 of the 1877 Consolidated Act, it could deduce the relevance of financial reporting for de-terminating tax income. Sampieri Mangano, expounding the orientation followed by the doctrine and jurisprudence of the time and by the administrative practice itself, could write that for the formation of financial reporting to be valid as a basis for the commensuration of the securities tax and the valuation criteria, finance cannot impose its own rules and must refer to the rules of private law; and since the Commercial Code itself provides nothing in this regard, there is nothing left but to rely on the prudence of the directors, who, however, should observe those rules which, however uncodified, constitute rules of common conduct, to which almost all well-ordered commercial companies conform in the valuation of the various components of the company's assets. Under the Commercial Code of 1882 and the Consolidated Law on Mobile Wealth of 1877, the fundamental inter-relationship between fiscal profit and statutory profit was thus fixed in the following terms: fiscal profit was based on the financial reporting profit valid for shareholders. The latter was determined under the principles and valuation criteria laid down not by the commercial code but suggested by economic science and business economics[36].

To have an overall view of the situation, it should also be recalled, as has already been pointed out in the preceding pages, that according to Article 89 of the Commercial Code, it was the memorandum or articles of association of public limited companies or limited partnerships with share capital that had to indicate, among other information, the rules according to which the financial statements had to be drawn up and the profits calculated and distributed. Each company could therefore identify the methods of preparing financial reporting that most closely resembled its idea of "evidence and truth", thus implementing a complete blanket reference to the accounting rules considered "accepted" and "recommended" by the best doctrine, which, moreover, given the silence of the legislator on this issue, could be "subjectively" interpreted by each company without this in any way leading to the assumption of an incorrect method of preparing financial reporting itself.

Bearing the above in mind, to understand whether or not in the late 1800s and early 1900s one could assume the presence of tax interferences in financial reporting, it is essential to understand the accounting obligations imposed by the legislator on companies subject to financial reporting.

In this regard, the Commercial Code merely imposed, through the provisions of Sections 21 and 22 C. Co., the keeping of a journal, an inventory

36. Falsitta, *Il bilancio di esercizio delle imprese, interrelazioni tra diritto civile e tributario*, p. 219.

book, 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 "accounting" obligations of companies, legal doctrine, including legal doctrine, agreed that

> although the commercial law did not require merchants and companies to keep other books, it is well known that for the rational determination of business income, it was necessary to set up a whole system of accounts that had to continually or periodically add to the management records, which, while being composed, formed the basis of all those combinations […] and all those synergies which, at the end of the financial year, are then the subject of special recognition by those responsible for compiling the financial reporting itself[37].

The requirements of the Commercial Code were therefore deemed insufficient for financial reporting. This was especially so because of the year-end valuation entries, which required knowledge and non-accounting and statistical entries, which, by their very nature, could not be placed in the inventory or the journal.

Hence the observation, accepted by the majority of doctrine and jurisprudence, that

> financial reporting is an accounting tool and a legal instrument with full binding effect on the actions of the Finance Department as long as it and the entire system of accounts that characterise it lend themselves to such a minute analysis as to leave any possibility of controlling the various positive and negative components of income. If therefore, one or more of the positive or negative components of the income of financial reporting did not lend themselves to the rational and well-considered control of the Revenue due to the inadequacy of the accounting records to capture all economic and business phenomena, if no other non-accounting or statistical means with a reliable probative value were provided by the company […], which insisted on upholding the full validity of financial reporting for tax purposes, it was apparent […] [it seemed] […] the legitimacy of the inductive procedure[38].

37. Grillo, *Il bilancio di esercizio delle società anonime*, p. 19.

38. Grillo, *last word cited*, p. 117 ff. In a similar sense Cosciani: «To determine taxable income, in addition to the power to check the financial reporting entries against the accounting records, the office also can take into account all the accounting elements and data collected by them, even outside the financial reporting and the accounting records, to adjust the settings as they result from the financial reporting, determining the taxable income accordingly. Therefore, the office cannot proceed with an inductive and summary assessment against these persons, regardless of the financial reporting results, but must limit itself to adjusting individual (one or more than one) settings. Only in one case can the office disregard the results of the financial reporting submitted and proceeded with the summary assessment. And

Or, we would add, the legitimacy of the variation of accounting data in financial reports resulting from subjective estimated and/or conjectured valuations[39]. In other words,

> the financial reporting of companies and entities [was] elected as the basis for assessing the income of companies and entities, from which the offices [could] not deviate unless [they] demonstrated that the financial reporting lacked those characteristics and requirements […] that [were] the logical and legal premise of Article 25. But this demonstration [could] not [be] provided employing investigations and elements respectively carried out and drawn from outside the financial reporting, or, to be more precise, the Finance Department [had] always had the right to carry out all the investigations that [it] considered appropriate or valuable and to seek elements of evaluation also outside the financial reporting and the other accounting documents, but only as a means to seek then, based on the accounting settings, the validity and truthfulness of the exact locations. No one [contested] the right of the Finance Department to search outside of financial reporting for the average yield of a given production tool, but it [could] make use of the result of its investigations, not to invalidate the unreliability of the accounting approaches that deviate from it, but to have a clue, just a clue, that [could] reveal a fact [the unreliability of financial reporting] of which [it was] necessary to search for the constituent elements only in the financial reporting and other accounting documents and not in other documents[40].

A similar position was expressed by Clementini, Bertelli and Scanda-le, who, however, considered that the Finance Department's power was broader than that described by La Mattina because, according to them, on the one

precisely when […] there is a well-founded presumption of tax fraud; this presumption results from certain elements and factual data, the office notifies the taxpayer of these elements and data'. Therefore, only the well-founded assumption of tax fraud, i.e. the presence of severe, precise and concordant hypotheses of fraud, allows the abandonment of financial reporting […] Naturally, it is not easy to say when tax fraud occurs […] It is not tax fraud to write down inventories, to charge to the operating expenses account plant or fixed assets». Cosciani, *La riforma tributaria*, p. 231.

39. «Accounting findings do not necessarily bind the tax authorities in assessing income […] Therefore, the tax authorities are not obliged to limit themselves to the mere verification of the bare accounting figures but can and must extend their examination to all those facts that can deduce even outside the financial reporting […] With this, we do not intend to exclude that financial reporting constitutes the regular basis for the assessment of income, but we wish to point out that it must be formed with the observance of those rigorous guarantees and formalities that are indispensable to establish the accurate tax assessment; securities and formalities that, sometimes […] in consideration of the particular nature of the entries may, for unrelated reasons, not give a severe assurance of sincerity». D'Angellilo, *last work cited*, p. 330 ff.

40. La Mattina, *Trattato della imposta dei redditi di ricchezza mobile*, p. 836.

hand, financial reporting should undoubtedly be considered the highest point of reference, on the other hand, the Finance Department could "disengage itself" from the results of financial reporting to ascertain taxable income. These authors reiterated that

> […] financial reporting is the usual basis for assessment […], but it is time to point out that it is accepted in jurisprudence that tax offices and commissions have the right to review the results and to depart from them whenever they deem them to be unreliable for any reason, drawing on other sources for positive or detailed elements for the assessment of taxable income[41].

These authors also recall an essential decision of the Supreme Court of Cassation of 29 November-11 December 1902, in which the Supreme Court affirmed that

> if it is undoubted that it must the assessment must be made based on financial reporting […], it must not say that the results [of the latter] are unquestionable. The tax authorities can never be bound by the results of financial reporting so that, if they consider them to be inaccurate, they cannot draw the elements for assessing income elsewhere: It cannot be forbidden to ascertain actual income and to determine the correct amount of profits when these have been concealed or disguised; nor can it be said to be bound by the results of financial reporting in such a way that it cannot search for and ascertain all income on which the tax is to be assessed, because […] the purpose of the tax law is that the tax should be proportionate to the income as it is and not as it may appear from financial reporting; it being an oddity to say that the interests of finance should depend solely on the pure discretion of the institutions and the criteria according to which the directors believed they were compiling the financial reporting[42].

As can be seen, although there were differences as to whether Finance could act outside the scope of financial reporting, all authors agree on the idea that financial reporting was at the heart of such investigations, also because, according to Article 25 of the Consolidated Act, albeit interpreted differently, financial reporting formed the basis for determining the taxable income for the tax on movable wealth of the companies referred to therein.

Assuming that this was unanimously accepted by the doctrine of the time, the question arises as to whether, during the period in which the Commercial Code and Consolidated Act 4021 were in force, there was any

41. Clementini, Bertelli, Scandale, *Imposta di ricchezza mobile*, p. 460.

42. Cassazione, 29 novembre 1902, *Bollettino ufficiale delle imposte dirette*, 1903, p. 398 ff.

doctrinal position that clearly and unequivocally expressed the possibility that the concept of operating income might differ from taxable income. In the absence of such a position and, consequently, in the presence of a widespread acceptance that income was to be regarded as unique, addressing an issue concerning tax interferences 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 varied and extensive. For all of them, we have chosen to present the positions of Grillo and Terranova, spearheads of the doctrine of the time.

Grillo states in an explicit and crystal-clear manner that

> among the many notions of income, one must also include that of fiscal income, which, however, cannot be confused with the idea of operating business income nor with other notions of the typical economic phenomenon mentioned above […]. It is well to emphasise the profound difference that exists between the income of a going concern and the taxable income attributable to the same based on financial reporting, which outlines, in extreme synthesis, the results of company management[43].

In the second and third volumes of this work, we will address in a detailed and analytical manner the issue of the actual diversity of the two mentioned incomes or, to put it better, the necessity/opportunity or impossibility that the two incomes should tend to overlap. At this stage, we only wish to present a concise overview of the historical development that has taken place concerning the issue of tax interferences in financial reporting, postponing any critical considerations concerning the hope that these values will converge in such a way as to ensure the taxability of an amount corresponding to the "real" wealth produced by the company. The objective of this analysis of the evolution is, therefore, to understand whether, regardless of the theoretical assessment of the various authors, linked to the diversity of tax and economic incomes, it can detect in nuce the existence of a potential tax interference in financial reporting due to subjective tax assessments (in addition, of course, to the tax interference resulting from fraudulent objective values).

According to Grillo,

> Finance does not replace itself in the company's acts of administration, nor does it claim to influence in any way the economic-productive activity of the company itself, but only tends to bring the financial reporting within the limits of fiscal reporting through the careful examination of the most typical income

43. Grillo, *last work cited*, p. 43.

components […], [for this reason, *ed.*] for tax purposes, it must be held […] that the procedure of extra-accounting re-assessment of operating costs and revenues […] is legitimate, especially concerning the assessment of those characteristic income components that, not being of numerical derivation, 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 reporting[44].

It is clear from Grillo's assertion that the «fiscal recovery of operating costs» was not common practice, meaning the tax practice of not accepting the estimated and conjectured valuations recorded in financial reporting. Therefore, it was common practice for the tax authorities to intervene in determining taxable income by identifying new valuation data, different from those presented in financial reporting, deemed more in keeping with the concept of «quantification of taxable income».

We will return to the relevance of this consideration in the following pages. For the time being, we would like to emphasise how widespread the opinion that Finance could intervene on the estimated and conjectured valuations in financial reporting so that the profit shown in the profit and loss account could, through such interventions, be considered correct from a pure taxation point of view. In this regard, it should note that Article 20 of Law No. 1231 of 8 June 1936, which partially amended the Consolidated Act of 1877, established that the profit shown in the profit and loss account is to be considered correct from a pure taxation point of view. of 1877, explicitly stated that

for the exact determination of the proper income of the companies and entities indicated in Articles 11, 12 and 13 of this law, the Tax Offices and the Boards of Appeal – in addition to the power to check the entries in the financial report based on the accounting records – also can take into account all the concrete elements and data collected by them, even outside the financial statement and the accounting records, to adjust the settings resulting from the financial report to determine the income as a result of such adjustments. The Tax Office, in the notice of assessment or other documents, served even after the time limit prescribed for such information. The Boards, in their decisions, are obliged to state the grounds based on which they have proceeded to rectification of the financial report settings and, as a consequence, the income. Suppose the financial reporting settings are found to be unreliable due to a well-founded presumption of tax fraud. In that case, the Tax Offices and the Boards of Appeal have the

44. Ivi, p. 39 ff.

> right to determine the income to be subjected to the tax based on the economic situation of the company as deduced from the elements and data collected by them, without prejudice to the obligation to indicate the reasons following the preceding paragraph[45].

Article 11 further provided that Article 3(2) of Law No. 222 of 2 May 1907 is amended as follows: Companies and bodies taxable based on financial reporting must submit their annual returns within three months of the approval of their financial statements. If the financial report is not closed on the yearly due date in the statutes or is not approved within three months following the closing date, the company or entity is obliged to submit the return within nine months after the statutory closing date. Both in the case referred to in the first paragraph, and 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 declaration was submitted or should have been submitted.

One of the items most closely examined by the time doctrine was precise because of the impact it could, and still can, have on operating income and the tax base, such as depreciation. Concerning this item, Terranova pointed out that it was widespread practice to record depreciation rates in financial reporting that, from an economic point of view, were acceptable/correct but, in reality, did not identify the tax-deductible cost. In particular, Terranova emphasised that

> if a financial reporting […] results in profit and loss items with significant figures […] for salaries, heating, postage, etc., the tax office cannot refuse the deduction of those items because they are exaggerated and disproportionate […]; for depreciation expenses, on the other hand, the OfficeOffice cannot always follow the company's way: it cannot always, let us say, respect the quotas that are calculated in the depreciation schedules. Sometimes, indeed often, one depreciates by one of the decreasing procedures: one loads the first financial years as a measure of prudence, for obsolescence, for 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 accounting terms, but fiscally it cannot be allowed. The assessing Office must allow for the share of the use that comes closest to reality according to the form deemed most convenient and correct. The directors may respect prudence because of the principle of solidarity during the financial years, which is dominant for the company's future. Still, it is incompatible with the focus of the autonomy of financial reporting of the definitiveness of the assessment, which dominates tax matters by Art. 59 of the

45. Art. 20, L. 8 giugno 1936, n. 1231.

> 1877 Consolidation Act. The OfficeOffice must [therefore] follow rates that are different from those adopted by the company[46].

It can be deduced from the above that, on the part of the Finance Department, the modification of depreciation rates applied in the balance sheet was standard practice. Depreciation deemed economically correct and thus included in the profit and loss account was frequently considered incorrect from a tax point of view. Thus, even if it was deemed acceptable to apply "prudent" depreciation rates and, as a consequence, even if depreciations in financial reporting were considered economically correct, they were often subject to variation by the tax authorities. It should note that the problem arose only if the financial reporting depreciations were higher than those considered acceptable in determining taxable income.

> It follows from the application of Article 25 of the Consolidated Act of 1877 that the Tax Authorities cannot grant deductions for depreciation if the depreciation has not been effected and is not reflected in the financial reporting[47].

This was because it was unanimously accepted, both in doctrine and in case law, that «it was inadmissible to deduct expenses [even] […] for depreciation not set out in financial reporting»[48]; therefore «the Finance Department could not charge unrecorded depreciation to the year»[49].

From an analysis of Article 25 of the 1877 Consolidation Act and from a reading of the various doctrinal positions of the time, it is therefore evident that the recognition of the cost in financial reporting had to be a condition sine qua non for it to be considered tax deductible. Non-accounting operations

46. Terranova, *Il concetto di reddito fiscale*, p. 81 ff.

47. Ivi, p. 84.

48. D'Angelillo, *Accertamento induttivo e in base al bilancio*, in *Trattato della imposta di ricchezza mobile*, p. 38.

49. Ivi, p. 41. «Nor would it be permissible, in addition to the results of the financial reporting, to deduct from gross profits, expenses and losses which, in any case relating to the financial year to which the financial reporting refers, were not expressly entered in the accounts, even if plausible reasons existed for recognising that they were expenses and losses incurred or suffered […] therefore, no deduction for depreciation is permissible from the income statement of a joint-stock company […] When no such expenses are found in the financial reporting». Sampieri Mangano, last word cited, p. 62. Lastly, it should note that, precisely because of the non-deductibility of items not accounted for in financial reporting, it happened that «in certain financial statements closed with a loss, in which deductible expenses such as depreciation were omitted, […] subsequently became, upon assessment, fiscally active, without the companies being allowed to deduct the costs not accounted for […] because of the immutability of financial reporting». D'Angelillo, *Le frodi fiscali*, p. 8.

which would increase depreciations booked to a lesser extent in the profit and loss account for tax purposes would therefore appear impracticable.

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

Precisely in order to limit the continual diatribes on the "fiscal congruity" of the depreciation recorded in financial reporting,

> between the Ministry of Finance and the main exponents of Italian industry [in the early 1900s, *ed.*], guiding criteria and rates to be applied for the depreciation of plant and buildings were agreed upon […]. The purpose of the said agreement was to reduce the daily disputes between companies and the Finance Police[50].

In D'Angelillo[51] the following tables are shown, containing the depreciation coefficients accepted as deductible by Finance (in 1936, the year of publication of the aforementioned treaty).

| *Nature of plant* | *Textile industries* | *Tanneries and hides* | *Tanneries and leather factories Breweries, spirits, wine, oil, cheese, mills, sugar mills, sugar refineries, mechanical engineering* | *Chemical factories, dyeworks and laundries* | *Fertiliser and carbon disulphide factories* |
|---|---|---|---|---|---|
| Buildings | 2% | 3% | 2% | 2% | 4% |
| Hydraulic force machine | 5% | 5% | 5% | 5% | - |
| Steam or electric force machines | 8% | 8% | 8% | 8% | - |
| Working machines | 10% yarns<br>7% textiles | 8-10% | 8% | 6-8% | 9% |

50. Terranova, *last word cited*, p. 83. On this topic, see also Clementini, Bertelli, Scandale, *Imposta di ricchezza mobile*, p. 566 ff.

51. D'Angelillo, *Accertamento induttivo e in base bilancio*, in *Trattato della imposta di ricchezza mobile*, p. 430.

| *Nature plants* | *Artificial silk factory* | *Wood processing* | *Glassworks* | *Explosives and synthetic ammonia factory* |
|---|---|---|---|---|
| Buildings | 5% | 2% | 2-3% | 6% |
| Hydraulic force machine | - | 5% | - | - |
| Steam or electric force machines | - | 8% | 8% | - |
| Working machines | 12% | 7% | 10% | 12% |

| | |
|---|---|
| Metal industry | Buildings 2-3%<br>Other stocks 10% |
| Iron and steel industry | Buildings 2%<br>Other stocks 10% |
| Furnaces, bricks, limecement and plaster works | Furnaces in general building 7%<br>Otating furnaces and working machinery 10%<br>Macc. for steam or electric 8% |
| Electrical industry | Buildings 2%<br>Hydraulic works 2%<br>Penstock 4%<br>Hydroelectric power stations 7%<br>Thermal power stations 9% |
| Large stations | Transformer stations 7%<br>Transmission lines 3.5<br>Distribution plants 8% |
| Waterworks industry | Hydraulic works 3%<br>Machines, appliances 8% |
| Construction industry earthworks, tunnelling | road and construction works 10-15% |
| Maritime construction sea installations, tugs | pontoons, dredgers and floats 8-10%<br>other installations 10-15% |
| Gas industry | Gas furnaces 10%<br>Gazometers 3.50%<br>Cast iron pipes 3%<br>Meters 10% |

| | |
|---|---|
| Cableways and funicular railways | Hauling and carrying rope 20-25% |
| Merchant marine for passenger or mixed vessels | Over 35,000 tonnes 8% |
| | From 17,000 to 35,000 ton 8% |
| | From 10,000 to 17,000 ton 7% |
| | Up to 10,000 6% |
| For new cargo ships | Construction of ordinary type 6% |
| | Special type: tanks and refrigerators 7% |

As can be seen, the above coefficients present similarities, albeit with apparent differences in form and substance, with the tables issued by decree by the Ministry of Economy and Finance, to which Article 102 of the TUIR currently in force refers.

> The general coefficients dictated by the Administration could also be elevated in the case of more intensive processing and, therefore, greater consumption of plant and machinery, as well as in the case of industries in which progress in technology occurs more particularly, putting the relative plants out of use sooner. Ministerial Circular No. 12,877 of 22 December 1926 warned that it would be a mistake to let fixed criteria guide oneself, uniform for all entities, and to harden oneself in pre-established percentages to reduce, systematically and without reason, the relative figures carried in the budgets. On the contrary, this is an area in which it is necessary to examine each entity separately to adopt criteria of greater breadth, not only in comparison with those industries that, due to intensive processing, have their machinery more subject to wear and tear but also in cases where a given year has seen a greater consumption of the machinery itself. In essence, it must be held that, for this part, it is the criterion of actual consumption that must take precedence over any other[52].

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 Uniform Commercial Code and, in particular, the situation prevailing in the early 1900s, one must ask whether it made

52. D'Angelillo, *last word cited*, p. 430. On this subject, in 1950, and thus after the enactment of the Civil Code of '42, Cosciani notes, however, that «one cannot but notice the excessive rigidity of the tax rules on normal depreciation incidentally. The depreciation percentages fixed in trade agreements are constant over time and cannot be changed except for proof that the plant has been subjected to hefty wear and tear. […]. All this is irrational in that it disregards an irrepressible characteristic of our economy: economic cycles for which the constant production rhythm is the exception and not the rule». Cosciani, *last word cited*, p. 259.

sense to discuss tax interferences in financial reporting at that time. As pointed out in the preceding pages, the Commercial Code laid down rules concerning financial reporting – which, euphemistically, we could describe as "concise and general". In essence, it did not regulate financial reporting; instead, it was so superficially handled that anyone could interpret the few rules concerning financial reporting according to their convictions. The almost total freedom that characterised the drafting of financial reporting created fertile ground for the diffusion of financial reporting practices that had nothing to do with communicating the "real" economic, financial and asset situation of the company to shareholders and external third parties. The possibility of translating fiscal income elements in the context of financial statements to obtain tax benefits could, therefore, be feasible in theory.

From the analysis of the doctrinal works of the time, it is reasonable to assume that the recording of tax data in financial reporting is not only a sensible hypothesis but even represents a customary practice implemented by companies to reduce the tax base. Of course, this is an inference that, as it cannot be proven by certain accounting elements and statistical surveys to be carried out employing questionnaires at companies, can be subject to controversial interpretations without absolute certainty. What we will present in the following pages is, therefore, a logical reconstruction of what can be deduced from the writings of the authors of the time. Nothing can be unequivocal in this context due to the lack of potential findings with any accounting certainty. As can be seen in Volume III of this work, considerations regarding tax interferences in current financial statements can be made based on the systematic analysis of financial statements and accompanying reports and the elaboration of questionnaires administered to companies, from which information can be derived regarding the intermingling of statutory values and tax data. Neither of those, as mentioned above, "investigative" strategies can be implemented when dealing with financial statements dating back to the last decades of the 19th century and the first years of the 20th century. The analysis of balance sheets would not yield any helpful information, as these documents, precisely because of the absence of specific regulations, were drawn up concisely and devoid of any valuable information for our investigation. For obvious reasons, the second route (questionnaires) is not viable either. Therefore, any conclusions to be drawn can only be the result of the author's reflections based not on private and individual convictions but instead on what is illustrated in various prestigious works of scholarship of the time analysed here.

To judge whether the financial statements of the late 19th/early 20th century contained tax interferences, it is interesting to quote Terranova's thoughts on the appropriateness/legality of so-called financial reporting reserves. In this regard, Terranova stated:

> There are several causes that induce directors to conceal reserves […]. It is said in support:
>
> (a) the company must amortise its facilities as quickly as possible to put itself at an advantage over competing companies;
> (b) when profits are fat, it is dangerous to expose them all to the sun because they whet the appetite, that is, they promote the formation of new competing companies;
> (c) the formation of clandestine reserves benefits the company's credit as it allows it to cover losses in lean years without leaking anything to the public and without causing a collapse in shares;
> (d) clandestine reserves still help to stabilise income […];
> (e) conceal profits from the treasury to escape taxation;
> (f) put a secret weapon in my hands that the directors can wield to influence the share price often […].
>
> Not many words are needed to show how clandestine reserves should not be allowed. […]. Reserves, therefore, as we have previously osserved, are often hidden to defraud Finance. […] [In light of these considerations, *ed.*] […], which of these hidden reserves must be respected by Finance? […]. Group reserves (b), (c), (d), (e) and (f) […] cannot be met by Finance. […]. Let us now turn to the group reserves (a) […]: in principle, these reserves should be respected […]; (with particular reference to depreciation […], however, the difficulties increase when it comes to judging the taxability of contingent reserves resulting from excessive depreciation […]. This reserve [according to Terranova, *ed.*] should not be affected. The offices, however, with the consent of jurisprudence, have always taxed excessive depreciation; this is why the industrial companies, in recent years, have accepted the tax rates with the regular agreement[53].

It is evident from Terranova's exposition that, in the period following the enactment of the T.U. 1877 (and, in fact, until the promulgation of the Vanoni Law of 1951), the issue of the relationship between tax values and financial reporting accounting data was very much present in the corporate sphere, and this beyond the apparent consideration concerning the objective costs and revenues, and therefore taking it for granted that the issue in question did not only concern the non-recognition of revenues or the recording of non-existent costs in financial reporting to reduce the taxable income that can be indirectly deducted from the profit and loss account, but also the

53. Terranova, *last word cited*, p. 170 ff.

recording, in this document, of income values determined according to tax logic.

Both Grillo's and Terranova's explication of the subject of depreciation attests to the fact that the interrelation between "economically correct" values that can enter in financial reporting (according to evidence and truth, according to Art. 176 of the Commercial Code) and tax-deductible amounts were already present at that time, not only present but also deepened from a doctrinal point of view. This means that the practice was widespread to such an extent that theoretical research into the possible solution to the problem connected with the interrelationship as mentioned above was topical.

In his works, Terranova suggested a solution to the above problem in the following terms:

> The best solution […] would be this: it would be necessary that in a system of financial reporting regulation, the rate according to the different nature of the investments would be established by law. If this rate were adopted by all companies and by Finance, not only would the in-conveniences be eliminated [all of them, *ed*.], but some of the latent reserves would disappear from the financial statements, which, although not malicious, contribute a great deal to distorting the truth, in defiance of Art. 176 of the Italian Civil Code and to the detriment of the majorities[54].

We will return to Terranova's comments on the instruments to overcome the problem of the discrepancy between financial reporting valuations and tax-relevant data, particularly concerning depreciation, in Volumes II and III of this work. For the time being, it is relevant to note that the problem of the potential differences between "economic" year-end valuations and tax-relevant amortisations was particularly felt doctrinally and pragmatically. In the academic world, it studies this issue as being of theoretical inter; in the corporate world, it was experienced as a contingent problem due to the pressing controls of the Finance Department on the income values resulting from the subjective evaluations of the director in charge of drawing up the financial reporting.

As already mentioned, the concept of tax interference originates from the assumption that tax principles directly or indirectly replace financial reporting postulates so that the values resulting from quantitative determinations are not economic but rather tax-related. From the above considerations, it is undoubtedly clear that the issue of the relationship between financial reporting values and tax data was also the subject of in-depth study in the

54. Ivi, p. 176.

late 19th and early 20th centuries. Most of the considerations developed by scholars of the time concerned the potential recovery of imputed costs in financial reporting. In other words, the scholars, precisely because of the related implications, analysed mainly the case in which companies re-levered higher depreciation (and other subjective items) in financial reporting than those considered deductible by finance. But, if this practice was consolidated or, at any rate, very widespread, it can be assumed, without fear of being disproved, that even if, for example, depreciation was extremely low at the economic level, companies tended to record in financial reporting the amount that was fiscally deductible, without regard to the concept of evidence and truth. Faced with an attitude on the part of the Finance Department that tends to take back excessive depreciation charged in financial reporting – compared to what is considered tax-allowable – it is logical to assume a mirror-image behaviour on the part of companies. 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. In that case, it is reasonable to assume that the tax control office would not investigate if it slavishly identified the amount that amount. Any higher values triggered checks to carry out tax recoveries, if necessary, whereas the presence of data that conformed to what the Finance Department accepted as the norm was undoubtedly not subject to further investigation. The Finance Department did not have the objective of verifying the economic appropriateness of the year-end valuations but only aimed to prevent the deductibility of costs that, although acceptable from a financial point of view, were not acceptable from a tax perspective. This, however, entailed the possibility that, in the presence of economic conditions that would have necessitated reduced year-end valuations, companies would import fiscally accepted values into their accounts with the explicit aim of reducing the tax base. At this point, to ask whether, at the end of the 19th and beginning of the 20th century, it was possible to speak, at least on a theoretical level, of tax interference seems superfluous: the answer is undoubtedly affirmative. The circumstance that may come as quite a surprise to the reader of the rules in force at the time is that, despite the almost total lack of legal regulation of financial reporting, it was possible to engage in tax interference practices. However, what has been set forth in some detail in the preceding pages leads us to assume that only those who have only superficial readings of the provisions of the Commercial Code would be surprised. A detailed analysis of the 1877 Consolidation Act, 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 Financial Administration, show how the situation was much more complex than may appear from a non-exhaustive study of the regulations of the time.

In our opinion, it can therefore certainly be said that even during the period in which the Commercial Code and the 1877 Consolidation Act were in force[55] (as amended in 36 by Law No. 1231) the phenomenon of tax interferences existed, albeit in a different form from what occurred in the decades following the Vanoni and Visentini Laws and the various reforms implemented in the 50 years following the enactment of the latter legislation. This demonstrates that the interrelationship and mutual connection/osmosis between civil/economic principles and tax provisions is a timeless issue with no limits linked to explicit norms. As we shall see in vol. III, the tax interference of financial reporting could, in theory, only cease in the presence of a barrier between financial reporting values and tax data. As long as any relationship/dependency between these two elements is identifiable, an absence of tax interferences cannot be assumed. And this is also in the presence of absolutely generic legal rules, which are limited and insufficient to give a "really" true and correct picture of the company's situation, as was the case during the period in which Article 176 of the Commercial Code was in force.

As amended in 36 by Law No. 1231 the phenomenon of tax interferences existed, albeit in a different form from what occurred in the decades following the Vanoni and Visentini Laws and the various reforms implemented in the 50 years following the enactment of the latter legislation. This demonstrates that the interrelationship and mutual connection/osmosis between civil/economic principles and tax provisions is a timeless issue with no limits linked to explicit norms. As we shall see in vol. III, the tax interference of financial reporting could, in theory, only cease in the presence of a barrier between financial reporting values and tax data. As long as any relationship/dependency between these two elements is identifiable, an absence of tax interferences cannot be assumed. And this is also in the presence of absolutely generic legal rules, which are limited and insufficient to give a "really" true and correct picture of the company's situation, as was the case during the period in which Article 176 of the Commercial Code was in force.

55. As can be understood from what has been said in the preceding pages, until the enactment of the civil code of 1942 and the Vanoni law, «the tax system, in its essential lines, had remained that of unification […] The Meda project did not end better than the preceding ones but sowed the seed that would later be harvested in 1923 by De Stefani for the complementary tax and in 1939 by Thaon de Revel for the ordinary wealth tax. But these institutions were introduced without an overall vision […]. The system, therefore [until 1942/1951, *note author*], remained that of unification». Cosciani, *last word cited*, p. 15.

## 2. The Enactment of The Civil Code of 1942 and the Vanoni Reform: Financial Statements as a Fundamental Element of Income Taxable. Pragmatic Analysis of Discrepancies Detectable between Theory and Practice from the 1940s to the Late 1960s

A closer look at the historical development of the subject of financial reporting vs taxable income requires the identification of the legislative innovations that, to some extent, changed the regulatory situation illustrated in the previous paragraphs.

The historical period analysed here (from the 1940s to the end of the 1960s) can identify profound reforms concerning the rules governing financial reporting and the provisions relating to the quantification of taxable income. Although these innovations were introduced by enacting civil and tax laws in the 1940s and 1950s, respectively, they have their roots in a changed attitude of doctrine and jurisprudence, which arose in the years preceding the entry into force of the reforms, as mentioned above. It cannot be forgotten that, in the face of a compact position[56], The doctrine and jurisprudence of the first decades of the 1900s, which considered financial reporting to be a document exempt from external scrutiny, began to be observed in the 1930s, which cast doubt on such a principle, at least in the case of fraud in financial reporting. More and more judgments conformed to the code 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 appropriate penal sanctions of the criminal law, the procedure of Art may annul the resolution of the shareholders' meeting […]. 163 c. c., paragraph 1, of the Penal Code[57].

The jurisprudence on the merits also then began to hold that «in civil law, any interest […] may have the nullity of the resolution approving a financial reporting that is false, erroneous or ineffective declared». The new path taken by the judges, both of legitimacy and merit, was in part the result of doctrinal studies that were more and more inclined to deny, firmly and decisively, the principle of the unquestionability of financial reporting by parties external to the company. An increasing number of scholars held that

56. As pointed out in the first pages of this chapter, while most scholars supported such a position, some authors emphasised their opposition to interpreting financial reporting as a document withheld from the judicial authority. For further discussion of these positions, the reader is referred to the preceding pages.

57. Cassazione, 24 giugno 1937 n. 2072, *Foro Italiano*, 1937, I, c. 34.

> financial reporting […] must be compiled by companies in compliance with the rules laid down by law or by the articles of association and based on technical criteria that cannot challenge, provided that it cannot demonstrate that these criteria lead to the violation of rules established by the code to protect the integrity of the company's assets, since in the latter case […] this would fall within the scope of the challenge [of financial reporting][58].

In essence, therefore, the doctrine was beginning to show itself united in pointing out that

> when the resolution has violated rules that are not only mandatory by the majority, but whose observance the shareholders cannot renounce […], it seems obvious [that one can] bring an action to ascertain the nullity of the resolution itself[59].

Despite the position taken by most doctrine and jurisprudence as early as the 1930s, the legislative situation, both civil and fiscal, did not undergo its first changes until the 1940s (amendment of the civil code) and the 1950s (tax reform).

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

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

- 1942: the 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 Consolidated Income Tax Law – Presidential Decree No. 645 of 29 January 1958.

To understand the scope of possible tax interferences in financial year reporting, it is necessary to analyse the regulatory changes identified above, albeit briefly. Only in this way is it possible to understand whether it makes

58. Scorza, L'art. 163 cod. comm. Ed il diritto degli azionisti di impugnare il financial reporting approvato dall'assemblea, *Foro Italiano*, 1932, I, c. 1802.

59. Ascarelli, L'art. 163 cod. comm. e la pratica statutaria, *Rivista del Diritto Commerciale*, 1932, I, p. 357.

sense to assume tax interferences in financial reporting by tax provisions in the three decades under study in this paragraph.

In 1942, the issue of the relationship between financial reporting and tax regulations reached a critical turning point: with the promulgation of the Civil Code, for the first time in the history of our country, a series of provisions were enacted which, although lacunar and limited, regulated financial reporting in a manner that was undoubtedly more exhaustive than had ever been the case in previous decades.

Article 176 of the Commercial Code, which merely stated that «financial reporting must show clearly and truthfully the profits made during the year and the losses incurred», was countered by Article 2423 of the Italian Civil Code, which stipulated that:

> Art. 2423 c.c. Preparation of financial reporting
>
> The directors must prepare financial reporting with the profit and loss account.
> The financial reporting and the profit and loss account must show with understandability and accuracy the financial position of the company and the profits made or losses incurred.
> The financial reporting must accompany a director's report on the company's performance.

When reading the various civil law articles interconnected with financial reporting, one notices that the legislator refers to this document with uncertain and variable terminology. In fact, in some articles (e.g. 2321, 2432, 2433), this term is used unequivocally to indicate the balance sheet and profit and loss, while in others, the expression "financial reporting" is differentiated from the profit and loss account, so that the latter articles (e.g. 2217, 2423, 2429-*bis*, 2425-*bis*) identify financial reporting with the balance sheet alone. The legislator's use of such imprecise terminology means it is impossible to deduce a specific legal notion of financial reporting from the code. However, such a situation is not particular to the 1942 codified legislation. Even in the preceding decades, there has been a considerable lack of terminological homogeneity concerning financial reporting at the legal/legislative level. By way of example only, it may be recalled that in contrast to Articles 25 of the Consolidated Law of 1877 No. 4021 and Articles 11, 12, 13, 16, 18 and 20 of Law No. 1231/1936 cited in the preceding pages, where the term financial reporting indicates the composite document balance sheet + profit and loss account, there is Article 14 of Law No. 1231/36 where financial reporting is understood as a synonym for the balance sheet. Article 6 of Law 25/1951, Article 28 of Consolidation Act 645/1958 and Articles 3 and 5 of Presidential Decree 600/1973).

Notwithstanding the terminological uncertainties, which even led, simple companies, to talk about reporting instead of financial reporting[60], At a doctrinal, corporate and legal level, the term "financial reporting" came to be increasingly understood as «the balance sheet and profit and loss account as a whole», beginning to propagate a principle that now appears to be taken for granted and established.

Concerning the problem of the "content of financial reporting", the Civil Code of 1942 provided for an intervention aimed exclusively at regulating the balance sheet, omitting any provisions concerning profit and loss. Although it required the preparation of the profit and loss account, according to Article 2423 of the Civil Code, nothing was stipulated concerning the content of this document. This omission had severe consequences regarding disclosure to third parties outside the company. In this regard, it is worth remembering that in 1942 (as is still the case today), financial reporting for the individual entrepreneur – without prejudice to the obligation to prepare it – was considered a document that was only useful to the economic entity[61] resulting in the non-imposition of any form of disclosure of this prospectus. A similar situation applies to partnerships, for which – as for individual entrepreneurs – special rules concerning the preparation of financial reporting were (and still are) laid down. Still, no specific obligations were (and are) laid concerning the disclosure of financial reporting. For joint-stock companies, on the other hand, as for all corporations, the publication of financial reporting data is required by law to guarantee the now unanimously recognised "right to information" of shareholders and third parties outside the company.

As highlighted in the preceding pages, in 1942, the legislator opted for a structural regulation of the balance sheet only, omitting all reference to the content of the profit and loss.

Concerning the items that had to be included in the balance sheet, Art. 2424 of the Civil Code stipulated the following:

Art. 2424 c.c. – Content of financial reporting

> Without prejudice to the provisions of special laws for companies engaged in particular activities, financial reporting shall indicate separately in their total amount:
>
> On the assets side:

60. «This annual accounting statement, which the legislator inaccurately calls a statement, corresponds to financial reporting». Ferrara, *Gli imprenditori e le società*, p. 265.

61. «This is clearly an outdated conception now that there is an awareness of the social dimension of every economic phenomenon». Libonati, *I bilanci delle società*, p. 6.

1) Receivables from shareholders for payments still due
2) Real estate
3) Plant and machinery
4) Industrial patent rights and intellectual property rights
5) Concessions, trademarks and goodwill
6) Furniture
7) Stocks of raw materials and goods
8) Cash and cash equivalents
9) Fixed-income debt securities
10) Participations, indicating separately owned shares acquired according to Article 2357
11) Loans and advances to customers
12) Loans and advances to banks
13) Loans and advances to associated companies
14) Other claims

On the liabilities side:

1) The share capital at its nominal value, distinguishing the amount of ordinary shares from that of other classes of shares
2) The legal reserve
3) Statutory and optional reserves
4) Depreciation, renewal and asset impairment reserves
5) The accounts set aside for employee seniority or retirement benefits
6) Secured debts
7) Accounts payable to suppliers
8) Amounts due to banks and other lenders
9) Amounts owed to associated companies
10) Bonds issued and not yet extinguished
11) Other debts of the company

On the assets and liabilities side

1) Directors' and employees' deposits
2) Other current accounts and memorandum accounts.

Guarantee obligations must be entered in financial reporting even when corresponding re-granting credits exist.

Matching fees are prohibited.

As can be understood from reading the article, the regulation did not impose a mandatory structure but merely listed the items that, by legal obligation, had to appear on the balance sheet (note in this regard that the title of the article refers to the content of the financial reporting and not to the content of a part of it, i.e. the balance sheet). In this regard, Migliaccio points out that the balance sheet, in particular, presented two lists, one for assets, the other for liabilities. They were, however, neither organised nor complete. Moreover, the list was not exhaustive and therefore did not correspond to the number of items to be entered. The best doctrine held, therefore, that the rule did not impose compliance with the order of the list, which could be derogated from whenever there was an alternative and consistent with the purposes inferable from the financial reporting to the benefit of understandability.

Continuing the analysis of the most significant rules introduced by the Civil Code, it must emphasise that a fundamental innovative provision in the regulatory evolution concerning financial reporting is represented by Article 2425. The legislature of 1942, following the example of the Aktiengesetzt of 1937 and the Swiss Obligationenrecht of 1936, established a sufficiently analytical regulation of valuations based on the imposition of separate valuation rules for each class of values and characterised by the fact that the civil law did not establish specific criteria, but instead identified maximum valuation limits.

Moreover, the legislature did not deem it necessary to regulate financial reporting valuations rigidly. Still, it provided that, if special reasons so required, the directors could depart from these rules (Art. 2425 u.c.).

In particular, Art. 2425 of the Civil Code established the following maximum principles/limits:

Article 2425 of the Italian Civil Code Valuation Criteria

It must observe the following criteria in the valuation of assets:

1) it may not enter buildings, plants, machinery and furniture at a value higher than the co-store price, and the valuation must be reduced in each financial year in proportion to their depreciation and consumption for the share corresponding to the financial year itself by entering a depreciation reserve under liabilities.
2) it may not enter raw materials and goods at a value higher than the lower of their purchase price or cost and the market price at the close of the financial year.
3) it may not enter industrial patent rights, intellectual property rights, concession rights and trademarks at a value higher than their purchase price or cost. This price shall reduce in proportion to their duration or the decrease in their use.
4) The value of shares and fixed-income securities shall be determined by the directors following their prudent judgment, taking into account the price trend in the case of securities listed on stock exchanges. The criteria used in this determination shall be disclosed to the board of auditors, which shall take them into account in its report to the shareholders' meeting.

5) Non-shareholdings must be valued at an amount not exceeding the amount shown in the latest financial reporting of the companies to which they relate.
6) Receivables are to be valued at their estimated realisable value.
7) it may state any other difference between the amounts due at the maturity of the bonds issued and the amounts received at the issuance in a separate item on the assets side. In this case, shall ama part of the difference shall be amortised in each financial year following the amortisation schedules.

Write-downs of assets may result from entries made under liabilities, separately for individual asset items.

If special reasons require a deviation from the provisions of this Article, the directors and the board of auditors shall indicate and justify the individual deviations in their reports to the shareholders' meeting.

From reading Articles 2423, 2424 and 2425 of the Italian Civil Code, it can understand that the civil law legislator intended to improve the informative capacity of financial reporting substantially. This function was not even taken into consideration by the regulations previously in force. The 1942 regulations were undoubtedly deficient and perfectible[62], but it cannot be overlooked that, compared to the provisions of the Commercial Code, the Civil Code represented a breakthrough towards legislation protecting the right to information of third parties outside the company. The identification of the items that had to be included in the balance sheet and the imposition of maximum valuation limits considerably improved the position of external parties interested in the company's financial reporting, as the information that these parties could draw from the document in question was undoubtedly more numerous and precise than that which they could remove from the financial reporting before the enactment of the 1942 code.

Despite the considerable step forward in terms of the information provided to third parties, the regulation of only the assets and liabilities of the balance sheet, and therefore in the absence of any rules concerning the content and composition of the profit and loss account, made it impossible to obtain information on the company's income situation from financial reporting. The only apparent economic information deducible from the

62. For an overview of the main shortcomings of the 1942 code see, for all, Cosciani, *La riforma tributaria, analisi critica del sistema tributario italiano*, p. 237; Colombo, *Il financial reporting di esercizio*; Colombo, Financial reporting e conto profitti e perdite, *Rivista delle Società*, p. 349; Sassi, *Tecnica, politica e interpretazione dei bilanci di esercizio*, p. 120; Locatelli, Financial reporting e contro profitti e perdite, *Rivista delle Società*, 1966, p. 349; Locatelli, Problemi di strutture funzionali di financial reporting, *Rivista delle Società*, 1967, n. 3; Locatelli, Problemi. di strutture funzionali del financial reporting, *Rivista delle società*, 1967, p. 525; Terzani, *Introduzione al financial reporting*, p. 25 ff.

balance sheet was the amount of the net profit or loss for the year. Although indispensable for any income analysis, this summary figure did not indicate how formed the income was created or destroyed during the administrative period in question. The total absence of rules regulating the structure of the profit and loss account analytically permitted the radiance of practices of extreme hermeticism in published profit and loss accounts. In the 1950s and 1960s, many companies considered it correct to draw up extremely concise profit and loss accounts, which showed the net income for the year as the algebraic sum of the gross operating surplus and very few other separately disclosed income components, with the consequence that it was difficult, if not wholly impossible, to obtain meaningful information on the company's performance from these accounts.

At that time, practically all balance sheets presented a profit and loss as follows:

| **Loss** | **Profit** |
|---|---|
| General expenses<br>Depreciation and amortisation | profit |
| *total costs* | *total profit* |
| *profit of the year* | |

A sufficiently widespread variant was as follows:

| **Loss** | **Profit** |
|---|---|
| Inventories 1/1<br>General expenses<br>Depreciation and inventories 31/12<br>amortisation | Profit |
| *total costs* | *total profit* |
| *profit of the year* | |

In this regard, it must emphasise that the doctrine firmly and decisively emphasised the illegitimacy of such a practice. The drafting of a profit and loss account that was hermetic in that it was too concise was considered by almost all scholars to be a factor that allowed them to affirm the absence of the postulate of understandability imposed by Art. 2423 c.c. Despite this, the jurisprudence continued to regard the preparation of such accounts as legally unobjectionable. In this connection, we may recall that the Court of Milan in 1973 considered a profit and loss consisting of only four revenue and four cost items to be correct in civil law. Given this jurisprudential position and the innate tendency of companies towards confidentiality, most companies continued to publish profit and loss accounts with extremely synthetic gross results, which, according to many scholars, in addition to being illegitimate, were often useless or even detrimental to the company, since the various external operators, not being able to rely on precise data, made approximate estimates that could even heavily penalise the company.

The absence of an analytical regulation of the structure of the profit and loss account thus prevented financial reporting from fully developing its role as a helpful information tool for third parties outside the company. This shortcoming was further aggravated by the circumstance that, in the absence of specific regulations concerning the directors' report, the practice had developed in companies of drawing up reports that did not provide any information on the company's performance. The obligation to draw up a director' report was first introduced by the 1942 code, as the 1882 commercial code did not provide for directors to draw up such a document. However, it must be emphasised that, even before the Civil Code came into force, there was a widespread tendency to supplement financial reporting with a short accompanying report, which, however, in most cases, was characterised by very little disclosure.

In 1942, the legislature, accepting to some extent the suggestions of scholars and the indications of a practice becoming consolidated, stipulated that a directors' report should accompany the financial reporting on the company's performance (Art. 2423). Apart from this concise statement, nothing else was established and regulated, as no explicit provisions concerning the report's content were to be found in the code. The only two specific rules on the content of the report were Art. 2425 u. c., according to which the directors had to indicate and justify in the report any exceptions (for exceptional reasons) to the criteria of Art. 2425, para. 1, and Art. 3 of Decree-Law No. 11149 of 14 February 1948 on monetary revaluation, according to which the directors had to indicate in their annual report the depreciation rates calculated for each category of assets.

The lack of precise legislative indications on the report's content favoured, similarly to what has been seen for profit and loss, the formation of a practice of report often lacking any real informative significance. These documents generally constituted «an admirable literary essay or a thoughtful reflection on national or world events, either referring to the sector in which the company operated or with attention to wider areas»[63]. However, when it came to providing information on the company's performance, the information contained in the report suddenly became deficient and

63. Libonati, *last word cited*, p. 43.

incomplete; that is why this historical period has been determed «the reticent reports»[64]. This situation, given the supplementary nature of the report concerning financial reporting, made the public financial reporting even less intelligible to third parties, a document, as noted above, already characterised by the lack of a meaningful profit and loss account. Such poorly expressive reports were strongly criticised by the economist (for whom reports were documents of primary importance that necessarily had to contain an illustration of the principles followed in the formation of the financial reporting of the characteristics of the company's management so that the figures and results recorded in financial reporting could be correctly interpreted and judged), and by a part of legal doctrine, which held that the vagueness of Art. 2423 did not justify the occult nature of the reports since the report, since it had to illustrate the management's performance, could not disregard the consideration of, for example, the company's various sectors of activity, the contribution made by the shareholdings, the investments, the costs, the prices charged and the criteria followed in the valuation of the assets. Therefore, according to the authors of these doctrinal currents, independent of a specific legal provision, these elements had to be highlighted in the directors' reports. In the second half of the 1960s, the practice characterised by the mysterious nature of financial reporting began to incur numerous unfavourable judgements. The effect of this jurisprudence was undoubtedly an initial push to improve financial reporting. Nevertheless, companies that prepared hermetically sealed reports and profit and loss accounts still represented the majority. By this time, however, both doctrine and jurisprudence had given clear signs of an evolution, now considered necessary, which was realised, also at the regulatory level, in the 1970s through the enactment of specific articles of law regulating the content of both the profit and loss and the directors' report.

After briefly describing the civil law situation concerning financial reporting and, in particular, the profit and loss account, it is now necessary to conduct 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 preceding pages, the turning point for taxation in the period analysed here was the promulgation of the so-called Vanoni reform, the centrepiece of which was the Tax Equalisation Law No. 25 of 11/1/1951, which overturned «the centuries-old statist conception of the taxpayer-taxpayer relationship and, by imposing the obligation of the annual declaration, (shifted) the main thrust of the levy from the tax administration to the

64. Castellano, La relazione degli amministratori, *Giurisprudenza commerciale*, 1983, II, p. 315.

taxpayer»[65]. This was followed in 1954 by the law establishing corporate tax, Law No. 603 of 6/8/1954.

> The fundamentals of the reform concerning the direct taxation of income 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 as a substitute for ordinary continuous income.
>
> Following the entry into force of the reform, therefore, the taxpayer's annual declaration […] constituted […] the fundamental basis of the assessment procedure, the system of confirmation by the silence of the previous year's income having been abolished: a system that found its legitimacy in the provision of art. 24 of the Consolidated Act of 24/8/1877 no. 4021[66].

An enormous step forward in the coordination of the many tax provisions was the promulgation, in 1958, of the Consolidation Act on Income Taxes – Presidential Decree No. 645 of 29 January 1958, which represented an element of considerable interest in that this Act

> the simplification, coordination and clarification of the regulatory texts already in force was accompanied by the use of unambiguous terminology following that most widely accepted by doctrine and jurisprudence, the formalisation of new categories and general principles, the ability to give support and homogeneity to the entire system, and the abolition of the excessive exemplifications that were the precursors of the regulatory chaos in which the previous discipline found itself.

In other words,

> the […] Tax Equalisation Law of 1951 was only the beginning and the basis for the subsequent measures, among which we can include the corporation tax, that would lead to the definitive reform. Although Vanoni was not personally involved in the drafting of this law, numerous elements in it lead back to the statesman: it was he who began to lay the foundations of this new tax that […] could be considered as part of a sort of the second stage of the tax reform after the 1951 tax equalisation law mentioned above[67].

65. Falsitta, Vicende, problemi e prospettive delle codificazioni tributarie in Italia, *Rivista di Diritto tributario*, 2002, n. 3, p. 195.

66. Giorgetti, *La tassazione del reddito d'impresa*, p. 299.

67. Ambrosetti, *E. Vanoni e la riforma tributaria in Italia*, p. 119.

With Law 25/51 and the subsequent reforms, the doctrinal discussion and jurisprudential intervention aimed in particular at assessing the feasibility of a financial reporting system that could respond simultaneously to information needs to be based on the principles of business economics "introduced" in the Civil Code and to requirements of a tax nature, 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 legislations distinguished, at least apparently, by different purposes and functions. The Vanoni reform is still remembered today as an element of primary importance in the field of taxation, not so much for the actual changes it introduced but for the vision that permeated this law. In particular, with the Vanoni reform,

> the moral and cultural heritage of the Constitution was transfused into the [tax] law, also known as the "Tax Equalisation" law, which was intended to ensure fairness in the tax burden. It changed the annual income declaration from a mere statement to a categorical imperative; the system was based on the principles of class progressivity, reduced tax rates, and a corporation tax [subsequently] introduced. A reform that will go down in history, not because of the innovative scope of the system but because it was clothed with constitutional principles[68].

68. Addis, *150 anni di Unità d'Italia. Breve viaggio fra fisco e storia*, p. 19. While many scholars considered the Vanoni reform to be an innovative and positive element of our tax system, many criticisms were levelled against Law No. 25/51. Bottarelli well summarises these criticisms: «Certainly, the two reports by Cosciani and Visentini to the Vanoni Commission set the stage for what was to become the debate on the configuration that the tax system should take with the tax reform. A debate that started from a different consideration of the issues concerning direct taxes, their role and the objective assigned to them and that led the authors to support and propose partially different solutions both in the general approach and concerning more specific aspects. The position and, at the same time, the divergence between the two represents the common thread around which the adherences of the various scholars and proposals will revolve over the years. Vanoni himself expounded, in October 1948, in the Chamber of Deputies what he believed should be the lines of reform based on the "personalization" of direct taxation, thus adhering to the lines already indicated by the Cosciani report and going even further along the road of recognizing the lesser importance of a proportional income tax concerning a progressive one. The objections raised to Vanoni's proposals in terms of the impracticality of shifting the burden from lower to higher incomes due to the distribution of income in the country, the danger of reproducing a further transfer of burdens from direct taxation to indirect taxation on income, and the impossibility for the financial administration to verify a "personal" and progressive income tax concerning all taxpayers, led to the failure of the reform in its organic nature. Nor was it possible for him to complete the reform initiated by De Stefani Vanoni's reform on "tax equalization"; thus lost the significance of unity and completeness with which it was originally conceived (and only succeeded in laying some premises for a future shift of the tax burden towards personal taxation), so much so that the reform is commonly recognized for the sole "introduction of the

It should note that the Vanoni reform of 1951, for the first time, laid down specific rules concerning the valuation of the stock. In particular, Art. 8 of Law 25/1951 stipulated that:

> Art. 8 L. 25/51
>
> The valuation of raw materials and goods, for de-terminating taxable income, is made based on the lower purchase price or cost and the market price at the end of the financial year. The provisions relating to a revaluation by monetary adjustment shall also apply, with effect from 1950, to raw materials and goods,

obligation to declare income". For Vanoni, the "grey areas" on which to intervene were certainly evident: excessive real and indirect taxation, widespread evasion, and inequality of treatment, so the passing of the Tax Equalisation Law is aimed at bridging some of these distortions. In particular, the obligation to declare extended to all subjects, which is configured as the basis for tax assessments based on the analytical method, the decrease in the burden of direct taxes, the increase in the exemption area and the additional deductions for the complementary tax, the elements of progressivity and "personality" for the movable wealth tax, as well as the criticism of complex legislation and the indication of permanent codification as a guarantee for certainty in the application of taxes are among the most significant elements of Vanoni's work. Vanoni counted on the sense of responsibility of both the financial administration and the taxpayers, in line with that conception of tax law to which he had enormously contributed: tax law not as an exceptional right, but as a regulation of the contribution to public expenditure, as a duty of solidarity. At the beginning of the 1940s, there was a debate on whether tax reform should be enormously contributed to tax law not as an exceptional right but as a discipline of contributing to public expenditure, as a duty of solidarity. But what influence had Visentini's and Cosciani's positions had on the shaping of the proposals of Vanoni and the others? What were the actual divergences that had led the two scholars to oppose positions? Visentini indeed started from the consideration that it was illusory to pursue tax justice by accentuating the personalisation of direct taxation: he considered, in fact, the introduction of personality elements in the pro-rata tax inappropriate41 because of problems related to the financial administration (which would be faced with assessments of individual incomes as well as refund claims generated by the presence of "subjective conditions"), because of the fact of greater risks of evasion and inequality, but also because of the related implications in terms of "compulsory" nominatively. In so doing, he believed that all that would be done was to shift (more) the burden from direct to indirect taxation. Again, the observation of the failure of the pre-existing personal tax prompted him to strongly criticise the shifting of all direct taxation in the direction of personality; he also considered it worthwhile to abandon prejudices against the regressivity of indirect tax, which could have been suitably transformed with elements of progressivity. The role he recognises for possible higher taxation of higher incomes is based exclusively on a more remarkable ability to pay while denying the assignment of any redistributive principle. Visentini takes a position clearly against the hypothesised concentration of direct taxation in a single personal and progressive tax, justifying his disagreement with the presence of distribution and the average level of income, such as to prevent the transfer of the tax burden from lower to higher incomes43. In addition to these observations, he made some considerations in favour of maintaining the real proportional taxation of an autonomous personal and progressive tax on total income, but only on incomes above 1-1.5 million (thus on a small number of incomes) and with a different assessment to that of real taxes.

> based on the values and quantitative and qualitative stocks resulting from the inventories duly kept. If, however, the inventory value is higher than the purchase price or cost price, the monetary adjustment revaluation shall be calculated based on that price. In the case of changes in quantity, realisation is deemed to have occurred first for goods purchased at a time closest to the date on which the completion occurred.

A reading of Article 8 of Law 25/1951 shows how the tax legislation has, in part, taken up the provisions of Article 2425 of the Civil Code (according to which «raw materials and goods cannot be recorded at a value higher than the lower of the purchase price or cost price and the price based on market trends at the end of the financial year»), succeeding in making the regulation

On the other hand, Cosciani placed great emphasis on improving the distribution of the tax burden among taxpayers, which he considered to be completely irrational, and emphasised the drawbacks of the current system concerning quantitative and qualitative discrimination. Cosciani underlined that the system was characterised by the prevalence of real taxes, little progressivity, few deductions, an excessive burden on companies compared to households, assessment at source but with little collection at source, as well as the existence of inequalities linked to different estimates on actual and flat-rate incomes, and other tax rates; all aspects for which he attributed responsibility to the lack of personalisation. Again, from the point of view of qualitative discrimination, he believed that the presence of distorting aspects should be attributed to property taxes with the sole character of occasionality. Cosciani takes a much more radical stance in proposing choices regarding the tax system, arguing that what should be undertaken can only be a structural reform with an accentuation of the progressivity and personality of taxes: the need for a radical revision to correct and improve the rationality of the tax system. Reform is to be implemented in two distinct phases so that one can proceed, in the first instance, with the introduction of that part of the reform that does not jeopardise revenue while improving assessments and, in the second instance, with the actual structural reform, paying particular attention to the accentuation of personality and progressivity. The hypothesised reform was to be realised in a structured tax system, of which income tax was the core. The basis of direct taxation was, therefore to be the general income tax as the possible result of a change in the structure of the existing real taxation of individual assets and which was to summarise in itself the following characteristics: uniformity of rates, homogeneity of the concept of income, broad assessment and application of the tax at source, shifting of the taxable person (and thus of the tax burden) from the producer of income to the beneficiary of the income itself, and personalisation of the tax. Once the proportional tax had been implemented on a personal basis, and this tax had been designed in such a way as to implement rapid progressivity on lower incomes due to deductions of fixed sums, the personal tax could be designed in such a way as to tax only a minimal number of taxpayers». This is how Cosciani defines the progressive personal tax on global income, which he configures as a surtax on the proportional tax, with a taxable base that coincides with that of the proportional tax and taxpayers as in the "complement-tare", but keeping well in mind the problems linked to assessment (and, in fact, excluding inductive assessment as a means for the standard determination of the taxable base) and the treatment of the "titularsi". Bottarelli, *Fra riforme mancate e riforme attuale. Da Vanoni alla riforma degli anni '70*, p. 18 ff.

more complete by adding some specifications concerning the determination of the cost/price based on market trends.

Article 12 also intervened for the first time straightforwardly on the issue of depreciation, stating that:

> Art. 12 L. 25/51
>
> The depreciation period for a new plant built on or after 1 January 1946, as well as for extensions, conversions and reconstructions of the existing plant built on or after the same date, may, at the taxpayer's request, be reduced by not more than two-fifths. The amount of the depreciation allowances relating to the shorter period is computed, in addition to the usual assistance, in the year in which the expenditure was incurred and in the following three years, provided, however, that in each year, the accelerated depreciation does not exceed 15 per cent of the expenditure. The person must indicate in the declaration the portions of accelerated depreciation for which he claims a deduction from his declared income. For financial years closed before the entry into force of this Law, the conclusion is allowed for income that is declared or defined, at the taxpayer's request, within four months of the entry into force of this Law.

These provisions were partly modified by the subsequent reforms of 1954 and 1958 and made complete by enacting a series of rules to regulate the various income elements, positive and negative, relevant for tax purposes analytically. With the 1954 reform, which instituted corporate tax, the doctrinal diatribe that had characterised the previous years was positively resolved. The enactment of Law No. 603 of 6/8/1954 put an end to the doubt as to whether it could recognise companies and entities as having a personality quite distinct from that of the shareholders. «The motive of the not only legal but also the economic nature of corporations, different from that of shareholders, constituted the primary and dominant argument of the entire justification for the new tax»[69].

Corporate tax had a

> personal and […] subjective character: and in fact, Article 1[70] The constituent law did not say that it instituted a tax on income, assets or capital. Still, a tax on companies and entities required to submit financial reports, and foreign

69. Boidi, *L'imposta sulle società e sulle obbligazioni*, p. 21.

70. Art. 1, L. 603/54: «With effect from 1 January 1954, a tax is at this moment imposed on companies and entities required to file financial reports or statements accompanying tax returns under Article 8 of Consolidated Act No. 573 of 5 July 1951, even if they are exempt from the tax on movable wealth by special provisions or subject to substitute taxes. The tax is also levied on foreign companies and associations, considered in Title II of Royal Decree 3280 of 30 December 1923 and subsequent amendments».

companies and associations were also subject to the tax […]. Generally speaking, it can say that these entities are legal persons; however, this general principle was extended to include entities that did not have legal personality, but only unilateral or imperfect patrimonial autonomy, and to include limitations because certain legal persons were excluded or exempted from the application of the tax[71].

Le new tax[72] It affected both income and assets. Specifically, Article 4 stated that taxable assets were the sum of the following elements:

a) subscribed and paid up capital of companies or net assets of other entities resulting from financial reporting;
b) ordinary and extraordinary reserves of any kind resulting from financial reporting, and favourable currency revaluation balances, with the exclusion of funds and credits intended to cover specific charges and liabilities and in favour of third parties;
c) retained earnings from previous years.

It shall deduct the sum mentioned in the preceding paragraph

a) the losses of prior years carried forward;
b) a sum equal to the portion of the total financial reporting value of the immovable property freely versionable to the grantor, corresponding to the time already elapsed since the grant; the related provisions for financial depreciation were to be included in the taxable assets.

Concerning the foreign companies and associations considered in the second paragraph of Article 2, the taxable capital consisted of all capital

71. Napolitano, Castelli, *L'imposta sulle società*, p. 23.

72. «Before 1877, there were no distinctions in the treatment of companies and individuals. Subsequently, formal rather than substantive differentiations were made. This was due to the evolution of the corporate subject. In fact, as the institution of the company evolved, and as the company was obliged to observe certain legal forms and to disclose the company's results, the tax law could not but pay due attention to it concerning the determination of taxable income. Then, the need to comply with this document (financial reporting) and to take it as the basis for taxation arose; this led to the tax of companies based on financial reporting. From the purely formal aspect, the focus shifted to the substantive element: an in-depth examination of financial reporting to find the correct tax income; differential corporate taxation. The culmination of this differentiation was discovered in 1954 with the establishment of a new tax: the corporate wealth and income tax. The corporation tax, it is true, is justified by the existence of the complementary tax for private individuals, but essentially, in addition to being a substitute tax, it is justified to make the principle of the differentiation of the corporate subject a subject of greater taxpaying capacity, operative». Castaldo, *La verifica contabile fiscale*, p. 220.

allocated to operations in the State or of the total capital employed in the State if this exceeded the de-allocated capital as of 31 December of each year.

Article 5, on the other hand, governed the determination of taxable income, which was composed of the algebraic sum of the following elements:

a) the positive or negative result of the assessment for the tax on movable wealth of category B; for this tax, consumer cooperatives were not to include in the income the refunds that at the end of the financial year were returned to the purchasing members in proportion to the purchases made;
b) incomes of dominical and agrarian resulting from the cadastral estimates of the land, increased by the coefficients established for the application of the progressive complementary tax;
c) income from buildings, assessed following Law No. 1219 of 4 November 1951;
d) interest income, not valued when determining the category B income of the company or entity, including interest on securities of any kind; dividends; payment from equity interests and any other income not included in subparagraphs (a), (b) and (c) above, with deduction of expenses and liabilities relating to such income and not deducted when determining net category B income;
e) salaries, emoluments and allowances, other than reimbursement of expenses, paid to directors of the company or body or to shareholders, where they exceed their normal remuneration, whenever possible concerning the collective labour agreements for employees performing similar work in the same or similar enterprises. The related sums were allowed as a deduction when determining the B-category income of the company or entity, except the remuneration paid to the worker-members of labour cooperatives and their consortia and to the auxiliary workers employed in the same to an extent not exceeding 20 per cent of the total labour employed.

Also to be considered for Article 5 was income which, under special laws, was exempt from the relevant taxes, including income which, in any form whatsoever, including substitute tax, benefited from temporary or permanent tax reliefs or reductions. From the resulting amount, the ordinary taxes relating to income were to be deducted, even for the preceding three financial years, which had not been taken into account in the determination of the payment referred to in the first paragraph.

The provisions of Article 5 also apply to taxable foreign companies and associations (and identified in Article 2 of Law 603/54).

Article 6 established that the tax was to be applied at the rate of 0.75 per cent on the taxable assets indicated in Article 4 and 15 per cent on the part of the income stated in Article 5 that exceeded 6 per cent of the taxable assets. In the case of the cooperatives and their consortia referred to in Article 3(1), subject to the tax, the tax was levied on assets exceeding five million lire and on the part of the income exceeding six per cent of the assets determined following Article 4 at a reduced rate of 7.50 per cent, provided that the conditions laid down in Article 26 of Legislative Decree No. 1577 of 14 December 1947, subparagraphs (a) and (b), were met.

Many scholars considered the introduction of the corporate tax as an element of tax equalisation. In this regard, one may recall the words of Napolitano-Castelli, who briefly but very effectively stated that the law was enacted to achieve five specific objectives:

1. the tax was aimed at eliminating the inequality that […] occurred (previously) concerning personal income taxation between natural persons and legal persons;
2. the new tax took into account the more remarkable ability to pay that existed in legal persons due to the possibility of raising capital, the potential unlimited duration and the better organisation;
3. the juridical person (in the period before the Act) was never subject to that periodic taxation on assets which is the inheritance tax;
4. the tax had the subrogation character of the registration tax for the transfer of shares;
5. the number of companies had been multiplying, not constantly due to new initiatives, a clear sign of a particular privilege resulting from the adoption of the corporate form[73].

Certainly more complete and exhaustive is the legislation concerning the determination of taxable income from financial reporting contained in the Consolidated Act of 1958. This law includes specific provisions regulating the tax relevance of the following elements:

- revenues (Art. 91);
- capital gains (Arts. 100 and 106);
- contingent assets (Arts. 100 and 106);
- hidden reserves (Art. 107);
- expenses and liabilities (Arts. 91, 96 and 97);
- depreciation (Art. 98);

73. Napolitano, Castelli, *L'imposta sulle società*, p. 28.

- losses (Art. 99);
- interest expense (Art. 110);
- goods and work in progress (Arts. 102 and 114);
- securities (Art. 103);
- capital losses (Art. 101).

From 1958 onwards, we thus witness a situation characterised by the following:

1. the absence of any civil law regarding the content/structure of the profit and loss account;
2. the presence of Art. 2425 of the Civil Code by which fixes maximum limits in connection with the valuation of the main assets and liabilities of the balance sheet;
3. and, lastly, the existence of T.U. L. 645/58, which regulates the determination of taxable income in a sufficiently analytical manner, albeit deficient concerning subsequently enacted regulations.

Since this work aims to identify the presence of tax interferences in financial reporting, it is necessary to fully understand the relationship that, following the enactment of T.U. 645/58, was established between financial reporting and taxable income. The mere listing of the items regulated by the Consolidated Act does not, of course, appear sufficient to understand whether, in the 1950s and 1960s, one could speak of tax interferences in financial reporting.

As we shall see in the following pages, it must make a separate discourse on the practice established in those years in the company/taxation relationship, a technique resulting from the high level of tax evasion that was taking place at a national level in those years. Some considerations will be devoted to this specific problem, which we will develop later. For the time being, our objective is to understand whether, in the thirty years considered here (from the beginning of the 1940s up to the entry into force of the so-called Visentini reform and Law 216/1974), the drafting of financial reporting was influenced by tax regulations, i.e. whether, for various reasons, tax regulations were inappropriately introduced into the balance sheet and profit and loss account governed by Articles 2423 et seq. of the Italian Civil Code.

As already mentioned in the preceding pages, between 1942 and 1951, taxable income was governed by the Consolidated Act of 1877, and, consequently, the only variable introduced into the legislation in the period considered here compared to the preceding decades was a regulation of the valuation criteria or, rather, the imposition of maximum limits applicable to them. The total absence of any legislation whatsoever concerning the content of the profit and loss account made the situation, from this point of view, analogous to that of the period before the promulgation of the Civil Code: each company could draw up a profit and loss statement with gross results at will, in which the concept of "gross" was variously interpreted. Therefore, as far as the period after the enactment of the civil code and before the Vanoni reform is concerned, the considerations made in the preceding paragraph concerning the hypothetical presence of tax interference in financial reporting can be reproduced in a practically analogous manner.

6/8/1954 no. 603, which represented

> the fruit of a long doctrinal and jurisprudential process of elaboration of the provisions of art. 30 of the law on the tax on movable wealth, which taxed the result of financial reporting as company profits and regardless of their destination, thus focusing the levy on the overall company product, considered in its counting consistency[74].

As mentioned above, this tax regulatory coordination led to enacting the Consolidated Income Tax Law – Presidential Decree No. 645 of 29 January 1958.

Before making any considerations regarding the hypothetical presence of tax interferences in financial year reporting, it should be recalled that, in the historical period analysed here,

> financial reporting, from a legal point of view, [was] considered the accounting do-document summarising the results of the company's financial year – such [was] the balance sheet and the profit and loss account […]. The tax law did not [make] any specification of the said accounting document, which [was] called[75] simply financial reporting, or financial reporting profit and loss account and also statement[76].

74. Padovani, *last word cited*, p. 18.

75. Article 119 T.U. of 1958 "Analytical assessment of income of taxable persons based on financial reporting". The income of taxable persons based on financial reporting shall be determined based on the financial reporting entries and the cost of profit and loss or the return. The tax authorities may check the financial reporting entries based on the books, records and accounting documents and check the entries in the financial reporting entries based on factual evidence and data collected ex officio. Suppose non-existent or higher-than-actual expenses and losses are indicated. In that case, that income is omitted or incorrectly marked, or the business facts are in any case poorly or irregularly reported in such a way as to lead to a result that differs from the actual result, the office also proceeds inductively to supplement or correct the missing or incorrect financial reporting entries.

76. Pellingra, *La determinazione analitica e induttiva del reddito fiscale nell'imposizione tributaria*, p. 21.

In Article 8 of the T.U. of 1958, the taxable persons taxable under financial reporting were identified as follows:

a) companies limited by shares, limited partnerships limited by shares, limited liability companies, cooperative societies and mutual insurance companies incorporated in the territory of the State;
b) companies incorporated abroad in one of the types referred to in subparagraph (a), which have their seat of administration or principal object of business within the territory of the State;
c) other legal persons incorporated in the territory of the State who is required by law or by their statutes to prepare financial reports or accounts.

It understood Companies and credit institutions to be the companies, bodies and undertakings indicated in Articles 3, 5, 40(a) and 41 of Royal Decree-Law No. 375 of 12 March 1936, as amended, Article 1 of Legislative Decree No. 370 of 23 August 1946 and Article 1 of Law No. 445 of 22 June 1950.The Article mentioned above eight also provided that, unless otherwise provided, the rules of the Consolidated Law referring to commercial undertakings should also apply to the persons indicated in paragraphs three and four who engaged in commercial activities and those referring to person taxable based on financial reporting should also apply to companies and credit institutions falling within the categories indicated in paragraph three. Section 104 (Optional Taxation based on Financial reporting) further provided that commercial undertakings not falling within the category of taxable persons based on financial reporting could opt for taxation based on financial reporting by notifying the tax office in writing before the beginning of the financial year. The notice, if not revoked, was also valid for the following financial years. Undertakings availing themselves of the option provided in the preceding paragraph had to enclose a copy of the financial reporting of the profit and loss account with the declaration. The opportunity provided for in the first paragraph was also available to companies incorporated abroad having one or more branch offices with permanent representation in Italy, provided that the financial reporting to be attached to the declaration was published according to Article 2506 of the Civil Code and showed the elements necessary for the determination of the taxable income in Italy separately. For the sake of completeness, it should recall that the tax law provided, according to Article 43 T.U. 45/58, that entities taxable based on financial reporting had to keep «in addition to the books and records required by the Civil Code or special laws:

a) an overview of the accounts, accompanied by notes explaining the contents of each account and the system of entry adopted;

b) a note explaining the criteria followed in valuing the individual assets constituting the balance sheet items;
c) a statement of depreciable assets and related accumulated depreciation, showing separately, by year of acquisition, the items in each group, original cost, write-downs and write-offs, depreciation charged in each year and reductions due to disposal of assets;
d) particular chronological records, containing a nominative indication of the recipients, their tax domicile and the amounts paid to each, of all sums paid to natural persons, whether or not entered in professional registers, business registers and the like:
   1) by way of remuneration, reimbursement of expenses or otherwise in respect of professional, artistic, intermediary or any other kind of work;
   2) by way of royalties or fees or income from the assignment or grant in use of patents, designs, processes, formulas, trademarks and the like
   3) by way of interest, commission, premium, commission and similar payments in respect of the acceptance of funds on deposit, loan, security or current account, irrespective of the form, name and manner of the relationship»[77].

According to the dictate of Article 43 of Law 645/58, this provision was not to be applied to companies/credit institutions.

Entities that carried out industrial activities for the production of goods or services had to keep particular stock records that indicated, distinctly by quantity and quality, the movements of raw materials, semi-finished goods for sale, finished goods and goods to be consumed for production purposes, and that made it possible to follow the variations that occurred between the stocks in the annual inventories. Persons who carried out intermediary activities in the circulation of goods were also required to keep stock records that showed the movements of goods distinctly by quantity and quality and made it possible to follow the changes between the stocks in the annual inventories.

The objective of this rule was, of course, to make it easier to ascertain the truthfulness of the quantitative determinations of taxable income resulting from the output of the general accounting records, i.e. the financial reporting for the financial year.

Apart from the aforementioned supplementary specifications concerning the keeping of records/documents of a purely fiscal nature, it is possible to state that, in the twenty years analysed herein, the financial reporting for

77. Art. 43, L. 645/58.

the financial year represented the subjects taxed based on this document, the fundamental element to determine taxable income. At this point, to understand whether, after the enactment of T.U. 645/58, it was possible to hypothesise a tax interference of the public financial reporting drawn up according to Articles 2423 et seq. of the Italian Civil Code, it is necessary to, first of all, make a comparison between the tax valuation criteria and the maximum limits identified by Article 2425 of the Italian Civil Code. Only after such a comparison will it be possible to delve into the so-called tax interferences in financial reporting.

To facilitate the comparison between the civil valuation criteria and the principles imposed by the tax legislator, the content of the various tax articles will first be considered, which will be directly compared with the provision outlined in Art. 2425 of the Civil Code. Only subsequently will it be verified whether the provisions of Consolidation Act 645/58 thoroughly and exhaustively regulate all subjective evaluations and objective items underlying the items of financial reporting, intended as an instrument of management and information to the outside world and, for this very reason, drawn up based on civil law, supplemented and interpreted, as far as possible, by correct economic-business principles.

To avoid tedious enumerations of legal articles, the topics will be grouped according to accounting logic, and a direct comparison will be made between tax provisions and civil law.

*Inventories of raw materials, goods and work in progress*

| *Civili Code – Art. 2425 c.c.* | *T.U. (fiscal law) 645/58* |
|---|---|
| Raw materials and goods may not be recorded at a value higher than the lower purchase price or cost and market price at the end of the financial year. | *Article 102 – Valuation of raw materials and goods*<br>The valuation of raw materials and goods shall be based on the lower purchase price or cost and market price at the end of the financial year.<br>The taxpayer may maintain the lower cost valuation in one accounting period in accordance with the preceding paragraph in subsequent accounting periods.<br>In the case of a decrease in quantity, the realisation shall be deemed to have taken place first for raw materials and goods purchased at the time closest to the date on which the completion took place. |

*Stocks and shares*

| *Civili Code – Art. 2425 c.c.* | *T.U. (fiscal law) 645/58* |
|---|---|
| The directors must determine the value of shares and fixed-income securities according to their conservative estimate, taking into account the price trend for securities listed on the stock exchange. The criteria followed in this determination must be communicated to the board of auditors, which must be considered in its report to the shareholders' meeting.<br><br>Non-shareholdings must be valued at an amount not exceeding the amount resulting from the latest financial reporting of the companies to which they relate. | *Article 103 – Valuation of Securities*<br>The valuation of shares, bonds and fixed-income securities shall not be less than the lower cost or the value at the end of the financial year.<br>The cost of securities issued by the same person and having the same characteristics shall be determined by dividing the total acquisition cost by the number of securities held, including those acquired free of charge.<br>In this case, securities already held shall be deemed to have been acquired at the beginning of the financial year and shall be valued based on the average cost following the preceding paragraph, and, in the event of changes in quantity, the securities acquired at the time closest to the date of realisation shall be deemed to have been realised first. The taxpayer may, however, proceed to the valuation based on the cost of individual securities, provided that he has notified the district tax office in writing before the beginning of the financial year. A communication made before the start of a financial year shall, if not revoked, also apply to subsequent financial years.<br>For subsection (1), the value of the securities at the end of the financial year shall be the average of the stock exchange prices of the last quarter before the end of the financial year or the price at the end of the financial year if that price is lower than the average. For shares not listed on a stock exchange, the account is taken proportionally of the decreases in equity resulting from the last financial reporting duly approved by the issuing companies in comparison with the previous financial reporting before the date on which the shares were acquired or from resolutions adopted according to Article 2446 of the Italian Civil Code; for bonds and other unlisted fixed-income securities, the account is taken of decreases in value proven by specific and distinct elements.<br>A lower valuation against cost made in a financial year following the provisions of the preceding paragraphs may be maintained by the taxpayer in subsequent financial years. |

## *Capital gains, capital losses*

| *Civili Code – Art. 2425 c.c.* | *T.U. (fiscal law) 645/58* |
|---|---|
| Absence of specific references | *Article 100 – Taxable capital gains and contingencies*<br>Capital gains, including goodwill, derived from the realisation of assets relating to the enterprise at a price higher than the non-depreciated cost or, if different, the last value recognised to determine income, shall be included in the taxable income. In the case of the companies referred to in Article 2200 of the Civil Code, all assets belonging to them are deemed related to the enterprise. Capital gains are taxable even if they are distributed to the shareholders before the assets are realised.<br>Capital gains realised in the business also contribute to the formation of taxable income, including those arising from the recovery for any reason of sums deducted in previous years and those deriving from the non-existence of liabilities.<br><br>*Article 101 – De-taxable capital losses*<br>To determine taxable income, only capital losses on raw materials, goods, shares, bonds and fixed-income securities, determined following the provisions of Articles 102 and 103, shall be deductible, subject to the conditions of Article 99.<br><br>*Article 106 – Taxable capital gains and contingencies*<br>Capital gains of all assets belonging to taxable persons based on financial reporting shall be included in the year's taxable income in which they are realised, distributed or included in financial reporting. Also included in taxable income are contingent assets arising during the financial year.<br>For the persons referred to in Article 104, the provision of the first paragraph shall apply only to capital gains on assets relating to the enterprise and contingencies arising during the financial year.<br><br>*Article 99 – Losses*<br>Losses arising from the total or partial destruction of assets relating to the enterprise or from their realisation at a price below the non-depreciated cost or, if different, the last value recognised to determine income, losses on credits, and other losses inherent in the activity producing the income shall be deductible. |

*General expenses*

| *Civil Code – Art. 2425 c.c.* | *T.U.(fiscal law) 645/58* |
|---|---|
| Absence of specific references | *Article 96 – General expenses*<br>The general expenses of the enterprise are deductible to the extent of the share attributable to the taxable income. |

*Amortization*

| *Civili Code – Art. 2425 c.c.* | *T.U. (fiscal law) 645/58* |
|---|---|
| Property, plant, machinery and furniture may not be entered at a value higher than their cost price, and the valuation must be reduced in each financial year in proportion to their depreciation and consumption for the share corresponding to that year by the entry of a depreciation reserve under liabilities. | *Article 98 – Depreciation*<br>The annual depreciation allowances of depreciable costs according to Articles 2425 numbers 1, 3 and 7, and 2427 of the Italian Civil Code, calculated concerning the remaining life of the assets, are determined starting from the financial year in which the relevant assets come into use.<br>Incremental expenses, including those of extraordinary maintenance, are deductible in annual instalments determined about the remaining life of the assets they refer, including any extension of that life as a result of the expenses incurred.<br>The depreciation period of new installations and extensions, transformations and reconstructions of existing structures may be reduced by not more than two-fifths at the taxpayer's request. In that case, depreciation shall begin in the year the expenditure was incurred, and an other portion not exceeding fifteen per cent of the cost shall be added to the normal parts in that year and the three subsequent years.<br>The taxpayer shall exercise the option provided in the preceding paragraph at the time of the annual return, indicating the portions of the additional depreciation for which he requests deduction.<br><br>*Article 109 – Write-downs, depreciation and expenses*<br>The following shall not be deductible.<br>(a) capital losses arising from depreciation not recorded following the provisions of the second paragraph of Article 44;<br>(b) depreciation not recorded under the provision of the second paragraph of Article 44 and those relating to assets in respect of which the condition of subparagraph (c) of Article 43 has not been complied with[78];<br>c) le spese indicate alla lettera d) dall'art. 43 non risultanti dalla prescritta registrazione cronologica. |

78. Article 44 "Rules on the Keeping of Accounting Records". The accounting records of entities taxable under financial reporting shall be kept so that the assets and liabilities contributing to the determination of income can be clearly and distinctly discerned following the reporting format in force at the beginning of the financial year. Valuations, revaluations,

*Receivables*

| *Civil Code – Art. 2425 c.c.* | *T.U. (fiscal law) 645/58* |
|---|---|
| Receivables must be valued according to their presumed realisable value | *Article 99 – Losses*<br>Losses arising from the total or partial destruction of assets relating to the enterprise or from their realisation at a price lower than the non-depreciated cost or, if different, the last value recognised to determine income, losses on credits, and other losses inherent in the activity producing the income are deductible. |

and depreciation must be recorded in the journal and the individual accounts in separate entries for categories of homogeneous assets concerning their nature and the depreciation period. In addition to the elements prescribed by the civil code or special laws, the inventory ledger must indicate the amount of the assets grouped in homogeneous categories by nature and value and the value attributed to each group. If the inventory does not show the elements constituting each group and their location, the lists used to compile the stock must be kept at the disposal of the offices. The provisions of Articles 2215, 2216, 2219 and 2220 of the Civil Code shall apply to the records referred to in point (d) of the first and second paragraphs of the preceding article. The provisions of Articles 2215 and 2220 of the Civil Code apply to the statement of depreciable assets.

Article 43 "Accounting records of persons taxable based on financial reporting". Persons taxable based on financial reporting shall keep, in addition to, the books and records required by the Civil Code or special laws: a) a chart of accounts, accompanied by notes explaining the content of each account and the system of entries adopted; b) an explanatory note on the criteria followed in valuing the individual assets constituting the balance sheet items; c) a schedule of depreciable assets and related accumulated depreciation, showing separately, by year of acquisition, the items in each group, original cost, revaluations and write-downs, depreciation charged in each year and reductions due to the elimination of assets; d) appropriate chronological records containing the names of the recipients, their tax residence and the amounts paid to each, of all sums paid to natural persons, whether or not entered in professional registers, business registers and the like: 1) by way of remuneration, reimbursement of expenses or otherwise, in respect of professional, artistic, intermediary or any other work; 2) by way of royalties or fees or income from the assignment or grant in use of patents, designs, processes, formulas, trademarks and the like; 3) by way of interest, commission, premium, commission and the like in respect of the acceptance of funds on deposit, loan, security or current account, irrespective of the form, name and manner of the relationship. This provision does not. Apply to credit companies and institutions.

Persons who engage in industrial activities for the production of goods or services must keep stock records that indicate, distinctly by quantity and quality, the movements of raw materials, semi-finished goods for sale, finished goods and goods to be consumed in production, and that makes it possible to follow the variations that have occurred between the stocks in the annual inventories. Entities engaged in intermediary activities in the movement of goods must keep stock records that indicate, separately by quantity and quality, the actions of goods and make it possible to follow the variations between the stocks in the annual inventories.

| *Civil Code – Art. 2425 c.c.* | *T.U (fiscal law). 645/58* |
|---|---|
| Any other difference between the sums due at the maturity of the bonds issued and the sums received at the time of issue may be charged to a particular item on the assets side of the balance sheet. In this case, a portion of the difference shall be amortised in each financial year following the amortisation schedules. | *Article 98 – Depreciation.*<br><br>The annual depreciation allowances of depreciable costs according to Articles 2425 numbers 1, 3 and 7, and 2427 of the Italian Civil Code, calculated concerning the remaining life of the assets, are determined starting from the financial year in which the relevant assets come into use.<br>Incremental expenses, including extraordinary maintenance expenses, are deductible on an annual basis and determined concerning the remaining life of the assets to which they relate, including any extension of the life of the assets as a result of the expenses incurred.<br>At the taxpayer's request, the depreciation period for new installations and extensions, conversions and reconstructions of existing structures may be reduced by not more than two-fifths. In that case, depreciation shall begin in the year the expenditure was incurred and be added to the normal portions in that year and the following years by a further piece not exceeding fifteen per cent of the spending.<br>The taxpayer must exercise the option provided in the preceding paragraph at the time of the annual return, indicating the portions of the increased depreciation for which he requests the deduction. |

*Intangible costs*

| *Civil Code – Art. 2425 c.c.* | *T.U.(fiscal law) 645/58* |
| --- | --- |
| Industrial patent rights, intellectual property rights, concession rights and trademarks may not be entered at a value higher than their purchase price or cost. This price must be reduced in proportion to their duration or the decrease in their use. | *Article 97 – Multi-year expenses*<br>Expenses related to several financial years shall be deductible within the limits of the portions attributable to each.<br>Expenses relating to the formation and increase of a company's capital shall be deductible during the five financial years following that in which they were incurred, not exceeding one-fifth for each of them.<br>The provision of the first paragraph shall also apply to allowances legally or contractually due to personnel upon the termination of their employment. The portions chargeable to each financial year shall be determined concerning the legal situation of each staff member following the laws and contractual provisions governing the employment relationship.<br><br>*Article 98 – Depreciation.*<br>The annual depreciation rates for depreciable costs under Articles 2425, numbers 1, 3 and 7, and 2427 of the Italian Civil Code, calculated about the duration of the assets, are determined starting from the financial year in which the relevant assets come into operation.<br>Incremental expenses, including those of extraordinary maintenance, are deductible in annual instalments determined by the remaining life of the assets to which they relate, including any extension of the life itself due to the expenses incurred.<br>The depreciation period of new installations and extensions, transformations and reconstructions of existing structures may be reduced by not more than two-fifths at the taxpayer's request. In that case, depreciation shall begin in the year the expenditure was incurred, and an other portion not exceeding fifteen per cent of the cost shall be added to the usual pieces in that year and the three subsequent years.<br>The taxpayer must exercise the option provided in the preceding paragraph at the time of the annual return, indicating the portions of the additional depreciation for which he requests the deduction. |

| *Civili code – Art. 2425 c.c.* | *T.U.(fiscal law) 645/58* |
| --- | --- |
| Absence of specific references | *Article 110 – Interest Expense*<br>Interest expenses are deductible for the part corresponding to the ratio between the gross revenues that enter into the taxable income and the total amount of gross revenues. |

To complete the overview of the rules concerning the determination of taxable income, mention should be made of Article 91 T.U. (fiscal law), from which it follows that:

Article 91 – Net Income

> Net income is the difference between the amount of gross receipts that make up taxable income and the amount of expenses inherent in the production of that income.

It is clear from the above summary that there were noticeable and significant differences between the provisions of the tax law and the basic principles that should have, at least in theory, formed the basis of financial reporting.

Specifically, concerning the issue of the presence/absence of tax interferences in public financial reporting, it is helpful to examine five particular financial reporting items in more detail:

1. receivables;
2. provisions for future risks and charges;
3. depreciation and amortisation;
4. closing inventories;
5. interest expense.

From the analysis of these items, it can be understood how wide the possibility and realisability of tax interferences in financial reporting were in the 1950s and 1960s. To avoid misunderstandings, it should again be recalled that the objective of this text is to investigate the presence of tax interferences in financial statements, understood not so much as simple changes in civil items motivated by "pure" tax evasion resulting from non-invoicing and the inclusion or overstatement of non-existent costs, but rather as changes in income 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 financial reporting implications of "traditional" tax evasion through non-invoicing or the recognition of purchase invoices that do not correspond to actual incoming production factors but will focus our attention exclusively on the tax interference in the balance sheet and profit and loss accounting, which is carried out using 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.

For obvious reasons, we will not repeat what has already been set out in the tables on the previous pages. Still, we will limit ourselves to making general considerations on specific financial reporting items and mentioning rules or principles not explicitly contained in the Italian Civil Code and the Consolidated Financial Act of 1958 (and, for this reason, not shown in the above tables).

Our analysis begins with the amortisation of deferred income costs, as even today, this cost represents one of the items that most frequently generates tax interferences in companies' financial reporting.

First of all, as already highlighted in the previous pages, it is necessary to bear in mind that the deductibility of depreciation allowances was subject to the provisions of Articles 44 and 43 of the Consolidated Act 645/58. These costs were, therefore, only tax deductible if:

1. the valuations of deferred assets, the revaluations of the latter and the depreciations appeared in the journal and the individual accounts under separate and distinct headings by category of homogeneous assets concerning their nature and the financial year (Article 44 of the Consolidated Act);
2. and these values were duly recorded in the book of depreciable assets, in which the elements of each group, the original cost, revaluations, write-downs, depreciation effected in each year and reductions for the elimination of expenses (Article 43 of the Consolidated Law) were to be shown separately by year of acquisition.

Formal compliance with these rules was the sine qua non for the tax deductibility of depreciation. Apart from that, the problem of quantifying these costs was particularly relevant. The amount of depreciation and amortisation was a particularly delicate problem as it resulted from subjective estimates by the directors.

About this issue, it may be noted that a comparison between Article 2425 of the Italian Civil Code and Article 98 of the Consolidated Law reveals substantial discrepancies between the two regulations, which become even more evident if the analysis of the Consolidated Law of 1958 is accompanied by the valuation principles outlined in the Ministerial Circulars of the Ministry of Finance – Direzione Generale Imposte Dirette 1/3/1957 no. 350620 and 14/4/1959 no. 350710. Circular No. 350620 of 1957 established the depreciation and wear and tear coefficients that were considered "normal" for tax purposes and, therefore, considered tax deductible without the need for any further analysis by the Tax Office.

The list of coefficients contained in that circular was much more comprehensive and structured than the one agreed in the early 1900s between tax authorities and company[79]. The table of coefficients established in Circular 350620 of 1957 distinguished, at the economic level, various branches of the productive fabric (branch of industry, a branch of trade, a branch of ancillary trade activities, etc.). Each chapter was further divided into groups of companies (e.g. group I: agricultural and forestry industries; group II: livestock industries; group III: fishing and hunting industries, etc.). For each group of companies, the typical long-term assets of the companies in question were identified. For each category of assets, the percentage of fiscally deductible depreciation was defined. Fiscal depreciation was characterised by the "fixity" of the rates, which meant that the Ministry had opted for the criterion of constant quotas for this quantitative determination.

On the other hand, business economics doctrine maintained that this rate, if determined according to correct principles of business economics, should reflect the actual consumption and deterioration of the asset and, therefore, could never be considered "fixed and constant" by definition. From this initial reasoning, it can be understood how civil depreciation, at least in theory, could differ from that determined according to tax law. Circular No. 350620 of 1957, however, tempered the tax position that provided for the constancy of the rates, stating that «concerning the above, the coefficients represent the maximum limit allowed […], except in the case of more intensive work. In the latter hypothesis, the offices will allow an upward adjustment of the coefficients, provided that it appears, through the elements at their disposal, that the plants have been subjected to more intensive work than is typical for the sector and not for the specific enterprise. Thus, for example, in the case of prolonged processing beyond the standard hourly limit of the industry, an increase of the coefficients proportional to the prolonged exploitation of the installations will be allowed».

The admissibility of the deduction of accelerated depreciation, as well as the possibility provided for by the circular to apply rates lower than

79. The reader is referred to the previous pages for an analysis of these tables.

those provided for in the attached table[80] Undoubtedly brought the fiscally relevant cost closer to the amount of depreciation determined according to correct economic principles, i.e. depending on the "real" consumption and amortisation of the asset. The possibility provided by the circular to decide on reduced and accelerated depreciation was. Therefore a step towards the theoretical convergence of the tax-deductible cost with the depreciation quantified according to economic logic. The circular as mentioned above also emphasised that such an increase could never be granted to offset any lower allowances calculated in previous years. Accelerated depreciation must therefore be interpreted as an increase in depreciation resulting from greater utilisation of the plant and not as a mere accounting method of equalising the cost between the various years of use of the multi-year asset. There is no doubt that the concession to "adapt" the fixed rates provided for by Circular No. 350620 of 1957 to the real exploitation of the asset through the application of accelerated and/or reduced depreciation was to be considered a decisive step towards the theoretical possibility that civil financial reporting was "accurate" (and therefore truthful) and the taxable income represented the "real" wealth produced by the company (at least as far as the determination of depreciation was concerned). In reality, as we shall have the opportunity to discuss later, this assumption often turned into a mere wishful thinking that was not followed by corporate conduct in keeping with this objective. For further considerations on this "discrepancy" between "possible" and "factual", the reader is referred to the following pages.

While the above-mentioned accelerated depreciation was connected to an increased use of an asset, Art. 98 T.U. allowed the deductibility of a portion of depreciation not connected to the use of the asset. This accelerated depreciation could be calculated in such a way that the depreciation period of new installations and extensions, conversions and reconstructions of existing structures was reduced by no more than two-fifths. In such a case, depreciation could start in the year the expenditure was incurred and be added to the normal portions in that year and the following three years. This additional quota could not exceed fifteen per cent of the expenditure. The taxpayer had to exercise this option at the time of the annual declaration, indicating the portions of the additional depreciation for which he claimed the deduction. It is clear from the rule wording that the accelerated depreciation was not linked to a hypothetical greater exploitation of the asset. This

80. «As the circular itself specifies, the coefficients set out therein are of an indicative nature only and normally represent the maximum limit allowed by the tax authorities, which may therefore also recognise lower percentages in the event of special circumstances». Berliri, *Il testo unico delle imposte dirette*, p. 301.

deductible portion merely represented a tax advantage to reduce taxable income. Thus, accelerated depreciation had no connection with the concept of business cost and, consequently, of an income component which, at least in theory, should have been recognised in the profit and loss account. Circular No. 350620 also stated that the annual instalments of depreciation and consumption should be allocated to the special depreciation fund recorded in the balance sheet liabilities according to Article 2425 of the Civil Code. Furthermore, following the provisions of the book of depreciable assets, depreciation was to be recorded in the individual accounts under separate and distinct items for personal assets, which homogeneous categories could only group.

As mentioned above, the provision contained in the Circular concerning the non-recording of depreciation is very relevant. The Circular explicitly provided that failure to account for depreciation in the manner described above would result in the non-deductibility of ordinary (and anticipated…) annual instalments and anticipated depreciation, or[81], which is also provided for in Article 109 of the Consolidated Act – Depreciation, Amortisation and Expenses, according to which depreciation is not recorded as prescribed in the second paragraph of Article 44 and those relating to assets for which the provisions of letter c) of Article 4 were not observed were not tax deductible.

To complete the regulatory framework concerning depreciation, it must be recalled that, in the ministerial circulars issued before and after 1958, there were precise rules concerning counting any depreciation not deductible for tax purposes. In this regard, Circular No. 350620 prescribed that

> the accounting treatment of depreciation calculated more than the permitted limits and recovered for taxation […] [must] be carried out in the current financial year at the time of settlement of the assessment, by reducing the relative depreciation provision and simultaneously recording a taxed reserve fund, freely available, in

81. «On the other hand, current legislation (Art. 98 T.U.) has responded to the legitimate needs of taxpayers by allowing the accelerated depreciation of 40% of the planting costs in the year of purchase and the three subsequent years to the regular depreciation quotas. It is, therefore, right that greater rigour be established in such a delicate and important matter and that easy tax evasions and inequalities be avoided; also, in consideration of the fact that greater understandability and the guarantee of a more exact application of the taxation criteria, may later allow for a revision of the depreciation coefficients of some aspects of the company's fixed assets: a correction, which, to meet the requirements of a satisfactory fiscal equalisation, must be based on the conviction that any form of arbitrary and artificial expansion of the depreciation rates, to be deducted from gross income, must be more easily detectable in the future and thus, prevented». GIORGETTI, *La tassazione del reddito d'impresa*, p. 305.

> the financial reporting liabilities. In correspondence […] [the adjustment must] be made in respect of the depreciable assets […], to achieve full consistency between the accounting presentation and the results of the statement itself.

With specific reference to what was indicated in the circular as mentioned above regarding the fiscal recovery of depreciation exceeding the limit fixed by the coefficient table, mention should be made of Ministerial Note No. 350099 of 6 April 1959, addressed to the Association between companies, in which the following was stated:

> This Association drew the attention of this Ministry to certain passages of Circular No. 350620/1959 concerning depreciation allowances calculated more than fiscally permissible limits and recouped from taxation, concerning which those mentioned above circular prescribes that the accounting settlement of such allowances «must be made in the current financial year at the time of the definition of the assessment, by reducing the relative depreciation fund and simultaneously recording in the financial reporting liabilities a taxed reserve fund, freely available».

This Association considers that such formal prescriptions, even if justified by the need to achieve greater understandability of financial reporting, go beyond the tax field, requiring entrepreneurs to allocate to reserves a part of the depreciation funds set aside by the directors in full compliance with the codified rules. Considering that the need for comprehensibility that informed the criterion expressed in the circular can be deemed to have been achieved through the distinction between taxed and untaxed provisions in the statement of depreciable assets required by Article 7 of Law 5/1/56 no. 1, this Association requests that the removal from the depreciation fund of the portions calculated more than the permitted limits to allocate them to a taxed reserve fund be considered an option of the entrepreneur, without prejudice to the obligation, already provided for by the circular, to adjust the depreciation funds entered in the appropriate statement. This Ministry, while still deeming the reasons that informed the circular as mentioned above to be valid, believes that it can accede to the request made by this Association, in consideration of the fact that the elimination from the depreciation reserve of the portions calculated in excess could lead to a distortion of the financial reporting values. However, it should be noted that the provisions of Article 7 of Law No. 1 of 5/1/1956 remain unaffected because depreciation allowances are not recorded in the journal, and individual accounts cannot be deducted.

From this summary of the tax provisions, potential discrepancies between tax depreciation and economic depreciation, which, as is well known, must be connected exclusively to the asset's wear and tear and consumption, are evident[82], without regard to possible tax advances/reductions that have nothing to do with the concept of «annual allocation of a multi-year cost». For further considerations on the potential differentiation between civil and fiscal depreciation, the reader is referred to the following pages, where a specific in-depth examination will be made of the issue concerning the presence/absence of tax interferences in financial statements drawn up in the 1950s and 1960s, in which the case of the relationship between economic depreciation vs tax depreciation took on a specific relevance.

The contrast between fiscally accepted value and the economic business cost was also evident concerning provisions for future risks and charges. Starting with the requirement for bad debts and arriving at the various lesser-known and more widespread provisions for risks and charges, such as, for example, the provision for pending litigation, the provision for prizes and competition coupons, the provision for environmental risks, the provision for inventory write-downs, etc., the comparison between tax law and civil law provisions shows an irreconcilable contradiction. The analysis of these items is elementary and concise: according to the T.U. 645/58, provisions for risks and charges were not deductible. Provisions to these funds were, therefore, never recognised as tax-relevant negative income components. The undoubted and insurmountable subjectivity and aleatory nature of the determination of these items had led the tax legislation to prevent any deductibility in the assessment. The tax deduction was allowed only and exclusively upon the occurrence of the adverse event, which in turn, given the certainty of the impact on financial reporting, caused numerous objective variations devoid of the aleatory nature that had previously rendered provisions for risks and charges non-deductible.

The legislator's intent of the time was to drastically reduce or, better yet, eliminate at the root any litigation concerning values that, by their nature, were subject to a quantification based on subjective elements and, therefore, not objectifiable in specific terms, is evident. The desire to limit the taxpayer's area of discretion as much as possible consequently led the 1951 and 1958 legislators to exclude, entirely and without exception, the hypothesis of considering any provision for risks and charges as fiscally relevant and to incontrovertibly postpone the deductibility of the cost to the time of the

82. It is not deemed appropriate here to recall, at length, the doctrine concerning the calculation of depreciation following accepted principles of business economics and, in the current period, correct national and international accounting principles. Since the text's primary objective is to deepen the subject of tax interferences in financial reporting, knowledge of the basics of year-end valuations according to correct economic postulates is taken for granted. For further study of this latter topic, the reader is referred to specific works on the subject.

occurrence of the adverse event or expense subject to the provision for risks and charges. Concerning the issue related to the deductibility of loan losses, Giorgetti points out that

> a problem of considerable importance […] is that relating to the taxation of income assets which, although assessable in their monetary amount, lack the requirement of certainty so that their actual acquisition of the company's assets is subject to the occurrence of certain conditions unforeseeable at the time of preparing the financial report. It is true that according to Article 112 of the Consolidated Law 645/58, companies and entities taxable based on financial reporting have the right to deduct the amount of any loss of a financial year from the income of subsequent financial years for no more than five years; however, in practice, it may well be the case that this time limit, appropriately established by the tax rule, is not sufficient to define controversial positions and, in any case, to the actual determination of the amount of the asset and its acquisition. It must therefore be borne in mind what the Central Commission, section IV, decided in its ruling of 16 April 1943 no. 69846 of 16 April 1943, according to which proof, for tax purposes, of the loss of capital and interest, for tax relief can be provided by any means capable of corroborating the taxpayer's declarations, even independently of and before the negative outcome of the procedures to which the definition and actual collection of the asset is subordinate; without prejudice, of course, to the discretion of the judges of merit on the appreciation of the evidence provided by the interested party[83].

Apart from the considerations set forth above regarding the concept of "certainty of the loan loss" and the "finality" of the loss itself, the analysis of the issue of the tax relief of loan losses appears very simple and concise insofar as it lacks the possibility of any comparison between two logics, economic and fiscal, potentially different. In this specific case, the logic is very bland: the deductibility of a loan loss was linked to the certainty of the loss; any provisions made in the financial reporting for the year in anticipation of presumed losses could never be considered tax-deductible, regardless of the validity or otherwise of the valuations that had led the financial reporting preparer to include those provisions among the operating costs. Concerning the valuation of receivables, therefore, the contrast between business principles and tax provisions was evident, making it impossible to identify an accounting method that would allow for some degree of compliance with the civil law, which required "precision" and thus, indirectly, the economical integrity of the financial reporting data, while at the same time allowing for the possibility of total tax deductibility of the cost. Concerning the issue

83. Giorgetti, *La tassazione del reddito d'impresa*, p. 339.

of loan losses, the convergence between the civil law provision (and thus economic-business logic) and the tax rule was, consequently, impossible to achieve.

About the issue of closing inventories, what stands out clearly from the comparison tables (civil code vs tax law) shown in the preceding pages is the fact that, as for all financial reporting items, in contrast to the code, which imposed a valuation "not exceeding", the tax law established a precise valuation without setting a maximum or minimum limit. Whereas, in fact, under Article 2425 of the Civil Code, raw materials and goods could not be recorded at a value higher than the lower of the purchase price or cost and the market price at the end of the financial year, Article 102 of the Consolidation Act – Valuation of raw materials and goods – stipulated that this valuation was to be made based on the lower of the purchase price or cost[84], and that inferred from the market trend at the close of the financial year.

It can understand how this fact could, at least hypothetically, lead to civil valuations different from those established by the tax provision since the law only and exclusively set

> a limit to the valuation […], in the sense that it was not [it was] possible to value them at a figure higher than the lowest price resulting from the ratio between the purchase price and the market price, while [it was] possible to value them below[85].

84. Concerning the determination of cost, Castaldi observes: «The industrial cost is represented […] by the cost of raw materials + expenses for technical salaries and contributions + expenses for wages and contributions + cost of ancillary materials + expenses for industrial energy, factory overheads, expenses for various consumables and consumption of other tools. On the share of consumption of different devices, i.e. for depreciation, there is a debate on considering these in the industrial cost. According to the concepts of accountancy and economics, this share forms part of the industrial cost. Still, economists reject the idea from a fiscal point of view, basing their argument on the fact that the legislator has provided for this share in Schedule B and not in Schedule IV of the declaration, i.e. as a deduction from gross profit and not in the formation of gross profit, where the inventories are included; therefore, depreciation should not be considered for determining the cost to be attributed to the stocks. We do not consider such considerations to be well-founded since the fact that depreciation is charged to Schedule B of the declaration does not mean that it should not be considered when determining the cost to be allocated to inventories. If this were the case, then the cost itself would also be exempt from the incidence of interest expenses, general expenses and other expenses that are nevertheless indicated on Schedule B. Thus, in the formation of the cost for the valuation of inventories, account must be taken of all the elements that have contributed to the creation of the asset if one does not wish to burden the sales of the financial year with a cost extraneous to it». Castaldi, *La verifica contabile fiscale*, p. 200.

85. Pellingra, *La determinazione analitica e induttiva del reddito fiscale nell'imposizione tributaria*, p. 41.

Moreover, it must be remembered that, for the tax authorities of the time, the only method of valuation was the so-called LIFO (in addition to, we believe, the specific identification which, although not mentioned, was, in our opinion, permissible). Article 102 T.U. provided that, in the event of a decrease in quantity, raw materials and goods purchased at the time closest to the date on which the realisation took place were deemed to have been realised. This taxation excluded the adoption of alternative methods to LIFO, such as, for example, FIFO or weighted average cost. To determine taxable income, the LIFO method was the only method that could be used to value a final inventory consisting of assets that could not be specifically identified.

Even for this specific method of valuation, one can see points of a discrepancy between the tax rule and the correct civil law valuation. There are many situations where the valuation of closing inventories must be carried out on a FIFO basis and not on a LIFO basis if one wishes to adopt a criterion that brings this valuation closer to reality. Consider, for example, a food company: applying a LIFO valuation of the final inventory would have represented an economic illogicality hardly acceptable and, above all, impossible to combine with the postulate of truthfulness required by Article 2423 of the Civil Code.

The rule imposed by the first paragraph of Art. 102 (valuation at the lower price between the purchase price or cost price and the price inferred from market trends) was attenuated by what was prescribed by the second paragraph, which, as will be seen in the following pages, could lead, or rather, certainly led, to tax valuations that differed from those that were civilistic correct. The second paragraph of Art. 102 states that the lower valuation in comparison with cost, made in a financial year following the provisions of the first paragraph, could be maintained by the taxpayer in subsequent years,

> which means that, if in a financial year (e.g. 1959) a commodity, the price of which is not in line with the cost of the goods, is valued at cost, the taxpayer may maintain the valuation in the following years. This means that if in a financial year (e.g. 1959) a commodity, the purchase price of which was 100, has been valued at 80, it may continue to be valued at 80 also to determine the income for the years 1960 and follow, even though, as the market has improved, the value of that commodity rose in 1960 to 90.
>
> Consequently, the taxable profit for 1960 will be ten less than it would have been if the thing had been valued at 90, as the first paragraph of Art. One hundred two would have it. It should be noted, for the avoidance of equivocation, that the taxpayer does not evade the tax on this profit but merely postpones its application to the day on which he resells the goods or revalues them in financial reporting. Naturally, since this is an option granted to the taxpayer, he may not avail himself

> of it and apply the rule on time, even when the circumstances of the exception provided for in the second paragraph apply[86].

From the preceding, it can understand that in Article 102, there were two potential reasons for the discrepancy between the valuation performed for tax purposes and the determination of the value of inventories conducted according to Article 2425 of the Civil Code.

Castaldi summarises the issue in this regard, stating that

> the tax legislator was concerned with not letting the price go down to a specific limit, i.e., not to allow write-downs; the civil legislator, on the other hand, was concerned with not letting the price of valuations go up to a specific limit, i.e., to avoid overvaluations that were harmful to the company's reality and detrimental to the interests of third-party creditors. Thus, the fiscal legislator wanted to guarantee operating income; the civil legislator wanted to ensure third parties[87].

Regarding the possibility that tax valuations of inventories could be transferred to civil law, we refer the reader to the following pages. For the time being, in light of the above, it is co-equal to say that potential discrepancies between tax valuations and civil law values could easily be identified in the regulations in force in the 1960s and 1970s.

Finally, regarding interest expenses, the analysis is elementary. From a tax point of view, under Article 110 T.U. 645/58, financial charges were deductible for the part corresponding to the ratio between the gross revenues that made up the taxable income and the total gross revenues. «In the past, interest expenses were deductible if specific, inherent and necessary». The tax provision created the prerequisites for a clear differentiation between civil value and tax-deductible amount, as deductibility depended on the identifiable relationship between total revenue and tax-relevant positive income components. There was, therefore, the potential for a discrepancy between the civil amount and the amount deductible for tax purposes. Again, the analysis of the actual presence of tax interferences in financial year reporting is postponed to the following pages.

Suppose one compares the dictate of the civil law regulations and the content of the tax provisions. In that case, it is evident that in the 1950s and 1960s, there were, at least at a theoretical and potential level, manifest discrepancies between the concept of taxable income (of direct taxes) and the quantification of the year's income determined in the financial reporting

86. Berlini, *Il testo unico delle imposte sui redditi*, p. 271.
87. Castaldi, *La verifica contabile fiscale*, p. 199.

prepared under Article 2423 of the Italian Civil Code. As has already been pointed out, this does not necessarily mean that tax pollutions in the context of civil financial reporting were identifiable in the period under consideration herein. It is not necessarily the case that, obligatorily and in all financial statements, the potential for tax interferences had to be transformed into the actual translation of tax principles into the economic assessments required for public financial reporting. The above substantially negates the position of that part of the doctrine, which, more or less explicitly, refutes the presence of differences between civil valuation principles and the content of tax provisions. In the preceding pages, it has already been pointed out that some authors, including Falsitta in particular, considered that

> the preconceived notion that tax laws use financial reporting for a purpose that is contrary to the purpose of statutory financial reporting becomes a petition of principle unsupported by any evidence and is contradicted, moreover, by the purpose expressly provided for by the delegation law (Law no. 825 of 9/10/71) to the tax regulations on financial reporting and income[88].

The author, as mentioned above, also asserted that since

> in principle, there is no conflict or incompatibility between the purposes of civil law and those of tax law [there is] no reason to believe that the notions used by the tax legislator to construct the concept of tax profit, if transplanted into private law, should therefore only be distorted and acquire a different scope or new meanings.

In other words, Falsitta first emphasises that there is no substantial contradiction between the two legislations and then argues the civil law legislation. However, it cannot be considered a set of meaningless words;

88. Falsitta, Convergenze e divergenze tra diritto commerciale e diritto tributario, *Giurisprudenza commerciale, società e fallimento*, marzo-aprile, I, 1980, p. 197. Falsitta refers here to Article 2(16) of the enabling act. And it is the proposer himself, observes Falsitta, who clarifies the meaning of the reference to the principles of economic competence and makes it clear that it was intended to require the delegate to construct the concept of taxable income using the principles and notions developed by business economics on the subject of business income. Faced with these observations, however, Colombo points out that: «the rule that taxable profit is determined according to accrual principles seems […] to state that, in code, no conflict can be found between the aims of civil law and tax law. The argument is unexceptionable from a logical point of view, but its validity depends on the reality or unreality of its premises. That is to say, whether or not, beyond the wording of Article 2(16), what constitutes taxable profit coincides with the gain to be shown on the balance sheet». Colombo, Disciplina del financial reporting e norme tributarie: integrazione, autonomia o inquinamento, *Rivista delle società*, 1980, p. 1176.

nevertheless, it is characterised by a set of propositions that give the compiler of financial reporting a great deal of discretion as to the solutions to be adopted[89].

According to this author, it was, therefore, legitimate for administrators to use the principles dictated by the tax legislator to fill in the gaps in the civil code. Thus, this scholar not only believed that there was no divergence between civil and tax law but even considered that integration – or hetero-integration – was feasible[90] – of the rules of the code through fiscal law[91]. Falsitta noted that the analysis of civil and tax laws could identify tax principles that, in part, were detrimental to the accrual principle, the latter being a fundamental postulate in civil law and business economics. However, he contested that this could lead to the invalidity of financial reporting, as

> these rules violate the accrual principle, but, being motivated by the need for a more stringent implementation of the principle of universality and equality of the tax burden on an equal tax burden, they escape the vice of unconstitutionality due to excess of delegated powers[92].

In time, Falsitta tempered his initial position, recognising that the civil code contained «only a list of empty words that need to be filled with normative substance»[93]. Falsitta's words, therefore, if contextualised in the period in which they were expressed, may have a motivation, if not theoretical, at least pragmatic. A task that, according to the scholar, should have been fulfilled by the tax legislator. This statement dates back to 1977, when "generally accepted" accounting principles were not widespread. In the 1970s, on closer inspection, what was established by the code was not supported by widely accepted business principles in doctrine and practice. Today, the situation has rationally changed, as the unanimous opinion is that

89. Falsitta, *Concetti fondamentali e principi in tema di rapporti fra bilancio civile e bilancio fiscale*, in *Bilancio d'esercizio delle imprese*, p. 17. In this paper, it is noteworthy that Falsitta has, in a certain sense, tempered his initial position. In *Il problema delle interrelazioni* the author stated that in reality, the civil law discipline contains «only a list of words» empties of meaning that must be «filled. With normative substance». A task that, according to the author, should be performed precisely by the tax legislator.

90. Falsitta, *Concetti, fondamenti e principi ricostruttivi in tema di rapporto fra financial reporting civile e financial reporting fiscale*, in *Bilancio d'esercizio delle imprese*, p. 15.

91. While not being able to go into the subject in depth, it may be recalled that the alleged usability of tax rules for the preparation of statutory financial reporting, according to Falsitta, rests on a number of premises, for the analysis of which the reader is referred to Falsitta, Il problema delle interrelazioni, *Impresa, ambiente e P.A.*, 1977, I, p. 240.

92. Falsitta, La questione delle divergenze, *Rivista delle società*, 1980, p. 897

93. Falsitta, Il problema delle interrelazioni, *Impresa, ambiente e P.A.*, p. 247

the national OIC and international IAS/IFRS accounting standards complete and supplement the statutory rules. While this is true, one has to wonder whether the transposition of rigid tax rules would not help to solve many problems concerning the "veracity" of financial reporting. Analysing this issue requires a closer examination, which, as already mentioned, will be carried out in vol. III. For the time being, therefore, we content ourselves with stating that the general objectives of civil law may well differ considerably from those of the tax provisions. And, since the purpose of this text is to examine in depth the possibility of tax interferences in the statutory financial statements in the 1950s and 1960s, we will limit our attention for the time being to the situation in those twenty years. We, therefore, refer the reader to the following text for broader considerations on the issue of the identifiable relationship between civil law and fiscal provisions.

Much of the doctrine disagreedand still does not agree with the views expressed by Falsitta. In the past, even the judiciary had to emphasise how the civil code rules could often not be considered analogous and consistent with the tax provisions; in particular, there were several judgments in which somebody explicitly highlighted the disparity between the aims and principles of the Civil Code and the objectives and criteria of the Consolidated Income Tax Law[94].

Since the beginning of the 1900s, a further doctrinal diatribe was underway, which, although not centred on the subject of tax interferences, has undoubted connections with the issue at hand. This doctrinal confrontation had its origin in the theoretical notion of financial reporting. There is now a unanimous opinion about public financial reporting that the coexistence of multiple official financial statements covering the same administrative period is inadmissible. The current doctrine, both corporate and legal, agrees that it is impossible to draw up as many financial statements as there are subjects for which such a document is intended. In the past, however, such unanimity was absent, as many authoritative scholars considered it not only permissible but even helpful to draw up several differentiated public balance sheets. In this regard and bearing in mind Pantaleoni's statement in 1904 that «the purpose for which financial reporting is prepared is that which only gives meaning to the valuations that make up assets and liabilities», many scholars believed that «the differentiation of year-end financial statements

94. In this sense, the famous judgment of the Court of Milan No. 4840 of 1978 (*Giur. comm.*, 1981, II, p. 1019) in which it stated that the tax legislation does not affect any of the criteria outlined in the Civil Code and, bearing this in mind, declared null and voided the resolution of the shareholders' meeting approving a financial report for the year in which the accelerated depreciation provided for in Article 68 of Presidential Decree No. 597 had been charged to the profit and loss account.

was necessary for any prudent practitioner who did not wish to deprive these documents of their practical usefulness»[95].

Napoleone Rossi's words were echoed by Grillo, who argued that

> the claim of positive Italian tax law and that of other countries to find […]. The claim to find […] in the "financial reporting of company operations" all the technical-accounting possibilities of a clear and unequivocal recognition of operating income is irrational and the source of all the economic-technical and legal-tax controversies on the subject, especially on the economic determination and tax recognition of depreciation costs […] of fixed assets, […] the recognition of value attributable in financial reporting to inventories of goods, finished products and raw materials, etc.[96].

It is clear from these words that, in past decades, the concept of «single public financial reporting» was not unanimously accepted, unlike today. At present, this rant seems to have been overcome. The doctrine agrees that the financial reporting proposed outside the company must be unique, as it is a synthesis and compromise between many different potential objectives. It remains to be emphasised how, despite the doctrine's denial of the theoretical possibility of the coexistence of a plurality of financial statements referring to the same administrative period, the practice of drawing up a so-called "internal financial reporting" is still alive, even in today's business reality, which should, at least hypothetically, better describe the company's economic and financial situation. Often such financial reporting is present when a tax evasion policy is implemented in the company. In this case, the official figures do not reflect the company's economic reality. Hence the need for a document from whose analysis a "true" company situation can be deduced. In these cases, to speak of the coexistence of multiple financial statements is a distorted use of the Italian language and the concept of financial reporting. In the presence of "true" internal financial reporting as opposed to "false" public financial reporting arising from tax evasion policies, it is not possible to speak of a plurality of financial statements but rather to state quite simply that there is "true" internal financial reporting as opposed to an illegitimate document, and therefore potentially subject to challenge, intended for third parties outside the company.

More complex, however, is the situation in which public financial reporting is characterised by heavy tax interferences carried out to obtain taxable income reductions, and for this reason, coexists with "internal

95. Rossi, *Il bilancio delle imprese*, p. 165.

96. Grillo, *Il bilancio delle società per azioni nella determinazione del reddito economico e del reddito fiscale*, p. 197.

financial reporting" that is more truthful insofar as it is not subject to tax requirements connected, for example, to limitations on the deductibility of estimated and conjectured costs. In this case, it does not seem correct to speak of a plurality of financial statements, as public financial reporting is unique. Still, it is indisputable that the presence of another document more in tune with economic reality causes the uniqueness of "truthful" financial reporting to be called into question or, better still, raises some doubts, at least from a linguistic point of view.

Let us now return to the topic that gave rise to the above considerations: the relationship between code provisions and tax valuation principles in the 1950s and 1960s.

From the preceding, discrepancies between civil law principles and tax provisions of the time appear 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 preparation of financial reporting as precisely as required by Article 2423 of the Civil Code. The indication of a maximum limit that cannot be exceeded, and therefore the implicit legitimacy of valuations below the «correct economic-corporate quantification» of asset values, could represent an obstacle to the preparation of an indeed "true" balance sheet and profit and loss. It is well known that the position of the civil legislator was dictated by the objective of protecting third parties from asset overvaluations, a situation that seemed much more dangerous than the opposite. In this part of the text, we will start from accepting this assumption, abandoning any investigation of the potential lack of precision due to valuations that do not correspond to the truth in that they are lower than the "real" value of the object of quantitative determination. In the following pages, we will focus exclusively on the search for potential and actual transpositions of tax valuation criteria into the civil sphere. Our objective is, therefore, to investigate whether it is possible or inevitable 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 tax interferences marked the financial statements of the twenty years analysed here.

As a first consideration, it should be noted that no particular doctrinal comparisons on the subject are to be found in the texts and written works of the time, just as the terms "tax interferences" and "tax interferences" of financial reporting are substantially absent from the vocabulary of the time. This circumstance proves the doctrine's, at least partial, disinterestedness/detachment/indifference about this specific thematic issue. It is, of course, possible that a few authors have addressed the matter in question. Still, in the overall doctrinal panorama, both corporate and legal, there seems to be no honest debate on the consequences of the potential or actual transposition of tax rules into the financial reporting of the civil year.

We have acted in both doctrinal and pragmatic circles to conduct our analysis. 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 financial statements prepared by different companies after the enactment of the Consolidated Act 645/58 and before the Visentini reform. This research 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 obtain statistically valid results but rather, despite the apparent limitation of the sample, to understand the pragmatic impact of tax regulations on preparing financial statements.

We believe that the doctrinal analysis and the study of financial statements have provided a relatively clear and faithful understanding of the trend in the 1950s and 1960s concerning the subject matter of our interest.

From a doctrinal point of view, reading the works of that historical period has allowed us to understand that, at least by a part of the doctrine, the idea was accepted that the valuations included in financial reporting could reflect what was imposed by the tax regulations. In this regard, the position of Giannetta-Sessa-Scandale appears attractive when they state that

> the legislator, in regulating the settings of financial reporting values in the Civil Code, was concerned with avoiding the distribution of fictitious profits […]. While the tax effects are interested in knowing the operating income that comes closest to the real[97].

Such reasoning leads to the belief that "true" income is determined for tax purposes. In contrast, public financial reporting is contaminated by objectives that have nothing to do with accuracy in determining business income and capital[98]. In the writer's opinion, such an assertion seems far-fetched, or rather, if, on the one hand, it is true that the code provisions of the 1950s and 1960s were intended to protect third parties by preventing overvaluations of the company's capital components, on the other hand, it is

97. Giannetta, Sessa, Scandale, *Teoria e tecnica dell'accertamento del reddito mobiliare, Raccolta delle lezioni 1953-1955*, p. 380.

98. It would seem that the same considerations can also be drawn from the work of Castaldi, who states, «As we have had to point out several times in this work, the entrepreneur, favoured by civil law, tends to devalue stock values to create strong reserves for the company: fiscal income, on the other hand, presupposes fair valuations, i.e. such as not to distort the year's income by deferring profits to subsequent years». Castaldo, *La verifica contabile fiscale*, p. 197.

equally valid that the tax provisions were far from allowing the calculation of an income "really" produced by the company. In this regard, one need only consider the impossibility of deducting any provisions for future risks and charges. Therefore, as mentioned above, the authors' position does not meet our approval due to the apparent contrast between economic valuation principles and the tax provisions of the time.

After having clarified that the pure and straightforward application of fiscal 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 code document was constant practice or represented if it could be detected in some financial reporting, a mere exception to the widespread absence of tax interferences in the profit and loss accounts and balance sheet of the time.

Before making an analysis based on deductions from corporate comportment, which seems logical for rational-tax reasons, we can consider the specific case of a financial reporting item that indisputably proves the existence of tax interferences in almost all financial statements of the 1950s and 1960s. The following is the technical explanation of accelerated depreciation provided for by both the Vanoni reform of '51 and the T.U. 645/58, taken from a manual for use by companies and officials of the Direct Taxes Office.

> Another question that arose in the application of Article 12 of the law [Vanoni of '51, *author's note*] is that relating to the accounting in financial reporting of accelerated depreciation. It is believed that starting from the financial years closed after the law came into force, i.e. from 15/2/51, accelerated depreciation, to be allowed as a deduction, must not only be expressly requested in the annual declaration but also accounted for in financial reporting as a harmful component of operating income. There are, however, those who have advanced the thesis, based on the literal interpretation of the legal provision, that the only condition for granting the deduction is the request in the declaration, thus admitting the possibility of extra-financial re-porting depreciation even when the relevant portion has not been accounted for. Therefore, in the extreme hypothesis of financial reporting that does not contain any non-deductible items, it would be the case that the profit distributed to the shareholders would not be fully taxable with a movable wealth tax, the portion of accelerated depreciation having to be deducted […]. Others, on the other hand, hold that, unless specifically accounted for in a profit and loss item or an income account, provided that the accelerated depreciation is claimed as a deduction, it may be allowed to offset other items fiscally recovered during the year, such as expenditure of an incremental nature, excessive ordinary depreciation, unallowable write-downs, unrecognised

> provisions, etc. With the entry into force of Article 7 of Law No. 1 of 5/1/56, all doubts in this regard must be considered dispelled since, as confirmed by the ministerial instructions on the tables of depreciation coefficients and depreciation of 1/3/57 No. 350620, the failure to count the ordinary annual quotas as well as the quotas of accelerated depreciation under Article 12 of Law No. 25 of 11/17/51 entails the non-deductibility of the same[99].

From these statements, it is evident, proven and irrefutable that the non-recognition in financial reporting of anti-depreciation resulted in the impossibility of deducting the same for tax purposes. Recalling that such depreciation did not refer to the depreciation and consumption of long-term assets but represented mere tax benefits, it is evident that civil financial reporting was contaminated by valuations lacking any economic-corporate depth and dependent exclusively on tax principles that had nothing to do with the concept of cost intended as a negative component of economic income. In general accounting, in the public ledger, in the book of depreciable assets and, finally, in the profit and loss account, there were entries without any income meaning understood in the economic-business sense. In financial reporting, there were thus accounting items of an exclusively fiscal nature, the recognition of which was the only way for their amount to be deductible for tax purposes. The presence of such accounting items in financial reporting irrefutably proves that, although in the 1950s and 1960s, there was no talk of tax interferences and tax interference taxation of the profit and loss account and the balance sheet, osmosis between tax law and civil financial reporting was well present and ingrained in all companies. In this specific case, the interference was similar to that which occurred in the 1980s, to which we referred in the previous paragraph. The tax obligation to recognise accelerated depreciation in accounting and financial reporting, under penalty of its non-deductibility for tax purposes, on the one hand, undoubtedly represented a tax interference, but on the other hand, constituted a legislative inconsistency that was the direct cause of this tax interference in financial reporting. Therefore, as far as accelerated depreciation is concerned, the tendentially negative judgement implicit in the phrase «tax interference in financial reporting» must be revaluated, as it did not derive from a voluntary company behaviour as an alternative to an attitude more in keeping with civil law principles, but from a special tax provision that prevented companies that did not comply with this obligation from deducting what, if recognised in the profit and loss account, was considered deductible costs. It seems

99. Giannetta, Sessa, Scandale, *Teoria e tecnica nell'accertamento del reddito mobiliare*, p. 479.

obvious that any company, even with good intentions of preparing "accurate and truthful" financial reporting from a civil law point of view, when faced with the alternative of not being able to deduct costs permitted by the same tax law, would opt for a different accounting behaviour from that which would have allowed for the achievement of the primary objective of civil law financial reporting, i.e. the preparation of an "accurate" document according to the logic contained in the code itself.

Regardless of these considerations, it is, in any case, undoubtedly the possibility that the financial statements of companies in the twenty years under consideration here were high from obvious fiscal pollutions.

At this point, it is interesting to develop some observations regarding potential "voluntary" tax interferences, i.e. regarding those transpositions into financial reporting of tax valuations that are not imposed by legislation but implemented by free decisions of the companies. The question arises as to whether tax valuations polluted the financial statements of the 1950s and 1960s only due to a legal "obligation" (accelerated depreciation) or also due to the free will of the directors. As we will discuss in more detail in vol. II, tax interferences generally have three motivations:

1. legal obligation (as, for example, in the case of accelerated depreciation);
2. the company's desire to deduct a cost to an extent more significant than it could count on by adopting "economically correct" behaviour;
3. "administrative laziness", i.e. lack of willingness to de-terminate two values (economic and fiscal) instead of one (fiscal); A mistaken conviction may dictate this motivation that this is correct (in which case, the concept of "administrative laziness" should be replaced by the locution "theoretical accounting error") or it may derive from the awareness that, although it is an attitude to be censured determining only the tax value (generally more easily determinable as it is subject to rigid rules without subjective evaluative interventions) is organisationally more economical than devoting time, work and energy to the double quantification (economic and tax) of a single asset or income element.

Regarding the first motivation, accelerated depreciation represented the only example of legally obliged tax interference in the twenty years analysed here. Regarding the other two reasons, however, before making any hypothesis, it is necessary to examine some specific items to assess the impact of the two potential valuations (civil and fiscal).

Ordinary depreciation represents, as has already been emphasised, an accounting item that frequently becomes an instrument of fiscal interference in corporate financial statements. According to the tax legislation following the Vanoni reform, the annual depreciation allowances had to be allocated to the special depreciation fund recorded as a liability in the balance sheet and to appear, according to the Vanoni law and the Consolidation Act of 1958, simultaneously in the journal and the individual accounts in separate entries according to homogeneous categories. According to the provisions of Article 109 of Consolidated Law b), depreciation was not recorded following the second paragraph of Article 44 and depreciation of assets for which the provisions of letter c) of Article 43 were not deductible for tax purposes. To complete the framework of reference, it must be recalled that the tax regulations permitted, in particular cases, the application of depreciation coefficients that were lower or higher than the "normal" ones fixed in the table of coefficients attached to the ministerial circulars issued in 1957 and 1963. However, it should not be forgotten that even in the historical period under consideration, the entry of depreciation in the profit and loss account was a condition sine qua non for the cost to be considered deductible for tax purposes.

It is clear from the preceding that the civil law provisions concerning depreciation (Art. 2425 of the Civil Code: «The valuation of long-term assets must be reduced in each financial year in proportion to their depreciation and consumption for the share corresponding to the year in question, by entering a depreciation reserve under liabilities») could, at least on a theoretical level, be applied independently of tax provisions. What we mean by this is that if an enterprise, according to correct business calculations, had determined a statutory depreciation of X, it could certainly recognise X in financial reporting and then subsequently calculate how much of that cost was tax deductible. Obviously, in making such calculations, it could happen that the tax depreciation would be less or more than X. The company wishing to prepare "accurate" civil financial reporting could, however, disregard this discrepancy and postpone the difference analysis until the income tax base is calculated. Such correct comportation, however, had the following consequences:

1. if the tax depreciation was less than X, the enterprise had to proceed with a tax write-back unless the conditions for applying accelerated depreciation for tax purposes were present.
2. if, on the other hand, the tax depreciation was higher than X, the company found itself in the situation of having knowingly missed the opportunity to deduct a higher cost for the "simple fact" of having indicated in financial reporting a value lower than that which, for tax purposes, would have been accepted as a cost, by definition, without checks/reversals/amendments.

The experience gained in the corporate field and the results of two research concerning recent years, which, however, in the writer's opinion, there is no reason to exclude that they reflect the "corporate accounting habits" also of the 1950s and 1960s, lead us to consider the "unexceptionable" corporate behaviour described above as not very widespread, and instead the procedure of recording in financial reporting the depreciation that could most guarantee the tax deductibility of the cost. Therefore, according to an economic calculation, the depreciation of an asset had to be lower than the fiscally allowable depreciation. In that case, we consider it difficult, if not impossible, to think that the company would renounce a portion of tax deductibility for the "sole" reason of calculating civilly correct depreciation. This assertion acquires even more value if one considers that in the period under consideration, there was no provision concerning the structure of the profit and loss account, which, as noted in the preceding pages, allowed companies to draw up a very hermetic profit and loss accounts and, consequently, devoid of any informative value.

From the analysis of the financial statements to which we have referred in the preceding pages, it could be seen that the directors' report, which also lacked any specific legal regulation, always consisted of a couple of pages at most, where often, for around 30%-40% of the report, general and generic judgements were made about the company and its sector. In many reports, one also reads various considerations about the work the managers and workers perform. It is clear, therefore, that the two pages of which the standard report was composed represented, practically, only an aggregation of general considerations devoid of any informative element de-linked to third parties outside the company.

From these details, one can understand the culture that permeated the companies in the twenty years analysed: the mentality that saw company confidentiality as the pivotal element of the concept of external information predominated; communication, especially accounting data, was experienced as an intrusion, not accepted by the companies. The '42 code was, without a shadow of a doubt, a huge step forward compared to the previous legal situation. But the culture of financial reporting, as is well known, is not created by laws or measures, just as many other aspects of community life are not changed through legal provisions but rather through other channels, the first of which is the cultural dissemination of ideas, opinions and dialectical comparisons. This rule also applied to financial reporting and still applies today. The law may help an evolution, but it will never succeed in imposing an openness that the interlocutors strenuously oppose. In the 1950s and 1960s, Articles 2423 et seq. of the Civil Code were in force. Still, the spread of the culture of financial reporting, which sees in this document as a helpful communication tool even for the strategic purposes of the company itself, was a long way off.

In the situation described above, to assume that a company would sacrifice the reduction of the tax base "only" to recognise a depreciation more in keeping with the company's reality honestly seems a conjecture devoid of any rational element. There is no doubt, therefore, that companies applied ordinary tax depreciation in civil financial reporting both in the hypothesis that the economic cost was lower (to take advantage of the tax reduction) and in the opposite case (to avoid double work of which no practical use was foreseen). Giorgetti even points out how

> for example, the need for greater control of financial reporting items concerning depreciation was emphasised; items that often served, through clever tricks put in place by cunning tax evaders, to conceal income earned, by failing to write off the values corresponding to capital assets, already fully depreciated, and continuing to operate a deduction, by way of depreciation, considerably higher than the true amount of the actual loss suffered by fixed capital items.

From this observation, it can be understood that depreciation was used as a negative income element to reduce the taxable value, even depreciating assets that had already been fully depreciated. If this is true, it also seems logical to assume the application of depreciation rates that, although fiscally permissible, did not represent the actual use of the asset. It seems unlikely that a company would have preferred to pay a higher amount of tax to include in its financial reporting an economic depreciation in line with the wear and tear/consumption of the asset that was lower than the value that the tax authorities would have accepted as deductible as reflecting the rate set by the table attached to the circulars issued in '57 and '63. Logic would lead one to affirm that companies would certainly be inclined to recognise in financial reporting the fiscally accepted depreciation even when the latter did not represent, from a business point of view, a true and proper operating cost connected to the wear and tear/consumption of the long-term asset.

However, this last assertion must be "validated" by two different elements:

1. firstly, it is necessary to understand whether the Tax Office had the technical and operational possibility of modifying the rates applied by the companies (e.g. if it considered that the "ordinary tax" rate applied was not adherent to the actual use of the multi-year asset);
2. Secondly, verifying such a statement in the field using research into the balance sheets of the time is advisable to avoid the possibility that the reality might, for some unimaginable reason at a theoretical level, be different from how we have described it.

As far as the first point is concerned, Berliri's statements on the possibility for financial offices to modify the valuations made by companies are clarifying:

> since […] it cannot think that the financial administration will supinely accept the results of financial reporting and the profit and loss account, (the legislator, with art. One hundred nineteen of the T.U. enacted in 1958 expressly admitted […] that the Finance (could) […] check, based on concrete elements and data collected ex officio, the entries contained in the accounting records […]. Given the breadth of the formula used by the legislature and given the *ratio legis*, it is (instead) absolutely out of the question that the Finance (could) not only ascertain whether all administrative facts have been faithfully recorded, i.e. whether all receipts and outgoings of money, goods and other assets have been accounted for in a manner consistent with the truth, but (could) also check the regularity of the criteria followed in the valuations – and, in particular, compliance with Articles 102 and 103 […]. It seems [therefore…] to exclude the possibility for the tax authorities to check whether depreciation has not been excessively calculated, whether the valuation of the various assets is correct or erroneous, whether the write-downs of receivables and securities are justified or not, etc. To use an expression borrowed from administrative law, while the right of the Finance Ministry to proceed to a control of legitimacy is unquestionable, a control of merit does not seem permissible. The difference between the control of evaluations and the control of the accounting of management facts is evident: whereas the latter is based on an objectively controllable factual ascertainment, the former takes the form of a review of a necessarily subjective judgement and therefore always debatable and easily susceptible to error. Hence the need to circumscribe the Finance Authorities' arbitrariness in correcting, or rather replacing, the assessments made by the taxpayer […]. The second paragraph of Article 121 goes on to state that «in the event of disputes, provided that the reasons indicated in the notice under the preceding paragraph are proven, the income assessed by the office cannot be declared non-existent or reduced if the taxpayer has not provided proof of the inaccuracy of the additions or corrections made». This provision offers [a further, *ed.*] appreciable argument in favour of the thesis according to which the office could not rectify the entrepreneur's discretionary evaluations, provided, of course, that they are not illegitimate because they were made in violation of the law.

The above eliminates any doctrinal doubts as to whether the Finance Department could modify the valuations made by the enterprise. This implied the substantial acceptance of the ordinary depreciation rates identified by the ministerial tables of coefficients. From this point of view, therefore, the problem did not arise.

To be able to state that what has been hypothesised above did indeed represent reality, it is now necessary to report the results of field research carried out by considering some 50 balance sheets drawn up after 1958 and before the Visentini reform came into force. As we have already had to point out, it is evident that the limited size of the sample and its random composition, not governed by sound statistical principles, make the results of such a survey merely cognitive and not statistically relevant.

Despite these limitations, the analysis of the aforementioned financial statements proved helpful in that it made clear and specific what, following logic, we had already assumed to be the company's reality. In some financial statements, this sentence is re-written: «Depreciation has been charged to the financial year within the fiscally permissible coefficients». In many other documents, the sentence appears in this variant: «Depreciation has been determined following civil and fiscal regulations». To be sure of our assertion, the investigation of the above-mentioned financial statements was supplemented by a series of interviews with chartered accountants who, directly or indirectly, followed the preparation of financial statements before 1973. All interviewees confirmed that tax valuations represented, in practically all companies, the valuations included in the financial statements. This behaviour, according to the accountants interviewed, was derived both from the desire to avoid tax recoveries or limitations on the deductibility of costs and from the awareness that the double determination of values (statutory and fiscal) entailed what was perceived by the companies as a «waste of time and work».

What has been outlined in the preceding pages proves, in our opinion unequivocally, that in the 1950s and 1960s, even though there was no debate on the tax interferences and the tax interference of financial reporting, osmosis between tax rules and civil law provisions was systematically implemented, to the extent that many financial reporting valuations were nothing more than the values fiscally permissible for the deduction. Therefore, in the twenty years under review, tax interferences 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. To give a further example, it can be said that what was established by the Consolidation Act was, in reality, the value recorded in financial reporting, even, for instance, for inventories. The LIFO valuation was by far the most common accounting method, and what was established by the tax provision identified the value of the stock recorded in the balance sheet and the profit and loss. As proof of this, we can quote the sentence in almost all of the financial statements analysed, which we have already mentioned in the preceding: «It carried out the valuation of inventory with the criteria of prudence and in compliance with civil and fiscal regulations». The continuous reference to the coupling of «civil and fiscal provisions» makes it evident 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 have mentioned before.

It, therefore, seems plausible to state that Pellingra's consideration that «for the application of the securities tax, financial reporting valuations, in correlation with the rules dictated by civil law, must obey the principles laid down by the tax law», represented, in essence, the "financial reporting" of the tax law. It meant not only the thought of an authoritative author but also the general behaviour of companies at the time.

Dosi masterfully describes this situation, a scholar who, in the 1960s, published a text to illustrate, from a technical-accounting point of view, the procedure of transition from "truthful internal" to "public" financial reporting, which, according to the author as mentioned above, not only had to declare a "stabilised" income but also had to be drawn up by direct application of the tax law:

> The stabilisation of income is [in fact] a fundamental requirement of the enterprise, which is satisfied by the constitution of reserves, from which a part of the income is withdrawn for distribution in the years in which income is low and to which vice versa, the surplus of the same income is transferred in the other years […]. As a consequence of these considerations […] it is considered more and more necessary that the public financial reporting of companies must declare and show a certain "stabilised" income[100].

According to Dosi, therefore, the "economically truthful" general accounting, the output of which was internal financial reporting (i.e. «financial reporting composed confidentially for the economic entity and possibly for all those who contribute to the»), in the first place, it had to be the subject of a series of technical operations aimed at identifying not the income "really" produced by the company, but rather a stabilised profit, that is to say, one not marked by significant temporal variations. There is no need to dwell on the fact that the implementation of such operations already resulted in the re-drawing of a financial reporting that was certainly not accurate and truthful, as it was the result of a series of technical operations explicitly aimed at "limiting" income when it was high and "artificially inflating" profits in the event of low values that shareholders and the market did not appreciate. In such a situation, any reference to financial reporting as an accurate and truthful information tool was an exercise in pure demagogy[101].

100. Dosi, *Bilanci interni e pubblici e doppia contabilità*, p. 35.

101. On the unacceptability of such a financial reporting policy, read, for all, what Santesso and Sostero affirms: «It is not acceptable to draw up financial statements that include

After analysing this issue, Dosi dwells on the problem of the coexistence of civil law, business principles and tax provisions, stating:

> The economic incongruence of the notion of tax income should lead to the conclusion that companies should compile, adopting appropriate valuation criteria about the particular purpose, a special financial reporting for use by tax offices. On the contrary, it is a widespread prejudice, also shared by the legislator, […] that the enterprise can only have one financial reporting […]. It follows that the values of so-called official or public financial reporting are not pure because they do not derive from evaluation criteria that are solely and logically intended for a particular configuration of income. Sometimes the ends are reconcilable with each other […], sometimes they are entirely contradictory and then the financial statements, of which practice provides examples, are a hybrid product. This compromise carries within itself the action of different ends […]. This is the case with official balance sheets that show distributable stabilised income […] and, at the same time, taxable income […]. The situation is, therefore, this: in social companies, the directors compile public financial reporting […] by appropriately altering the values contained in the internal financial reporting they have previously collected […]. That is, the general financial reporting demonstrates stabilised, distributable or consumable income, which is at the same time […] also in conformity with the principles […] applicable to the formation of tax financial reporting […]. The internal financial reporting is compiled, as we have said, without considering the need to stabilise income: the operations of transition from interior to public financial reporting aim both to stabilise income and to adapt the financial reporting values to the fiscal criteria[102].

According to the above, the accuracy of the public financial reporting was therefore "distorted" by as many as two operations to modify the truthful internal data: firstly, it assumed that it determined it stabilised utility over time, and subsequently, reference was made to the adjustment of the values shown in financial reporting (and in accounting) to the criteria prescribed by the tax legislator. These interventions undermined the very postulate of precision imposed by the civil legislator in Article 2423 of the Civil Code.

Beyond any consideration of the methods of drafting public financial reporting illustrated above, it is evident, however, how the so-called tax

evaluations or classifications inspired by designs aimed at suggesting partial judgements or preordained constructed towards an end – usually favourable to the decisions that management tends to pursue, […] or to reassure current and potential financiers on the company's state of health, […]. A representation bent to financial reporting policies would be of grave pre-judgement to the economic relations established between the company and all external parties». Santesso, Sostero, *I principi contabili per il bilancio d'esercizio*, p. 4.

102. Dosi, *Bilanci interni e pubblici e doppia contabilità*, p. 48.

interferences were considered, in essence, an obvious and necessary result of civil financial reporting. Also, in light of Dosi's observations, in addition to all those of other prestigious economists and jurists cited in the preceding pages, it is possible to affirm, without any fear of being contradicted, that in the 1950s and 1960s, financial statements were characterised by considerable tax interferences to such an extent as to make the so-called tax interferences a substantially normal or, even, almost obligatory element of public financial reporting.

At the end of this work, we would like to recall a reflection by Boidi, who, at the end of an examination of the problems connected to the relationship between tax regulations and financial reporting, states:

> As long as a huge disparity exists between "official financial reporting" and "tax financial reporting" […], the sincerity of financial statements appears to be an unattainable myth and an aspiration that is difficult to achieve[103].

From an examination of the financial statements drawn up in the 1950s and 1960s, this, rather than being an aspiration challenging to achieve, seems to be a veritable illusion, at least in the historical period analysed here. It is, therefore, possible to state that at the end of the 1960s, many steps still had to be taken to achieve complete transparency of information, understood as

> an expression dense with meaning and endowed with considerable expressive effectiveness (insofar as it is connected to) […] the purposes and postulates of financial reporting conceived exclusively as an information tool for anyone interested in knowing the economic, financial and asset structure of a company in operation and its development[104].

103. Boidi, *L'imposta sulle società e sulle obbligazioni*, p. 89.

104. Coda, Trasparenza dei bilanci di esercizio e principi contabili, *Rivista dei Dottori Commercialisti*, 1983, p. 197.

# References


Addis M., *150 anni di unità di Italia. Breve viaggio fra storia e fisco*, relazione presentata dall'Agenzia delle Entrate in occasione dei festeggiamenti del 150° Anniversario dell'Unità d'Italia, Cagliari, 2012.

Airoldi G., *Le comunicazioni aziendali per il cambiamento strategico e organizzativo nelle banche*, in Aa.Vv., *La comunicazione nelle banche*, Il Sole 24 Ore, 1987.

Allegrini M., *L'informativa di periodo nella comunicazione economico-finanziaria*, Giuffrè, Milano, 2003.

Amodeo D., Il bilancio di esercizio della S.p.A. come strumento di informazione, *Rivista dei Dottori Commercialisti*, n. 5, 1973.

Andreaus M., Costa E. *Appunti di contabilità aziendale e bilancio di esercizio*, UNI service, 2004.

Ambrosetti C., *E. Vanoni e la riforma tributaria in Italia*, working paper n. 325, Dipartimento di economia pubblica e territoriale, Università di Pavia, settembre 2004.

Amigoni F., *La comunicazione interna come strumento di management*, in Andrei P., *Valori storici e valori correnti nel bilancio di esercizio di esercizio*, Giuffrè, Milano, 2004.

Ascarelli T., L'art. 163 cod. comm. e la pratica statutaria, *Rivista del Diritto Commerciale*, I, n. 2, 1932.

Aa.Vv., *Bilancio di esercizio e reddito d'impresa: aggiornato al correttivo IRES: disciplina civilistica e fiscale, analisi di bilancio di esercizio*, Egea, 2005.

Aa.Vv., *Basic financial accounting: rilevazioni per il bilancio di esercizio e il bilancio di esercizio consolidato*, McGraw-Hill, New York, 2008.

Aa.Vv., *Bilancio di esercizio secondo i principi contabili internazionali IAS/IFRS: regole e applicazioni*, Giappichelli, Torino, 2010.

Aa.Vv. *La comunicazione: strumento di management per le imprese complesse*, Egea, Roma, 1991.

Bafile C., Reddito di imposta e bilancio di esercizio nel nuovo TU. delle imposte sui redditi, *Rassegna tributaria*, n. 9, I, 1987.

Balducci D., *Il nuovo bilancio di esercizio*, Fag, Milano, 2003.

Balducci D., *Bilancio di esercizio: Principi contabili nazionali e internazionali IAS/IFRS*, Fag, Milano, 2007.

Balletta F., La finanza pubblica e il Mezzogiorno d'Italia al momento dell'Unità, *Rivista di storia finanziaria*, n. 1, 2011.

Bandettini L., *Una prima lettura del bilancio di esercizio di esercizio secondo Ias/Ifrs*, Cedam, Padova, 2006.

Bandettini A., Liberatore G., Mulazzani M. (a cura di), *Verso la riforma delle norme in materia di bilancio di esercizio di esercizio: alcuni contributi a partire dalle guide operative OIC*, FrancoAngeli, Milano, 2009.

Batistoni Ferrara F., *La determinazione della base imponibile delle imposte indirette*, Jovene, Napoli, 1964.

Berliri A., *Il testo unico delle imposte dirette*, Giuffrè, Milano, 1960.

Bertinetti G., *La comunicazione finanziaria e la teoria della finanza*, Egea, Milano, 1996.

Bettetini G., *Semiotica della comunicazione d'impresa*, Bompiani, Milano, 1993.

Bassi V., La comunicazione verso la pubblica amministrazione, *L'impresa*, n. 5, 1980.

Belcredi M., *Economia dell'informazione societaria*, Utet, Torino, 1993.

Bernardi L., Note sull'evoluzione recente e sulle prospettive future dei sistemi tributari, *Studi e note di economia*, n.1/2000.

Bertelli C., Clementini P., *Commento sull'imposta di ricchezza mobile*, Utet, Torino, 1934.

Bertelli C., Clementini P., Scandale E., *Imposta di ricchezza mobile*, vol. I, Utet, Torino, 1934.

Bertinetti G., *Comunicazione finanziaria aziendale e teoria della finanza*, Egea, Milano, 1997.

Bianchi L.A., *La disciplina giuridica del bilancio di esercizio*, Il Sole 24 Ore, Milano, 2001.

Bocchini E., La chiarezza e la precisione dei bilanci delle società per azioni nell'evoluzione della dottrina e della giurisprudenza, *Rivista delle società*, marzo-aprile, 1972.

Bocchini E., *Il bilancio di esercizio delle imprese*, Liguori, Napoli, 1979.

Bocchini E., *Bilancio di esercizio*, Utet, Torino, 2010.

Boidi A., *Commento alla legge sulla imposta complementare progressiva sul reddito*, Utet, Torino, 1937.

Boidi A., *L'imposta sulle società e sulle obbligazioni. Commento teorico-pratico*, Utet, Torino, 1959.

Bompiani V., *L'imposta complementare progressiva sul reddito*, Cedam, Padova, 1939.

Boria P., *Il sistema tributario*, Utet, Torino, 2008.

Bottarelli S., Fra riforme mancate e riforme attuale. Da Vanoni alla riforma degli anni '70, *Quaderni del dipartimento di economia politica*, Università di Siena, quaderno n. 434, settembre 2004.

Branciari S., *La comunicazione economico-finanziaria degli intermediari finanziari*, FrancoAngeli, Milano, 2003.

Brusa L., *Veridicità, attendibilità e chiarezza del bilancio di esercizio*, Giuffrè, Milano, 1974.

Buscema S., D'amato N. (a cura di), *Documenti e discussioni sulla formazione del sistema tributario italiano*, Cedam, Padova, 1961.

Buzzetti G., *L'imposta sui redditi di ricchezza mobile*, Hoepli, Milano, 1937.

Campedelli B., *L'internazionalizzazione della comunicazione economico-finanziaria d'impresa*, FrancoAngeli, Milano, 2003.

Caratozzolo M., La relazione degli amministratori nel bilancio di esercizio, *Consulenza*, n. 10, 1980.

Castaldo A.S., *La verifica contabile fiscale*, Leonardo da Vinci Editore, Bari, 1965.

Castellano G., La relazione degli amministratori, *Giurisprudenza Commerciale*, 1983, II, n. 2.

Castelli E., Napolitano L., *L'imposta sulle società*, Giuffrè, Milano. 1955.

Catturi G., *I contenuti culturali e etici del bilancio di esercizio di esercizio*, in Aa.Vv. *Scritti di economia aziendale in memoria di R. D'Oriano*, Cedam, Padova, 1997.

Catturi G., *La redazione del bilancio di esercizio di esercizio secondo la dottrina, la normativa comunitaria, civilistica e fiscale*, Cedam, Padova, 2003.

Chiaraviglio L., *bilancio secondo la normativa giuridica*, in Aa.Vv., *L'impresa. Economia, controllo, bilancio di esercizio*, vol. III, Giuffrè, Milano, 1984.

Ceccherelli A., *Il linguaggio dei bilanci*, Le Monnier, Firenze, 1941.

Cerbioni F., Cinquini L., Sòstero U., *Contabilità e bilancio di esercizio*, McGraw-Hill, Milano, 2006.

Clementini P., Bertelli C., *Commento sull'imposta di ricchezza mobile*, Utet, Torino, 1934.

Clementini P., Bertelli C., Scandale E., *Imposta di ricchezza mobile*, vol. I, Utet, Torino, 1934.

Coda V., Trasparenza dei bilanci di esercizio e principi contabili, *Rivista dei Dottori Commercialisti*, n. 1, 1983.

Coda V., *Comunicazione e immagine nella strategia dell'impresa*, Giappichelli, Torino, 1991.

Colombo G.E., *I bilanci delle spa*, Cedam, Padova, 1965.

Colombo G.E., Bilancio di esercizio e conto profitti e perdite, *Rivista delle Società*, n. 2, 1966.

Colombo G.E., Dondena A., Il bilancio di esercizio delle S.p.A. nella riforma, *Giurisprudenza Commerciale, società e fallimento*, n. 1, I, 1975.

Colombo G.E., Disciplina del bilancio di esercizio e norme tributarie: integrazione, autonomia o inquinamento, *Rivista delle società*, n. 6, 1980.

Colombo G.E., *Il bilancio di esercizio: strutture e valutazioni*, Utet, Torino, 1992.

Colombo G.E., Relazione di sintesi, in Jorio A., *Il progetto italiano di attuazione della IV Direttiva CEE*, Giuffrè, Milano, 1988.

Colombo G.E., Portale G.B., *Trattato delle società per azioni*, vol. VII, Utet, Torino, 1995.

Corbella S., *L'attendibilità del bilancio di esercizio: posizioni consolidate e nuove prospettive interpretative*, FrancoAngeli, Milano, 2008.

Corvi E., *Comunicazione d'impresa e investor relation. La gestione della comunicazione economico finanziaria*, Egea, Milano, 2000.

Cosciani C., *La riforma tributaria*, La nuova Italia, Firenze, 1950.

Damascelli N., *La comunicazione nelle imprese*, FrancoAngeli, Milano, 1985.

Dameri R.P., *I siti web e la comunicazione ai mercati finanziari: Gli strumenti e gli intermediari*, a cura di Quagli A. e Teodori C., FrancoAngeli, Milano, 2005.

D'Angelillo F., *Accertamento induttivo e in base al bilancio di esercizio*, in *Trattato della imposta di ricchezza mobile*, vol. III, Zanichelli, Bologna,1936.

D'angelillo F., *Le frodi fiscali*, vol. I: *Le alterazioni dei bilanci e l'imposta di ricchezza mobile*, Giuffré, Milano, 1950.

De Angelis F., Potenza G., Testa A., *Testo unico delle leggi sulle imposte dirette*, Giuffrè, Milano, 1964.

De Dominicis U., La struttura del conto economico nell'impresa e il progetto di riforma nelle S.p.A., *Rivista dei Dottori Commercialisti*, n. 6, 1972.

De Gregorio A., Commento alla sentenza della Corte di Appello di Milano 2 giugno 1910, *Giurisprudenza Civile e Commerciale*, 1910, I, p. 376.

De Martini P. (a cura di), *Informazione, imprese e mercati finanziari efficienti: spunti di riflessione in una prospettiva multidisciplinare*, FrancoAngeli, Milano, 2004.

Dezzani F., Ferrero G., *Contabilità e Bilancio di esercizio*, Giuffrè, Milano, 1970.

Di Paolo G., *Imposta di ricchezza mobile. La rotazione dei bilanci nella tassazione delle società azionarie*, Edizione de La biblioteca del contribuente, Roma, 1933.

Dondena A., Colombo G.E., Il bilancio di esercizio delle S.p.A. nella riforma, *Giurisprudenza Commerciale, società e fallimento*, n. 1, I, 1975.

Dosi F., *Bilanci interni e doppia contabilità: reddito economico e reddito fiscale*, Giuffrè, Milano, 1967.

Falsitta G., Il problema delle interrelazioni fra normativa di diritto commerciale e di diritto tributario, *Impresa, ambiente e P.A.*, marzo, I, 1977.

Falsitta G., Convergenze e divergenze tra diritto commerciale e diritto tributario, *Giurisprudenza commerciale, società e fallimento*, marzo-aprile, I, 1980.

Falsitta G., *Il bilancio di esercizio di esercizio delle imprese. Interrelazioni fra diritto civile e tributario*, Giuffrè, Milano, 1985.

Falsitta G., Vicende, problemi e prospettive delle codificazioni tributarie in Italia, *Rivista Diritto tributario*, n. 3, 2002.

Ferrara F., *Gli imprenditori e le società*, Giuffrè, Milano, 1980.

Ferrari P. Il concetto di tributo nella legislazione e nella legislazione italiana dall'Unità d'Italia al secondo dopoguerra, *Rivista della scuola superiore dell'economia e delle finanze*.

Ferrero G., *Il calcolo economico del reddito di esercizio e del capitale di bilancio di esercizio*, Giuffrè, Milano, 1968.

Ferrero G., Dezzani F., *Contabilità e Bilancio di esercizio*, Giuffrè, Milano, 1970.

Ferrero G., *Analisi di bilancio di esercizio*, Giuffrè, Milano, 1972.

Ferrero G., *La valutazione del capitale di bilancio di esercizio*, Giuffrè Milano, 1995.

Frattini G., *Contabilità e bilancio di esercizio*, Giuffrè, Milano, 2011.

Giacosa E., *La comunicazione economico-finanziaria d'impresa. Finalità, strumenti e comportamenti attuali e teorici in un modello "ideale" di comunicazione*, Giappichelli, Torino, 2012.

Giannetta E., Scandale G., Sessa M., *Teoria e tecnica dell'accertamento del reddito mobiliare*, Raccolta delle lezioni svolte negli anni 1953 e 1954 al corso teorico pratico per funzionari delle imposte dirette del compartimento di Roma, Giacomaniello Editore, Roma, 1955.

Giannetta E., Scandale G., Sessa M., *Teoria e tecnica dell'accertamento del reddito mobiliare*, Abete Editore, Roma, 1958.

Giorgetti A., *La tassazione del reddito di impresa*, Utet, Torino, 1963.

Giunta F., Pisani M., *Il bilancio di esercizio*, Apogeo, 2008.

Greco G., *Testo unico leggi sulle imposte dirette*, La tribuna, Piacenza, 1968.

Grillo R., *Il bilancio di esercizio delle società anonime*, Giuffrè, Milano, 1940.

Grillo R., *Il bilancio di esercizio delle società per azioni nella determinazione del reddito economico e del reddito fiscale*, Giuffrè, Milano, 1955.

Grillo R., *Il bilancio di esercizio delle società per azioni nella determinazione del reddito economico e del reddito fiscale*, Giuffrè, Milano, 1969.

Guatri L., Illeceità e inopportunità del conto profitti e perdite sintetico, *Rivista dei Dottori Commercialisti*, n. 5, 1972.

Gustarelli E., Le imposte dirette e il testo unico, *Rivista Studi e statistiche della Camera di commercio, industria e agricoltura di Milano*, n. 11, 1960.

Izzo L., *La finanza pubblica del primo decennio dell'Unità di Italia*, Giuffrè, Milano, 1962.

Jaeger P.G., *L'interesse sociale*, Giuffrè, Milano, 1964.

Jakobson R., *Typological studies and their contributions to historical comparative linguistic*, vol. I: *Phonological studies*, De Gruyer Moutn, 2010.

Lai C., *Guida alla contabilità e al bilancio di esercizio: impatto delle riforme fiscale e societaria, rilevazioni per il bilancio di esercizio*, IPSOA, Milano, 2004.

La Mattina A., *Trattato dell'imposta sui redditi di ricchezza mobile*, Arti Grafiche S. Pezzino e figlio, Palermo, 1933.

Liberatore G., Mulazzani M., Bandettini A. (a cura di), *Verso la riforma delle norme in materia di bilancio di esercizio: alcuni contributi a partire dalle guide operative OIC*, FrancoAngeli, Milano, 2009.

Libonati B., *I bilanci delle società*, Utet, Torino, 1979.

Locatelli P., Problemi di strutture funzionali di bilancio di esercizio, *Rivista delle Società*, 1967, n. 3.

Locatelli P., Bilancio di esercizio conto profitti e perdite, *Rivista delle Società*, n. 3, 1966.

Malizia P., *Comunicazioni: strutture e contesti sociali dell'agire comunicativo*, FrancoAngeli, Milano, 2006.

Matacena A., *Introduzione allo studio del bilancio di esercizio*, Clueb, Bologna, 1979.

Masini C., *I bilanci d'impresa. Principi e concetti*, Giuffrè, Milano, 1957.

Mazza G., Interrelazioni e interferenze fiscali fra bilancio di esercizio d'esercizio e dichiarazione fiscale, *Rivista Dottori Commercialisti*, n. 6, 1974.

MAZZA G., *Il bilancio di esercizio e la dichiarazione dei redditi*, in AA.VV., *Il bilancio di esercizio. Problemi attuali*, Giuffré, Milano, 1978.

MAZZA G., *Problemi di valutazione per il bilancio di esercizio di esercizio*, Giuffrè, Milano, 1980.

MELIS F., *Storia della ragioneria. Contributo alla conoscenza e interpretazione delle fonti più significative della storia economica*, Zuffi, Bologna, 1950.

MIGLIACCIO G., *Verso nuovi schemi di bilancio di esercizio, Evoluzione e prospettive di forme e strutture del bilancio di esercizio di esercizio*, FrancoAngeli, Milano, 2007.

MILONE M., *Bilancio di esercizio di esercizio: normativa civilistica, principi contabili nazionali e internazionali*, FrancoAngeli, Milano, 2006.

MOLTENI M., *Bilancio di esercizio e strategia*, Egea, Milano, 2000.

MONTUORI L., *Note sulle tassazioni in base la bilancio di esercizio*, Giappichelli, Torino, 1960.

MOSCHETTI F., *Il principio di capacità contributiva*, Cedam, Padova, 1973.

MULAZZANI M., BANDETTINI A., LIBERATORE G. (a cura di), *Verso la riforma delle norme in materia di bilancio di esercizio: alcuni contributi a partire dalle guide operative OIC*, FrancoAngeli, Milano, 2009.

MUSUMECI M., La mancanza di understandability e precisione dei dati contabili. Il commento, *Le società*, n. 9, 2002.

NANULA G., L'equivoco c.d. bilancio di esercizio fiscale, *Bollettino tributario*, n. 16, 1979.

NANULA G., Effetti inquinanti dell'ammortamento anticipato, *Il fisco*, n. 16, 1985.

NANULA G., I problemi irrisolti del bilancio di esercizio, *Il fisco*, n. 15, 1985.

NAPOLITANO L., CASTELLI E., *L'imposta sulle società*, Giuffrè, Milano, 1955.

NAVA G., Avremo un nuovo tipo di politica fiscale nella formazione dei bilanci delle società di capitale?, *Rivista Dottori Commercialisti*, n. 6, 1974.

NUZZO E., Ricostruzione del contenuto del rapporto fra bilancio di esercizio e dichiarazione del reddito, *Giurisprudenza commerciale*, n. 5, I, 1985.

OSIMO B., *Manuale del traduttore*, Hoepli, Milano, 2004.

OSIMO B., *La traduzione totale, spunti per lo sviluppo della scienza della traduzione*, *www.scribd.com*.

PAOLONE G., *Il bilancio di esercizio. Funzione informativa, principi, criteri di valutazione*, Giappichelli, Torino, 2004.

PALMA A., *Il bilancio di esercizio. Aspetti istituzionali e profili evolutivi nell'attuale assetto normativo italiano*, Giuffrè, Milano 2008.

PAOLONI P., *Bilancio di esercizio delle piccole imprese nella prospettiva internazionale: il progetto IASB, International Accounting Standards for SMEs*, Giappichelli, Torino, 2006.

PATRONI GRIFFI A., *Il controllo giudiziario sulle società per azioni*, Jovene, Napoli, 1971.

PEDONE A., *Alle origini del persistente alto livello del debito pubblico italiano*, Intervento alla Riunione Intermedia SIEP 2012 "La gestione di elevati debiti sovrani in contesti di crisi finanziaria: quali insegnamenti dalla storia", Banca d'Italia, Roma, 2 marzo 2012.

Pellingra G., *La determinazione analitica e induttiva del reddito fiscale nella imposizione tributaria*, Giuffrè, Milano, 1969.

Petrioli A., Mercatelli F., *La banca e la comunicazione produttiva: il caos apparente della comunicazione*, FrancoAngeli, Milano, 2010.

Pisani M., Giunta F., *Il bilancio di esercizio*, Apogeo, Roma, 2008.

Pontani F., Sesana T., *Le determinazioni quantitative e le rilevazioni contabili: per la redazione del bilancio di esercizio di esercizio*, Università Cattolica del Sacro Cuore, Milano, 2008.

Pontani F., *Bilancio di esercizio di esercizio delle società di capitali. Accounting Philosophy e Conceptual Framework: la clausola generale (art. 2423 c.c.) ed i principi di redazione (art. 2423-bis c.c.)*, Cedam, Padova, 2011.

Potenza G., Testa A., De Angelis F., *Testo unico delle leggi sulle imposte dirette*, Giuffrè, Milano, 1964.

Quagli A. (a cura di), *Internet e comunicazione finanziaria*, FrancoAngeli, Milano, 2001.

Quagli A., *Comunicare il futuro. L'informativa economico-finanziaria di tipo previsionale delle società quotate italiane*, FrancoAngeli, Milano, 2004.

Quagli A. (a cura di), *I sistemi informativi gestionali*, FrancoAngeli, Milano, 2005.

Quagli A., *Bilancio di esercizio di esercizio e principi contabili*, Giappichelli, Torino, 2010.

Salvioni D., *Il bilancio di esercizio di esercizio nella comunicazione integrata d'impresa*, Giappichelli, Torino, 1992.

Salvioni D., *Comunicazione economico finanziaria e analisi della concorrenza*, in Aa.Vv., *L'efficacia della comunicazione economico finanziaria e l'analisi della concorrenza*, Giappichelli, Torino, 2002.

Salvioni D. (a cura di), *Trasparenza ed efficacia della comunicazione economico-finanziaria*, Giappichelli, Torino, 2003.

Sampieri Mangano V., *L'imposta di ricchezza mobile e le società commerciali per azioni*, Giuffrè, Milano, 1934.

Sander Peirce C., *Collected papers, Volume I, II, III, Charles Hartshorne and Paul Weiss*, The Belknap Press of Harvard University Press, Cambridge, 1978.

Santesso E., Sostero U., *Principi contabili per il bilancio di esercizio*, Il Sole 24 Ore, 2011.

Sassi S., *Tecnica, politica e interpretazione dei bilanci di esercizio*, Jovine, Napoli, 1968.

Sostero U., Cinquini L., Cerbioni F., *Contabilità e bilancio di esercizio*, McGraw-Hill, Milano, 2006.

Sostero U., Santesso E., *Principi contabili per il bilancio di esercizio*, Il Sole 24 Ore, 2011.

Santoro F. (a cura di)., *La determinazione del reddito di ricchezza mobile, Documentazione in materia di imposte dirette, Studi di settore economici – Tabelle di classificazione delle attività – Coefficienti di ammortamento*, Edizioni Scientifiche Italiane, Napoli, 1966.

Savioli G., *Verità e falsità nel bilancio di esercizio*, Giappichelli, Torino, 1998.

Savioli G., *Il bilancio di esercizio, strumento di informazione esterna dell'impresa in funzionamento*, Giappichelli, Torino, 1998.

Savioli G., *Il bilancio di esercizio secondo i principi contabili nazionali e internazionali*, Giuffrè, Milano, 2004.

Savioli G., *Verità e falsità nel bilancio di esercizio*, Giappichelli, Torino, 1998.

Scandale E., Clementini P., Bertelli C., *Imposta di ricchezza mobile*, vol. I, Utet, Torino, 1934.

Scandale G., Sessa M., Giannetta E., *Teoria e tecnica dell'accertamento del reddito mobiliare*, Abete Editore, Roma, 1958.

Sessa M., Giannetta E., Scandale G., *Teoria e tecnica dell'accertamento del reddito mobiliare*, Raccolta delle lezioni svolte negli anni 1953 e 1954 al corso teorico pratico per funzionari delle imposte dirette del compartimento di Roma, Giacomaniello Editore, Roma, 1955.

Scorza B., L'art. 163 cod. comm. ed il diritto degli azionisti di impugnare il bilancio di esercizio approvato dall'assemblea, *Foro Italiano*, 1932, I, c. 1802.

Sessa M., Giannetta E., Scandale G., *Teoria e tecnica dell'accertamento del reddito mobiliare*, Abete Editore, Roma, 1958.

Shannon C.E., Weaver W., *La teoria matematica delle comunicazioni*, Etas Kompass, Milano, 1971.

Scialoja A., Commento alla sentenza del Tribunale di Genova 9 maggio 1905, *Rivista Diritto Commerciale*, 1905, II, p. 503.

Superti Furga F., *Il bilancio di esercizio italiano secondo la normativa europea*, IV ed., Giuffrè, Milano, 2004.

Superti Furga F., *Reddito e capitale nel bilancio di esercizio di esercizio*, Giuffrè, Milano, 1987.

Sostero U., Santesso E., *Principi contabili per il bilancio di esercizio*, Il Sole 24 Ore, Milano, 2011.

Tafuro A., *Bilancio di esercizio IAS/IFRS fra inglesismi e nuovi approcci valutativi e contabili*, Cacucci, Bari, 2009.

Terranova P., *Il concetto di reddito fiscale e alcune sue applicazioni*, La stampa commerciale editore, Milano, 1931.

Terzani S., *Introduzione al bilancio di esercizio*, Cedam, Padova, 1982.

Testa A., De Angelis F., Potenza G., *Testo unico delle leggi sulle imposte dirette*, Giuffrè, Milano, 1964.

Tieghi, M., Gigli S., *Introduzione alla contabilità del bilancio di esercizio di esercizio*, il Mulino, Bologna, 2007.

Viganò E., Reddito economico di impresa e reddito imponibile, *Rivista Dottori Commercialisti*, n. 5, 1974.

Watzlawick P., Beavin J.H., Jackson D.D., *Pragmatica della comunicazione umana*, Astrolabio, Roma, 1971.

Weaver W., Shannon C.E., *La teoria matematica delle comunicazioni*, Etas Kompass, Milano, 1971.

Zappa G., *Il reddito d'impresa*, Giuffrè, Milano 1950.

Zappa G., *La produzione nell'economia delle imprese*, Giuffrè, Milano 1957.

ZAVANI M., *Il valore della comunicazione aziendale. Rilevanza e caratteri dell'informativa sociale e ambientale*, Giappichelli, Torino, 2000.
ZERBI T., *Le origini della partita doppia: gestioni aziendali e situazioni di marcato nei secoli XIV, XV*, Marzorati, Milano, 1952.

*Ultimi volumi pubblicati:*

Ricerche - Open Access

SILVIA GATTI, *Long Life to the Women*. The Reorganization of Early Detection of Breast Cancer in Bologna (2010 - 2016).

ALESSIA ZOPPELLETTO, *Organizing for Sustainability*. Resilient Organizational Architectures to Co-create Sustainable Transitions.

LUCA ANSELMI, SILVIO BIANCHI MARTINI, CECILIA CHIRIELEISON, GIANCARLO DI STEFANO, MICHELE GALEOTTI, STEFANO GARZELLA, LUCIANO MARCHI, LUCIA TALARICO (a cura di), *Scritti in onore di Umberto Bertini*. Tre volumi.

UFFICIO STUDI E RICERCHE IPE (a cura di), *I Project Work IPE 2023*. Strumenti, ricerche applicative e casi aziendali.

ALBERTO RINALDI, *Interlocking Directorates ed élite imprenditoriale in Italia*. 1913-2017.

PAOLO MAZZOCCHI, GIUSEPPE DELLA PIETRA (a cura di), *La giustizia in Italia*. Efficienza del sistema e prospettive di riforma.

UFFICIO STUDI E RICERCHE IPE (a cura di), *I Project Work Ipe Business School 2022*. Strumenti, ricerche applicative e casi aziendali.

ALICE VALDESALICI (a cura di), *L'ordinamento finanziario del Trentino-Alto Adige/Südtirol*.

CECILIA ROSSIGNOLI (a cura di), *Tracciabilità digitale di filiera*. Creare relazioni aziendali collaborative per lo sviluppo sostenibile del territorio.

UFFICIO STUDI E RICERCHE IPE (a cura di), *Lab fattoria 4.0*. Incubatore di idee e innovazione per il settore agrifood.

MARIASOLE BANNÒ, GIORGIA MARIA D'ALLURA, *Donne e governo d'impresa*. Prospettive teoriche ed evidenze empiriche.

LUCIO IANNOTTA (a cura di), *Le molteplici dimensioni del lavoro: Personale, oggettiva, spirituale, sociale, politica*.

MARIA SILVIA AVI, *Truthfulness or trib-truthfulness of financial reporting?*. A historical analysis.

UFFICIO STUDI E RICERCHE IPE (a cura di), *I project Work IPE Business School 2021*. Strumenti, ricerche applicative e casi aziendali.

ELEONORA DE LUCA, *Le risorse finanziarie assegnate al Servizio Sanitario Nazionale e la loro ripartizione*.

UFFICIO STUDI E RICERCHE IPE (a cura di), *I Project Work Ipe Business School 2020*. Strumenti, ricerche applicative e casi aziendali.

GBS - GRUPPO DI STUDIO PER IL BILANCIO SOCIALE, *Rendicontazione sociale nel non profit e riforma del terzo settore*. Documenti di ricerca n. 17.

ILARIA CURINA, *New media in trade shows*. Support tools or dominant solutions for the future?.

# Vi aspettiamo su:

**www.francoangeli.it**

**per scaricare (gratuitamente) i cataloghi delle nostre pubblicazioni**

DIVISI PER ARGOMENTI E CENTINAIA DI VOCI: PER FACILITARE LE VOSTRE RICERCHE.


---

**Management, finanza, marketing, operations, HR**
**Psicologia e psicoterapia: teorie e tecniche**
**Didattica, scienze della formazione**
**Economia, economia aziendale**
**Sociologia**
**Antropologia**
**Comunicazione e media**
**Medicina, sanità**


---

**Architettura, design, territorio**
**Informatica, ingegneria**
**Scienze**
**Filosofia, letteratura, linguistica, storia**
**Politica, diritto**
**Psicologia, benessere, autoaiuto**
**Efficacia personale**
**Politiche e servizi sociali**


---

FrancoAngeli

*La passione per le conoscenze*

 ISBN 9788835176725

The book aims to analyze the issue of fiscal interference. This first volume examines the Italian situation from the 1860s to the 1960s. The analysis is carried out by comparing the articles of the Commercial Code first, and the Civil Code later with the concept of true income, which would be appropriate to identify taxable income as well. The period from the late 1960s to the present is analyzed in the second volume of the series.

**Maria Silvia Avi** (avi@unive.it) is Full Professor of Business Economics at the Department of Management, Ca' Foscari University of Venice. She is engaged in research in the field of business management, financial reporting, accounting and management control. She is a certified public accountant and auditor. The numerous publications produced in recent years deal, in particular, with management control of small and large enterprises, accounting and legal aspects of financial statements, the invalidity of financial statements and their use as a tool for management and information inside and outside the company.

FrancoAngeli
La passione per le conoscenze