Lettera ai professionisti

Derivazione rafforzata: equità tributaria, e redazione di un bilancio veritiero e non penalmente falso

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ABSTRACT: (DOES THE REINFORCED DERIVATION GUARANTEE AN ECONOMICALLY “FAIR” TAX PAYMENT AND THE DRAWING UP OF A CIVIL TRUTHFUL AND PENALTY UNTRUE FINANCIAL REPORTING?). The reinforced derivation brings tax income closer to the income generated economically by enterprises. The approximation of tax income on the income actually generated by businesses has always been advocated by both doctrine and company managers. Often, however, taxable income, especially in the past, was very different from economic income. The possibility of using legally values for tax purposes should ensure that the financial reporting is accurate. The questions that need to be asked are: 1) Does the application of the reinforced derivation guarantee the payment of taxes calculated, in essence, on the income generated by the companies that is, does the taxable income identify the value actually produced by the business or does it represent a sum of economically irrelevant data? 2) Does the reinforced derivation ensure that a true and fair and legally legitimate financial reporting is drawn up, or does the application of the new tax rules at last allow for the dissemination of a budget without problems that could make it null? 3) And finally, does the application of the above-mentioned rules allow to avoid the disclosure of false corporate communications, criminally sanctioned by articles 2621 of the Civil Code and 2622 of the Civil Code that is to say, does the enhanced derivation certainly prevent the drawing up of a criminally false financial reporting?

In this article, we will answer the three questions above.

KEYWORDS: reinforced derivation, false corporate communications, true and fair view in financial reporting.

1. Premessa

Il titolo dell’articolo pone, in realtà, tre domande:

I) Derivazione rafforzata garantisce che le imposte pagate colpiscono il reddito realmente prodotto e, di conseguenza, siano economicamente corrette?

L’introduzione nel nostro ordinamento della derivazione rafforzata garantisce la redazione di un bilancio corretto e veritiero e quindi non inquinato da nomine tributarie?

Il bilancio veritiero e corretto, derivante o meno dall’introduzione della derivazione rafforzata, è garanzia di validità civile e penale del bilancio oppure il bilancio potrebbe essere corretto e veritiero ma civilisticamente invalido e penalmente falso?

2. La derivazione rafforzata garantisce che le imposte pagate colpiscono il reddito realmente prodotto e, di conseguenza, siano economicamente eque?

Per rispondere sinteticamente alle tre domande sopra indicate si deve sottolineare come la derivazione rafforzata sia stata introdotta con il D. Lgs. 28 febbraio 2005, n. 38, art. 4, comma 7 ter, con il quale il legislatore fiscale ha modificato l’art. 83 del TUIR prevedendo

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