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INTER-FIRM NETWORKS: SUBJECTIVITY AND FISCAL DISCIPLINE

"*DOMESTIC PROFILES AND EUROPEAN PERSPECTIVE*"

English abstract

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English Abstract

The work proposed analyzes the regulatory profiles, in general, and the tax considerations, in particular, of the instrument of aggregation represented by the network contract. All this, in the light of the general principles of civil law and tax law.

The effort made has led to an overall assessment of the individual profiles of the cooperation as a network, without neglecting an economic analysis.

The legislative choice is intended to ensure a wide margin of operability to the Italian entrepreneurship and to counter the new international competitors particularly structured and aggressive. These aims can only be answered and support in a dimensional profile, able to contribute to a lower incidence of fixed costs in goods and services production, and to a constant product innovation by facilities for research and development. The network helps small and medium-sized enterprises (SMEs) make the most of business opportunities in the EU and beyond.

In the light of economic premises until now only hinted, it is stated as the investigation moves from the findings of subjectivity and (consequently) taxability of the network, with particular regard to the reward mechanism place in a European perspective.

The phenomenon of networks of firms has been for a long time without a single legal framework: while activating a collaboration plan was entrusted to some models of association (such as "joint ventures" or "Temporary Associations Business"), exchange of goods and/or services reports between companies were regulated by the common framework of contracts. Recently, however, the growing preference of the operators for the network model - due to economic contexts increasingly based on knowledge and innovation, which require individual companies to develop cooperative relationships with other organizations - has prompted our legislature to regulate the network contract.

This instrument has undergone many changes since its introduction (Art. 3, paragraphs 4-*ter*, *quater* and *quinquies*, dl February 10, 2009 n. 5, converted from l. 33/2009). However, Art. 42, paragraphs 2 to 2-*septies*, dl May 31, 2010 n. 78, converted with amendments by l. 122/2010, and Art. 45, dl June 22, 2012 n. 83, converted with amendments by l. 134/2012, have provided a new tool extremely flexible, able to adapt to the needs of companies of all sizes and sectors, integrating two concepts equally important, but among them apparently far: the collaboration of entrepreneurial shared programs and the guarantee of entrepreneurial autonomy. All this, for sure, to the detriment of legal certainty and the principles underlying it.

On this point, indeed, it is observed that, in the face of recognized legal and fiscal subjectivity on "optional way" (but not too) to networks, has been undertaken to provide a detailed discussion of the issue of subjectivity in the light of civil law, in general, and in tax law, in particular.

It is apparent, therefore, the need to assess how in the cooperative phenomenon are distinguished companies agreements involving the rise of tax matters in the head to the members from those who, on the contrary, they create an autonomous entity within the parameters identified by the residual clause of the second paragraph of Art. 73, Income Tax Code (TUIR).

We wondered whether, in the face of strong economic independence and the possibility for the member companies to set up a joint body with independent managers powers on the network, in the absence of registration in the ordinary section of the register of companies in whose district has established his seat (formal requirement to acquire essential subjectivity), should be considered in each case excluding the passive subjectivity in relation to the same network. In other words, it has raised the question for which in the absence of a subjectivity acquired *ex lege* is also to exclude a subjectivity acquired under a contract.

From this, you come to expand the theme verifying the conditions in supranational optical, providing a comprehensive study about the prohibitions to which the facilities provided for the network contract instrument must submit.

The underlying theme of the entire work is the incomplete nature of the institute who, in the face of the numerous advantages granted, reflects a legislative choice which, although full of good intentions, is guilty of systematicity, clarity and above all reliability because charge of interpretation questions not easily overcome.

The legislative choice does not grant the relief that deserves to profile of collaboration in place of the organization. This is clear from further complicated and which seem jagged regulatory choices based on the inadequacy in optical of business needs.

Indeed, only focusing on the narrow collaborative profile, located at the base of the instrument of network contract, it captures the characteristics of the network phenomenon.

Well, despite the requests and legal precepts in order to encourage a legal and fiscal favorable climate to the companies that agree to work together to create a production system efficient, innovative and competitive, the current status of ordinary legislation and (consequently) of tax legislation, which the tool of network is based, can not certainly be defined as satisfactory because, indeed, it will create a real obstacle to the formation of business aggregates.