

Libera Università Internazionale degli Studi Sociali “Guido Carli”

Ph.D. Program in Company Tax Law

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**The entrepreneurship concept:
notion, relevant tax rules
and qualification of entities as entrepreneur**

*(Impresa ed attività commerciale
tra presupposto d'imposta e qualificazione degli enti non societari)*

Abstract

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ABSTRACT

The aim of this Ph.D. thesis is to analyze the concepts of entrepreneurship (entrepreneur, entrepreneurial or business activity, and other related notions) from a tax law perspective.

In particular, this study examines the origin and scope of these concepts, their connections with the corresponding economics and civil law concepts, and their relevance in the process of qualification of entities as business entities or non-business entities.

The first chapter describes the relevance of the entrepreneurship concept in the Italian and EU tax law in the following sectors:

- (i) the income tax law, in which the entrepreneurship concepts are the relevant criteria in order to ascertain the correct source of income (*e.g.*, business profits or income from a profession) and to qualify an entity as a business or a non-business one;
- (ii) the VAT system, where carrying out an entrepreneurial activity is one of the conditions for the application of this tax;
- (iii) the EU State aid rules;
- (iv) the application of incentives and anti avoidance provisions, and other rules that recall concepts similar to entrepreneurship (as, for instance, the rules applicable to “independent organizations” or “permanent establishment”).

Moreover, the first chapter considers the origins of the tax notion of entrepreneur and entrepreneurial activity from the civil law and economics perspective, and explains why these concepts are broader in the tax law than the corresponding civil law and economics notions.

The second chapter analyzes more in detail the above mentioned tax notions, with particular regard to the elements of the tax concept of entrepreneurial activity, and specifying that such activity must:

- (i) qualify as an “activity”, *i.e.* as a number of single acts with one common purpose,
- (ii) be professional, *i.e.* habitual,
- (iii) be economically sustainable, and
- (iv) be “organized as a business” (only for certain types of service activities).

The third chapter considers the impact of the entrepreneurial concepts on the qualification of entities other than companies (because companies are always considered business entities for tax purposes, even if they are used to perform non-business activities) and the main problems and questions that arise from this qualification process, with particular regard for some important cases as foundations that have a shareholding in banks, trust and other recent cases.

In conclusion, some observations are made about the current legislation, the impact of economic concepts in defining the tax notion of entrepreneurship and of business activity, and the possible future evolutions of the role and the importance of these tax notions.

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