

The role of tax legislation in the development of new technologies through innovative start-ups

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(Abstract)

In a current context tested by the effects of a profound global crisis, it has been observed that entrepreneurial initiatives characterized by high rates of innovation can represent a valid recovery strategy for the economy of entire countries. The main actors of innovation in this sense are startup companies, newly established economic initiatives that originate from new business ideas compared to the past, often in the technology sector, and which, if they manage to break into the market, are able to generate wealth and employment. In a globalized "knowledge" economy, now radically different from the traditional one, startups play a fundamental role as generators of significant competitive advantages.

In recent years, specific reforms and legislation have been introduced in the various international legal systems to favor the birth and development of these new companies. The countries that have focused on the development of these realities have achieved important results such as the increase in employment, the attraction of capital and talent from abroad and economic growth.

In Italy in 2012 a Task Force was established by the Ministry of Economic Development with the aim of analyzing the Italian economic landscape, identifying the problems encountered by new companies that want to enter the market and propose measures aimed at encouraging the creation of startups innovative in the Italian economic context. A report (Restart, Italy!) Resulted from the work of the Task Force, which led to the subsequent issue of Law Decree no. 179 of 18 October 2012. The Decree introduces the figure of the "innovative start-up" for the first time in Italy, which is granted a series of concessions and derogations from the common law in order to encourage its creation and development. The Decree was issued with the aim of creating "an ecosystem favorable to innovative start-ups" through the creation of an "economic policy tool aimed at promoting growth, the creation of jobs, especially youth, the attraction of talents and capital from abroad, and to make the productive fabric and the whole of Italian society more dynamic, promoting a culture of merit and risk-taking".

The peculiar character that makes startups particularly interesting in today's context is innovation, it is true that in today's language when we talk about startups we generally refer to companies that invest considerable resources in research and development and that propose themselves on market with newly invented products and services or with innovative production processes and methods. Startups are recognized as having the "ability to convey and disseminate innovation within an economic system, with a transversal impact on other production sectors, encouraged to welcome the technological innovations introduced by them, with a further stimulus to renewal for traditional businesses and consequent income in terms of competitiveness".

The explanatory report to decree 179/2012 (decree establishing the discipline for innovative start-ups) identifies technological innovation as "a multiplying factor for development". From this perspective, the role played by startups is fundamental, which "are characterized by their ability to convey and sprinkle innovation within an economic system. The impact is transversal: all production sectors are encouraged to welcome the technological innovations introduced by start-ups. This direct benefit is accompanied by a conceivable indirect advantage in terms of stimulating renewal for traditional businesses and consequent gain in terms of competitiveness. By becoming a welcoming place for innovative start-ups, a country can aspire to become a destination for foreign capital and talents".

The D.L. n. 179/2012, converted with amendments by Law 221/2012, entitled "Further urgent measures for the growth of the country", had the advantage of favoring highly technological sectors and the development of new technologies, through the introduction of important structural measures and permanent ones also of a fiscal nature, aimed at innovative start-ups and certified incubators.

Investing in research and innovation means creating the conditions to generate technological solutions with which to promote development and the future, and taxation can play a decisive role. When the taxation of innovation becomes structural, even the historical criticalities regarding the compatibility of state aid can be overcome. It is the European Union itself that with the Nexus Approach indicates the conditions for the recognition of tax concessions for research and development in the presence of a direct link between the expenditure incurred and the proceeds deriving from the exploitation of the resulting results.

Nor should it be overlooked that taxation, in addition to having a decisive role in supporting innovation, has, at the same time, a social responsibility that it exercises through the public function that the Financial Administration also implements through income redistribution policies.

However, the problem of financing remains, it is true that the most widespread and felt problem among new entrepreneurial initiatives remains the difficulty in finding financial means to start the business and then to expand and the legislator in this sense through the legislation on equity crowdfunding tried to provide an alternative to traditional bank credit.

Also in this case, the tax law can do its part and the attention of the Legislator to favor the development of innovative start-ups is also demonstrated by the introduction of measures to support the economy introduced in the emergency context determined by COVID 19 (Relaunch Decree), where provisions of a facilitative nature have been introduced, in the form of raising the maximum limit of deductions due to lenders in order to attempt to convey greater third-party financing, and the disbursement of non-repayable contributions.

A sore point remains the "traditional" difficulty of interpreting tax legislation characterized (necessarily) by a high level of technicality and the aforementioned discipline contained in the Relaunch Decree is no exception, in which it is not defined what is meant by high technological value of innovative products and services , whose development, production and marketing must characterize the corporate purpose of the innovative start-up.