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Agricultural Companies Under Italian Law:
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Introduction

Historically, agriculture has served as the foundation of Italy's economy. Significant transformations have occurred, including the shift from large southern landholdings to northern cooperatives, reflecting broader national trends. Crop and livestock production have contributed substantially to the national economy and employment in peri-urban and rural areas. Although the service sector is expanding more rapidly, land-based production remains essential for regional cohesion, landscape preservation, and food security.

Reforms to Italian agricultural law have mirrored broader macroeconomic and societal developments. The introduction of the farm manager in the 1942 Civil Code (Art. 2135) established a basic understanding of this role, initially limited to the direct management of crops, forests, and livestock. This definition remained unchanged for many years, corresponding to a period when farm management focused primarily on raw food production. As agribusinesses became more complex, however, the existing legal framework increasingly failed to align with emerging industry trends, particularly following Italy's accession to the European Community.
A major turning point was, however, represented by the Legislative Decree no. 228 (18 May 2001), which defined the activity of agriculture, as far as this matter is concerned, as the activity related to the cultivation of the soil and to the management and development of the biological cycles. This definition represented a conceptual change of perspective from a perception of land working to a consideration of biological processes, that drew on recognition by legislatures of the expansion of activities that might reasonably be thought to constitute "agriculture."

This more comprehensive conception of the concept was then ultimately confirmed by the Law no. 99 (29 March 2004), that introduced the figure of the Professional Agricultural Entrepreneur and the concept of the agricultural company as an institutional model.

The Italian legal system acknowledges a special status for the agricultural company. The agricultural company is not a separate category of company, such as the società per azioni or società a responsabilità limitata, but a qualification that can be attached

to different legal forms of companies, in compliance with all the formal and material legal requirements. As a consequence, this qualification is granted with many advantages like the agricultural tax regime or the availability of the European Community agricultural subsidies, support necessary for traditional investment in this sector.

Nevertheless, the legal framework under which agricultural companies operate is a source of ongoing problems and conflicts. Capital companies are frequently not entitled to benefits which a family farm could normally claim and the stringent application of operational definitions gives rise to new conflicts. Suspicion about attempted claims for obtaining agricultural use is ever present and having a legal framework does not seem to help. Besides, the fact that numerous existing and outdated legal texts address this issue makes it complex.

This thesis offers a comprehensive analysis of the agricultural company within the Italian legal system. The study is structured into three chapters.

Chapter one examines the legislative framework, tracing the evolution of the agricultural entrepreneur concept from the 1942 Civil Code through the reforms of 2001 and 2004, and analysing the constitutive requirements and eligible corporate forms of the agricultural company.

Chapter two examines the benefits and incentives linked to farms: cadastral income taxation regime, VAT exemptions, exoneration from local property tax, EU financings, young farmers incentives. Chapter three examines unsolved questions and main critical issues: pre-emption rule, single company rule, fictitious qualification risks, forfeiture doctrine, fragmentation.

Initially, this thesis examines the legal framework shaping the structure of Italian agricultural enterprises, aiming to provide an objective analysis by highlighting both strengths and weaknesses. Where deficiencies are identified, recommendations are offered as informed observations regarding the Italian system.

Chapter 1: The Agricultural Entrepreneur and the Legislative Framework.

1.1 The Concept of Agricultural Entrepreneur under Art. 2135 of the Civil Code: From the 1942 Codification to the Reform of Legislative Decree No. 228/2001

This legal definition and category of the agricultural entrepreneur in Italy has its roots in Article 2135 of the Civil Code: in its original 1942 version, the provision provided that the agricultural entrepreneur was one who cultivated the soil, reared animals or managed forests. The three components still carried the past sense of what constituted agriculture-the human figure in direct contact with natural systems, and the ones transforming natural things into another end product. (Germanò, 2016)

In 1942 a clear distinction existed in law between farmers and traders. The Italian Civil Code exempted farmers from the obligation to undertake the duties entailed by trading, such as being registered in the national firms registry and keeping accounts, and subjected those who traded to strict bankruptcy proceedings (Article 2082 identified the trader as a businessman). The case for leaving farmers unregulated was that 'the vagaries of weather, the ups and downs of sales and the different transport and storage requirements made the yields of farming income too uncertain to justify the application of standard bankruptcy provisions' (Lees 1957). This argument however, was finally abandoned. (Buonocore, 2002)

Plant culture encompasses a wide range of operations for the cultivation of soil, such as ploughing, sowing, irrigating, and harvesting, all for the purpose of producing vegetable products. Forestry encompasses the management of wooded areas and other natural resources. Finally, animal husbandry involves the feeding and care of animals in order to produce products such as milk, meat, wool, or eggs.

Of these three main activities, the range of the incidental activities (*attività connesse*) in the original version of Article 2135 in the 1942 draft law was rather limited. The key issue was the degree to which it was necessary to define these activities. Since at that stage the only precondition for any activity to be considered 'connected' was the fact that the final product was mostly derived from agriculture or forestry, the interpretation that prevailed was that the product transferred in exchange, or as processed, should be preponderantly derived from the producer's own output, since acceptance of even the smallest part of the external transformation material could, as previously mentioned, be enough to undermine the agricultural nature.

This narrow conception of connected activities generated considerable interpretive difficulties as the Italian agricultural sector underwent structural transformation in the second half of the twentieth century. The progressive mechanisation of farming, the development of agri-food chains, the growth of agritourism, and the increasing importance of direct marketing and on-farm processing all represented phenomena that sat uneasily within the rigid categories of the 1942 code. A farmer who processed his own olives into oil and sold it directly to consumers, for instance, could find himself reclassified as a commercial entrepreneur if the volume of purchased olives exceeded that of his own production, with all the attendant legal and fiscal consequences.

By the early 1990s, the cracks in the original framework were already well and truly apparent, as EU agricultural policy increasingly extended farmland issues beyond that of food production. Instead of simply focusing on production and output, reforms of the CAP began to link the farmer to the landscape and nature conservation, recognizing the broader ecological significance of farming.

The decisive reform came with Legislative Decree no. 228 of 18 May 2001, which was adopted in implementation of the delegated authority conferred by Law no. 57 of 2001 (the so-called *legge di orientamento* for agriculture). (Bonfante, 2002)

Article 1 of the Decree substituted the entire text of Article 2135 of the Civil Code with a new formulation that profoundly altered the conceptual foundations of the agricultural entrepreneur.

Under the reformed Article 2135, the agricultural entrepreneur is defined as one who exercises one of the following activities: the cultivation of the land, forestry, the raising of livestock, and activities connected thereto. The most significant innovation lies in the new characterisation of the first three activities, which are no longer defined by reference to the direct exploitation of the land as a productive factor but rather by reference to the care and development of a biological cycle or of a necessary phase thereof, whether of a vegetable or animal nature, that makes use of, or may make use of, the land, the forest, or freshwater or saltwater resources. (Germanò, 2001) This reformulation represents a paradigm shift in the legal understanding of agriculture.

The centrality of the biological cycle, rather than the land, as the qualifying element of agricultural activity means that a wide range of operations previously excluded from the scope of Article 2135 now fall within it. Hydroponic cultivation, for instance, which does not involve the direct use of the soil, qualifies as agricultural activity under the new definition because it involves the care and development of a vegetable biological cycle. Similarly, the raising of fish in aquaculture tanks constitutes agricultural activity because it involves the care of an animal biological cycle that makes use of freshwater or saltwater resources.

The reform also substantially broadened the definition of connected activities. Under the new Article 2135, paragraph 3, connected activities include those directed towards the manipulation, preservation, transformation, commercialisation, and valorisation of products obtained predominantly from the exercise of the essential agricultural activities described above. Crucially, the provision also includes the supply of goods or services through the predominant use of the equipment or resources of the farm normally employed in the agricultural activity, as well as activities directed towards the valorisation of the rural territory and the agricultural heritage. (Germanò and Rook Basile, 2011)

The provision provides a new clear vehicle for all activities already underway, such as agritourism, educational farms and local rural schemes that were on the fringes of regulation. It also captures electrical generation from by-products of agricultural

activity or the use of solar panels on farmland; by these means it addresses activities of an increasing commercial importance.

Another aspect of the reform established the criterion of prevalence (*prevalenza*), which was maintained but reinterpreted in a less rigid fashion. According to the reformed Article 2135, the items undergoing transformation or marketing shall be obtained predominantly from the entrepreneur's own agricultural business. By subsequent ministerial decrees, the Ministry of Agriculture clarified that the examination of the criterion of prevalence shall not be only quantitative, but also in relation to the whole agricultural business, which entails a wider scope of the assessment. (Bonfante, 2002)

The doctrinal reception of the reform was generally moderate. Germanò, reviewing for one of the most highly regarded contemporary treatises on the new Article 2135 c.c., remarked that the 'conceptual revolution' represented by the move from a land-based definition to a biology-based one accounted for the most prolific innovation in Italian agricultural legislation since the 1942 codification. Costato too welcomed the reform's ability to reflect the changing pace of agricultural production, although he noted that the initial broadness of language of the new provision was bound to create a band of interpretive dilemmas which can only be solved through jurisprudential practice. (Germanò, 2001; Costato, 2003)

In the United Sections judgment (no. 5765 of 14 March 2011) the Court of Cassation offered clarification on the scope of the reformed Article 2135. The Court reiterated that the new notion of the activity covered is valid for any activity which involves the care and the development of a biological cycle, regardless of whether the land is used as the main productive factor. More generally, the Court underlined that the way in which the scope of the activity of the entrepreneur should be ascertained on a concrete basis and – overriding any formal or classificatory considerations – in regard to the physical nature of the performed activities. (Cass., SS.UU., no. 5765/2011)

This discrepancy became ever more apparent as agricultural laws came to favor ecological standards. Cultivation being, by definition, an activity dependent on ecosystems, the amended Article 2135 categorized agriculture as an ecological

activity. Later laws incorporated ecological incentives and emission reductions to those operating in the fields on the principle that because they control the cycles of nature, they have a duty to preserve them. (Costato, Germanò and Rook Basile, 2011)

In summary, the reform of Article 2135 effected by Legislative Decree no. 228/2001 transformed the Italian concept of the agricultural entrepreneur from a figure defined by the physical exploitation of the land into one defined by the management of biological processes. This broader conceptualisation has enabled the Italian legal system to accommodate the multifunctional reality of modern agriculture, while preserving the fundamental distinction between agricultural and commercial activity that underpins the differential regulatory treatment of these two categories of entrepreneur. (Germanò, 2016)

1.2 The expansion of Agricultural Activities: Primary Activities and Ancillary Connected Activities.

The reform of Article 2135 of the Civil Code introduced a distinction between primary agricultural activities and related activities that, while present in embryonic form in the first codification of 1942, acquired substantially new content and significance under the revised legislative framework. An accurate understanding of this distinction is essential for determining the scope of application of the agricultural qualification and, consequently, the range of benefits and obligations which attach to the agricultural entrepreneur. (Germanò and Rook Basile, 2011)

Primary agricultural activities, as defined in the second paragraph of the reformed Article 2135, comprise the cultivation of the land, forestry, and the raising of livestock. As noted above, these activities are characterised by the common element of the care and development of a biological cycle, or of a necessary phase thereof, that makes use of, or may make use of, the land, the forest, or freshwater or saltwater resources. This formulation is intentionally broad, and the interpretive practice of the courts and the administrative authorities has confirmed that it encompasses a wide range of productive operations.

Practically, this category is so broad it includes many types of activities, for example cropping, gardening, vineyard management, olive culture, floriculture, running of plant nurseries, production of aromatic and medicinal plants. The decisive element here is not the cropping, or the specific crop, but the permanent biological process that occurs within this environment under human supervision: greenhouse, aquaponics and vertical farms for example are covered here, as long as they support a plant cycle.

Forestry encompasses the management of wooded areas for productive purposes, including the harvesting of timber, firewood, resin, cork, and non-timber forest products such as mushrooms, berries, and chestnuts. The reform of 2001 clarified that forestry is not limited to the exploitation of naturally occurring woodlands but also includes the cultivation of purpose-planted forests (*arboricoltura da legno*) and short-rotation coppice for biomass production.

The raising of livestock extends to all forms of animal husbandry, including the breeding of cattle, sheep, goats, pigs, poultry, rabbits, horses, and bees. Following the reform, it also unambiguously includes aquaculture, namely the raising of fish, crustaceans, molluscs, and other aquatic organisms in controlled environments. The key requirement is the existence of an animal biological cycle that is managed by the entrepreneur; the mere fattening of purchased animals, while it may constitute a phase of the biological cycle, must still involve a meaningful degree of care and development to qualify as an agricultural activity.

Connected activities (*attività connesse*) represent the second category of agricultural activities recognised under Article 2135. The distinguishing feature of connected activities is that they are not autonomous economic undertakings but rather activities that are functionally linked to one of the primary agricultural activities described above. This functional connection is the essential criterion that distinguishes a connected activity, which retains its agricultural qualification, from an independent commercial activity, which does not. (Germanò and Rook Basile, 2011)

Article 2135, section 3, distinguishes three main groups of connected activities. The first group includes operations connected with the handling, storing, processing,

commercialization and valorization of agricultural products, when the latter occur immediately after primary agricultural activities. Examples are operations from sorting and labeling products until manufacturing processes converting products into edible foodstuffs.

Manipulation (*manipolazione*) has been identified as the basic operations which would not change the characteristics of the product; these include washing, sorting, grading and cutting. Preservation (conservazione) can be summarized as the activity which is aimed at prolonging the product life, this involves refrigeration, freezing, vacuum packaging and air drying. Transformation (trasformazione) would include the processing of the raw agricultural product into a qualitatively different product such as from grapes to wine, olives to oil, milk to cheese and wheat to flour. Commercialisation (commercializzazione) would entail the sale and distribution of the products, These would include direct sales at the farm, sale via farmer's markets and online. Last but not least, Valorisation (*valorizzazione*) is a generic term which takes into account all the activities which would add value to the product this would include for example branding, quality certification and promotional events.

The second category of connected activities comprises the supply of goods or services through the predominant use of the equipment or resources of the farm normally employed in the agricultural activity. This provision has particular relevance for activities such as contract agricultural services (for example, a farmer who uses his own machinery to plough the fields of neighbouring farms), snow clearing and road maintenance in rural areas using agricultural vehicles, and the production of renewable energy using agricultural infrastructure.

Within the third category are initiatives focused on improving countryside scenery alongside agricultural heritage, which together support agritourism activities. Formed by specific regulations set in the law number 96 of 2006, farm stays have become notable revenue streams. In areas where farming easily merges with tourist interest - such as Tuscany, Umbria or Trentino-Alto Adige - the model flourishes more clearly. In spite of challenges elsewhere, it finds firmer financial ground here (Galloni, 2007).

A transversal essential condition to all committed activities is the prevalence criterion. The goods submitted to manipulation, preservation, transformation or commercialization must be obtained mainly from the developed activities of the primary sector by the entrepreneur. In the same way, the goods or the services that are supplied by the connected activities must be supported mainly through the use of the farm's equipment or resources. The calculation of prevalence normally refers to the value of the raw material or to the time of the equipment, but can be different in the provisions of each ministerial regulation.

The practical importance of this distinction between primary and connected activities cannot be overstated. An entrepreneur who engages in activities that fall outside the scope of Article 2135, even if those activities are related to agriculture in a general sense, is classified as a commercial entrepreneur and is subject to the corresponding regulatory obligations, including the risk of bankruptcy proceedings. The expanded definition of connected activities introduced by the reform of 2001 has considerably reduced the scope for such adverse reclassifications, but the boundary between agricultural and commercial activity remains a fertile source of litigation. (Tommasini, 2003)

The jurisprudence of the Court of Cassation has contributed to the clarification of this boundary through a series of important decisions. In particular, the Court has held that the assessment of whether an activity qualifies as a connected activity must be conducted on a case-by-case basis, taking into account the overall organisational and economic context of the enterprise. The mere fact that an activity involves agricultural products is not sufficient to confer the agricultural qualification; rather, there must be a genuine functional connection between the activity and the primary agricultural production of the enterprise. (Cass., no. 11810/2015)

A paradigmatic case in this regard is the production of wine by a viticultural enterprise. When a farmer who cultivates his own vineyards produces wine exclusively or predominantly from his own grapes, the winemaking activity constitutes a connected activity under Article 2135, paragraph 3, and the farmer retains the agricultural qualification for this activity. Even so, should that farmer start

a distinct business buying grapes from various outside sources and making wine in large quantities, the process might no longer count as part of farming. What matters most is where the materials come from - most must originate in the grower's own fields for it to remain linked. Only when homegrown supply dominates does the work stay inside the farm-related category.

The expansion of the category of connected activities has also raised questions concerning the boundary between agricultural activity and the provision of services. The inclusion, within the reformed Article 2135, of activities that make predominant use of the equipment and resources of the farm has opened the door to the agricultural qualification of activities such as contract agricultural services, landscape maintenance, snow clearing, and the production of renewable energy from agricultural biomass. These activities, while functionally related to farming, may in some cases bear a closer resemblance to service provision than to agricultural production in the traditional sense.

Special emphasis should be given to the issue of production of renewable energies. The installation of photovoltaic panels on farm buildings, as well as the production of biogas from agricultural waste have already been playing an important role of additional source of income for Italian farms. Tax authorities take the view that such activities may be considered connected activities under Article 2135, as long as production of energy occurs on the resources and infrastructure of the farm and it is not the main activity of the enterprise. However, the fast development of agri-voltaic installations in some parts of the country has raised a question whether agricultural land is being converted into energy production sites, using the "agrarian" qualification as a mere vehicle for fiscal benefits. (Albisinni, 2015)

1.3 The Professional Agricultural Entrepreneur (IAP): Definition, Professional Requirements and the Qualification Mechanism under Legislative Decree No. 99/2004

The figure of the Professional Agricultural Entrepreneur (*Imprenditore Agricolo Professionale*, hereinafter IAP) was introduced by Article 1 of Legislative Decree no. 99 of 29 March 2004, replacing the earlier concept of the principal farmer (*coltivatore diretto*) as the central subjective qualification in Italian agricultural law. The IAP represents the Italian transposition of the European concept of the professional farmer, and its introduction was motivated by the need to align the national legal framework with the requirements of the Common Agricultural Policy and, in particular, with the conditions for access to EU agricultural subsidies.

Under Article 1, paragraph 1, of Legislative Decree no. 99/2004, the IAP is defined as the person who, possessing adequate professional knowledge and competences as established by the Regions, dedicates at least fifty per cent of his or her total working time to agricultural activity, and derives at least fifty per cent of his or her total working income from such activity. In areas classified as disadvantaged pursuant to Article 17 of Regulation (EC) no. 1257/1999, the thresholds are reduced to twenty-five per cent of both working time and working income. (Ferrucci, 2004)

The requirement of professional knowledge and competence is assessed by the competent Regional authorities on the basis of criteria established by each Region in accordance with its own legislative framework. In general terms, the requirement may be satisfied through one or more of the following: possession of a degree or diploma in agricultural sciences or a related discipline; completion of a vocational training course in agriculture recognised by the Region; a minimum period of practical experience in agricultural activity, typically of at least three years. The specific modalities and procedures for the recognition of professional competence vary from Region to Region, reflecting the decentralised nature of agricultural governance in Italy.

Half of each person "works" inclusive of all their employment activities must be spent on agriculture each year; periodic assessments are made to ensure that is maintained. If an individual is engaged in various activities (e.g. service sector, manufacturing, and agriculture), they must, through their various farm jobs, spend most of their time picking, planting, propagating, raising stock, or caring for crops or animals in order to receive IAP qualification. This rule thus safeguards the predominance of farm work in "rural" livelihood strategies.

The second condition as regards the source of income (at least 50 percent of working income shall derive from agricultural activity) is also considered in relation to the total of the working income. The sum of the working income is considered, under the provision, including all income deriving from the sale of agricultural products, as well as the income from connected activities under article 2135 of the Civil Code. Income deriving from other activities (employment, professional activity, investment, rent *etc.*) is not considered in the numerator of the calculation.

Getting IAP status means going through an official process, though how it works differs from one Region to another. Usually, someone aiming for IAP standing sends an application to their local Regional body, along with proof showing they meet the work experience, time-based, and earnings criteria. Once reviewed, the office grants a document confirming IAP classification, then adds this detail to the business registry managed by the Chamber of Commerce. This position isn't permanent - it gets checked regularly, while failing to keep up any key condition leads to cancellation of the title, followed by disappearance of related advantages.

The concept of IAP applies not only to natural persons but also, by extension, to legal persons. Under Article 1, paragraph 3, of Law no. 99/2004, a legal person may be recognised as IAP provided that it meets specific conditions related to its corporate governance and the qualifications of its members or directors. For partnerships (*società di persone*), at least one partner must individually possess the IAP qualification. For capital companies (*società di capitali*), at least one director must be IAP. For cooperative societies, at least one director must be IAP. In each case, the

partner or director who holds the IAP qualification must devote adequate time to the management of the company's agricultural activity.

The widening of IAP qualification to legal persons has been the cause of significant dispute among academics. A number of commentators have suggested that the notion of the professional agricultural entrepreneur is in its nature a personal one and cannot simply be transposed to a corporate body whose decisions are of course taken in the collective body of its managers or directors. Others have argued in contrast that to require corporate bodies to possess the IAP qualification was rather pragmatic given the widespread nature of corporate forms of farming in Italy and that once a single partner or director of any legal person had the individual IAP qualification, this provided a good safeguard that the enterprise was indeed substantively professional. (Iannarelli, 2006)

The significance of the IAP qualification within the broader legislative framework cannot be overstated. It constitutes the gateway to a wide range of fiscal, financial, and regulatory benefits, including the cadastral income taxation regime, reduced registration taxes on land transfers, exemption from municipal property tax, and preferential access to EU and national agricultural subsidies. The loss of IAP status, conversely, entails the forfeiture of all these benefits, a circumstance that may have severe economic consequences for the enterprise concerned. (Ferrucci, 2004) Contrary to prevailing conceptions, the IAP stands apart from the direct cultivator, an institution that remains extant under the existing statute. Who is a direct farmer? An individual who carries out the cultivation, forestry, or livestock raising in person, individually or with family members, for a sum of no less than thirty-three percent of the labour requirements. Benefits connected to this status may not be applied automatically to those who work as an IAP. One of such benefits is prior right to the purchase of land, grounded in Art. 8, Law no. 590 of 1965. This advantage is reserved exclusively for direct farmers and is not extended to those who hold only the IAP qualification. (Francario, 2010)

The coexistence of these two qualifications, the IAP and the direct farmer, has generated a degree of interpretive complexity, particularly with regard to the

conditions for the exercise of the pre-emption right. As will be discussed in greater detail in Chapter 3 of this thesis, the scope of the pre-emption right in the context of corporate agriculture represents one of the most contested issues in contemporary Italian agricultural law.

A further aspect that warrants attention is the relationship between the IAP qualification and the social security system for agricultural workers. Under Italian law, the IAP is required to register in the mandatory social security scheme for self-employed agricultural workers (*gestione previdenziale agricola*) administered by INPS (the National Social Security Institute). This registration entails the payment of social security contributions calculated on the basis of the cadastral income of the cultivated land, and it provides access to retirement pensions, disability benefits, and other social security entitlements. The registration requirement serves a dual function: it provides social protection for the agricultural entrepreneur, and it serves as an additional mechanism for verifying the substantive reality of the agricultural activity, since the obligation to pay contributions on a continuous basis discourages purely nominal qualifications. (Ferrucci, 2004)

Furthermore, the IAP qualification interacts with a range of sector-specific legislation, which condition the economic activity carried out by the agricultural entrepreneur. This comprises, among others, phytosanitary controls, animal welfare provisions, food safety requirements and environmental preservation, which all impose a series of duties upon the agricultural entrepreneur, which differ in scope and stringency, according to the type of activity carried on. Although these duties are not specific to the exercise of the IAP, the professional nature of the qualification as such entails an implied obligation to satisfy such legal standards, breach of which may in some instances undermine the integrity of the qualification.

1.4 The Agricultural Company: Constitutive Requirements and Eligible Corporate Forms.

The agricultural company (*società agricola*) was formally introduced into the Italian legal system by Article 2 of Legislative Decree No 99 of March 29 , 2004. This provision does not create a new corporate type, but rather establishes a specific qualification that may be attributed to companies that satisfy certain official and substantive requirements. The agricultural company, therefore, is not a separate legal entity in its own right; it is a conventional company of any of the forms permitted under Italian law, to which the agricultural qualification has been attributed by virtue of its compliance with the conditions laid down by the Decree. (Masini, 2005)

The formal requirements for the registration of an agricultural company are provided for in art. 2 (1) of the Legislative decree no. 99/2004. There are two main requirements: firstly, the corporate name (ragione sociale or denominazione sociale) must contain the words agricultural company (società agricola). This is a publicity requirement that would make clear to any third parties the fact that the enterprise was of agricultural nature by simply looking at its denomination. Secondly, the corporate purpose (oggetto sociale) indicated in the articles of association must include only the exercise of those agricultural activities foreseen in art. 2135 of the Civil Code.

The exclusivity of the corporate purpose has been a very controversial subject of interpretation. The accepted view, supported by the Ministry of Agricultural Policies and followed by the companies register practice is that the corporate purpose must be confined to agricultural pursuits as set out in article 2135, including primary and other connected activities. A company whose articles of association allow for the exercise of non-agricultural commercial activities will not satisfy the requirement of exclusivity and will not be classificable as an agricultural company. This view has been criticised by some commentators as too harsh, for example in situations where

the non-agricultural activities constitute a very small proportion of the company's overall activities. (Casadei, 2005)

Apart from the formal criteria, the attribution of the IAP qualification to the agricultural enterprise requires as well the satisfaction of the subjective requisites set out in article 1, third paragraph, of Legislative Decree no 99/2004. These requisites, as pointed out in the previous part of the paper, depend on the corporate form that the undertaking has taken. The following sub-sections analyze the particular aspects of each corporate shape.

1.4.1 Partnerships (Società di Persone): Società Semplice, S.N.C., S.A.S.

Partnerships are the institutional form most commonly associated with agricultural activity in Italy. The società semplice commands special prominence among institutions of law relating to farming because it is the sole corporate form reserved exclusively to the carrying out of non commercial activity – including agriculture; and, in terms of the 'principle of framework' (for which see below) limits the performance of commercial activity to other corporate forms. This restrictive use of the società semplice is found in Article 2249 of the Civil Code according to which the società semplice may not be used for commercial activity and, by implication, non commercial activity, including agriculture, may be exercised through this form. (Buonocore, 2002)

The *società semplice* is characterised by a number of features that make it particularly suitable for agricultural enterprises. It does not require a minimum capital contribution, its constitution is subject to minimal formal requirements, and its partners enjoy considerable flexibility in organising the internal governance of the company. Moreover, the *società semplice* is exempt from the obligation to maintain formal accounting records and from the application of insolvency proceedings, advantages that reflect its non-commercial nature.

For the purposes of the IAP qualification, a *società semplice* must satisfy the condition that at least one of its partners individually possesses the IAP qualification. In practice, many agricultural *società semplici* are family enterprises in which all or

most of the partners are engaged in the agricultural activity, and the fulfilment of the IAP requirement presents no particular difficulty.

The *società in nome collettivo* (general partnership) and the *società in accomandita semplice* (limited partnership) are also eligible forms for the agricultural company. Unlike the *società semplice*, these partnerships may also be used for commercial activities and are therefore subject to the general obligations of commercial enterprises, including registration in the companies register and the maintenance of accounting records. However, when used for the exercise of exclusively agricultural activities, they benefit from the exemptions applicable to the agricultural entrepreneur, including the historical exemption from insolvency proceedings, subject to the reforms introduced by the new Code of Business Crisis and Insolvency (Legislative Decree no. 14/2019). (Rook Basile, 2012)

The distinction between accomandatari/general partners (liable for the debts of the company and authorized to manage the business, unlimited liability) and accomandanti/limited partners (Liable for the debts of the company only up to the amount of their contribution to the share capital, limited liability) in the case of the società in accomandita semplice, complicates matters further. For the IAP qualification, the requirement of a condition of professionalism is usually examined in relation to the general partners and those persons who are responsible for managing the enterprise, but the limited partners may also contribute to the overall agricultural activity of the company in the case of family farms.

1.4.2 Limited Liability Companies (Società di Capitali): S.R.L. and S.P.A.

The use of limited liability companies for agricultural activity represents a more recent phenomenon, driven by the increasing scale and capitalisation of modern farming enterprises. The *società a responsabilità limitata* (S.R.L.) and the *società per azioni* (S.P.A.) are both eligible forms for the agricultural company, provided that the formal and substantive requirements of Legislative Decree no. 99/2004 are satisfied.

The main benefit of the limited liability form is the shelter it provides for the members' patrimony from the corporate patrimony of the company. This feature, in

an agricultural setting, is useful to shield members from the economic hazards of farming, such as crop or livestock disease and market fluctuations. This feature is also useful to obtain external capital for the company.
For the purposes of the IAP qualification, a capital company must satisfy the condition that at least one of its directors individually possesses the IAP qualification. This requirement has been interpreted to mean that the director in question must hold a position of effective management responsibility within the company, rather than a merely nominal directorial role. The competent Regional authorities typically verify that the director-IAP devotes adequate time to the management of the agricultural activity of the company, in accordance with the general temporal requirements of the IAP qualification.
The S.R.L. is the limited liability form most commonly employed for agricultural companies, owing to its lower capital requirements and greater organisational flexibility compared to the S.P.A. The minimum share capital of the S.R.L. is one euro following the reforms introduced by Decree Law no. 76 of 2013, although in practice agricultural S.R.L.s typically have substantially higher capitalisation. The S.P.A., with its minimum share capital of fifty thousand euros and its more rigid governance structure, is generally employed only by large-scale agricultural enterprises or by companies that are part of broader agri-industrial groups.

A significant limitation affecting limited liability companies in the agricultural sector is their exclusion from the right of agricultural pre-emption, a matter that will be examined in detail in Chapter 3 of this thesis. This exclusion has been criticised as an anachronistic impediment to the modernisation of the sector, as it discourages the adoption of corporate forms that would otherwise be well-suited to the needs of capital-intensive agricultural enterprises. (Prosperi, 2008)

It should also be borne in mind that the S. R. L. and S. P. A. are governed by the same corporate governance rules and disclosure obligations as any limited liability company under the Civil Code, notably (i) the obligation to draw up and file annual accounts, (ii) the appointment of a statutory auditor and/or an auditing firm where mandated by law and (iii) the strict keeping of the obligatory corporate books. These

obligations must be compared to the very simple rules which apply to partnerships, although they do bring the enterprise a level of transparency.

1.4.3 Cooperative Societies

Cooperative societies represent the third category of corporate forms eligible for the agricultural company qualification. Agricultural cooperatives have a long and distinguished history in Italy, particularly in the regions of Emilia-Romagna, Veneto, and Trentino-Alto Adige, where the cooperative model has played a fundamental role in the development of the agricultural sector. The cooperative form is characterised by the principle of mutuality, pursuant to which the primary purpose of the cooperative is not the maximisation of profit for its members but rather the provision of goods, services, or employment opportunities to its members on more favourable terms than those obtainable on the open market. (Russo, 2010)

Depending on the kind of the mutualistic relation, agricultural cooperatives can take different shapes. Production cooperatives (cooperative di produzione) consist of a group of farmers who assemble resources to work on the land together; a processing cooperative (cooperative di trasformazione) is set up among farmers who work together to process their agricultural production (i.e. with milk into cheese or with grapes into wine); a marketing cooperative (cooperative di commercializzazione) can be created to take advantage of economies of scale in the commercialisation and distribution of the agricultural products; finally a service cooperative (cooperative di servizio) might be formed, which offers the members such kind of services as, for example, the leasing of the agricultural machinery, the advice in agronomy or the pay-roll management.

For the purposes of the IAP qualification, a cooperative society must satisfy the condition that at least one of its directors individually possesses the IAP qualification. Given the typically large membership of agricultural cooperatives, this requirement is generally met without difficulty. Yet defining success gets harder when applying strict business criteria to cooperatives. Though certain agricultural co-ops function mostly within boundaries set by Article 2135, a few shift toward activities such as

processing goods or managing supply chains. Whether these extra tasks count as linked operations - therefore acceptable under an agribusiness mandate - depends on individual review. That judgment hinges partly on how central those actions are, also their scale relative to core work.

Agricultural cooperatives benefit from a specific set of fiscal advantages in addition to those available to agricultural companies generally. Under the provisions of the Tax Code relating to cooperative societies, the income of predominantly mutualistic cooperatives (*cooperative a mutualità prevalente*) is partially exempt from corporate income tax, subject to the satisfaction of certain conditions relating to the volume of transactions conducted with members as compared to transactions with third parties. These fiscal advantages, combined with the benefits of the agricultural company qualification, make the cooperative an attractive organisational form for collective agricultural enterprises. (Putti, 2009)

In the last few decades this co-operative model has been exploited also with regard to other experimental settings in the agricultural sector, such as Community Supported Agriculture, Social Farming (agricoltura sociale) and organic farming groups.

Chapter 2: Benefits and Incentives of the Agricultural Company.

2.1 Tax Benefits: The Cadastral Income Taxation Regime under Law No. 296/2006

Taxation in Italy is also very favorable for the agricultural companies as it allows to establish taxable income by cadastral values instead of accounting. This regime, commonly referred to as the cadastral income taxation regime (*tassazione su base catastale*), was extended to agricultural companies by Article 1, paragraphs 1093 to 1095, of Law no. 296 of 27 December 2006, the annual budget law for the year 2007. Prior to this legislative intervention, the cadastral income tax system could be applied solely to individuals who carried on an agricultural enterprise; whereas the income of agricultural companies was taxed through the general corporate income tax and on the basis of their actual profitability.

While using the land register structure of Italy, the concept of cadastral income divides the value of each farmed parcel into two shares: any contribution for farm management, and equal ownership share. Investment return drawings represent expected yields for the given combination of investments (land, work and capital) to the farm-based cropping pattern. Variations for each draw are for different regions where the parameter depends on crops, soil characteristics and the geographical position of the parcels. The calculations are updated every 10 to 15 years for the variation of the variable. Its pattern does not change with the variations in markets.

In the cadastral income system, the taxable result of the agricultural enterprise is calculated solely from the cadastral values of the land on which the enterprise is engaged in cultivation that is, it does not take into account the records of revenues and costs provided by the company in its accounts. Hence, an agricultural enterprise making a profit could face a significantly lower tax burden than it would from the standard corporate income tax if the cadastral values would constitute only a small

part of the enterprise's real economic income. On the other hand, a company making a loss in the period would nevertheless be taxed on the cadastral income of its land as there is no provision to incorporate a negative result into the cadastral income computation.

The extension of the cadastral income regime to agricultural companies was motivated by the policy objective of promoting investment in corporate agriculture and eliminating a source of fiscal discrimination between individual farmers and corporate farming enterprises. Under the previous regime, an individual farmer who cultivated the same land and produced the same crops as a neighbouring agricultural company would enjoy a substantially lower tax burden, since only the individual farmer could avail himself of the cadastral income regime. This disparity created a disincentive for the adoption of corporate forms in agriculture, which was considered contrary to the broader policy objective of modernising and professionalising the sector.

The regime is optional: agricultural companies may elect to be taxed on the basis of cadastral income by communicating their choice to the competent tax authority. The election is valid for a minimum period of three tax years and is automatically renewed unless revoked. The company must satisfy the substantive requirements of the agricultural company qualification throughout the entire period of application of the regime; the loss of the agricultural qualification entails the automatic cessation of the cadastral income regime and the reversion to ordinary corporate income taxation.

It is important to note, however, that the cadastral income regime has its detractors. Certain commentators have argued that the regime facilitates tax avoidance such as in the case of large-scale agricultural companies, which produce high income earning capacity, but are taxed under the regime on the basis of low cadastral values. It has also been argued that the regime has a distorting effect by putting low-cadastral-value land into competition with high value land, putting small and medium-sized agricultural companies at a disadvantage compared to large highly productive firms. Consequent upon these concerns, the regime has been periodically considered for revision or abolition, but none has been realized (Putti, 2009).

For instance an agricultural business which has a surface of one hundred hectares in the Po Valley has a turnover of one million euros and expenses of three hundred thousand euros. Under the normal tax regime, the taxable income will be two hundred thousand euro (taxable income times the IRES rate of 24%), and a tax of forty eight thousand euro has to be paid. On the contrary, using the cadastral income method an agricultural firm with a cadastral income of three hundred euro per hectare and a surface of one hundred hectares will have a net taxable income of thirty thousand euro and a tax of seven thousand two hundred euro.

2.2 Indirect Tax Reliefs on Agricultural Land Transfers: The Small Farming Property Regime.

The transfer of agricultural land in Italy is subject to a specific set of indirect taxes including registration tax (*imposta di registro*), mortgage tax (*imposta ipotecaria*) and cadastral tax (*imposta catastale*). Under the ordinary regime, these taxes are levied at rates that can constitute a considerable financial burden, especially for large acquisitions. However, the Italian legislator has established a preferential regime for the transfer of agricultural land to certain qualified agricultural operators, commonly known as the small farming property regime (*piccola proprietà contadina*, hereafter PPC).

The PPC regime, originally introduced by Law no. 604 of 6 August 1954 and subsequently amended on numerous occasions, provides for a substantial reduction in the indirect taxes applicable to the acquisition of agricultural land by direct farmers and, following the reforms of 2004, by Professional Agricultural Entrepreneurs. Under the current version of the regime, as amended by Article 2, paragraph 4-bis, of Decree Law no. 194 of 2009, converted with amendments by Law no. 25 of 2010, the acquisition of agricultural land by a direct farmer or an IAP is subject to registration tax at the reduced rate of one per cent (as opposed to the ordinary rate of fifteen per cent for agricultural land or nine per cent for non-agricultural transfers), together with fixed mortgage and cadastral taxes of fifty euros each. (Putti, 2009) (Agenzia delle Entrate, Circolare 32/E, 2009)

The fiscal saving enjoyed under the PPC regime is substantial. For instance, in the case of the transfer of agricultural land of a value of five hundred thousand euros the ordinary registration tax would be seventy-five thousand euros (15%), while under the PPC regime it is five thousand euros (1%), a saving of seventy thousand euros. After including the fixed mortgage and cadastral taxes the overall fiscal burden under the PPC regime is approximately five thousand one hundred euros, in comparison to seventy seven thousand euros under the ordinary regime.

Access to the PPC regime is conditional upon the satisfaction of several requirements. The purchaser must be a direct farmer or an IAP, duly registered in the mandatory social security scheme for agricultural workers (*previdenza agricola*). The land must be acquired for the purpose of agricultural cultivation, and the purchaser must commit to cultivating the land personally (in the case of a direct farmer) or through the agricultural enterprise (in the case of an IAP) for a minimum period of five years from the date of acquisition. In the event of the transfer of the land or the cessation of cultivation within the five-year period, the taxpayer shall forfeit the fiscal advantage and shall be required to pay the difference between the reduced taxes already paid and the ordinary taxes that would have been due, together with interest and penalties.

The extension of the PPC regime to corporate farmers: Article 2, paragraph 4-bis, of Decree Law no. 194 of 2009 was aimed at widening the scope of the regime to corporate companies that was considered to fulfill the IAP qualification requirements. It was the last step taken to mitigate yet another fiscal discrimination existing between individual farmers and corporate operators buying land. The issue of the period of application of the five-year period of cultivation obligations in corporate companies has given rise to particular interpretive issues, especially concerning the effects of corporate reorganization, mergers, and changes in the composition of the corporate membership during the period of the declaration (Putti, 2009).

The PPC regime also deals with transfers by succession and donation, but remains subject to the same substantive conditions. Succession requires the heirs to fulfill the qualification requirements and undertake a five year cultivation obligation; in the case of donation the donee has to satisfy the qualification requirements and undertake the

same obligation. These rules are particularly interesting in the framework of the generational renewal in agriculture, to be discussed in section 2.5 of this chapter.

The interaction between the PPC regime and the Italian system of land registration deserves brief mention. Italy operates a dual system of land registration: the *catasto* (cadastre) records the physical characteristics and fiscal values of each parcel of land, while the *conservatoria dei registri immobiliari* (land registry) records legal transactions affecting property rights. The use of the PPC regime will also involve the presentation of various documents to both systems, which include a self-certification for the buyer, confirming eligibility to PPC, a commitment to farm the land for the qualification period and a registration with the agricultural social security scheme. These administrative obligations, although straightforward for existing farmers, may be seen as difficult by aspiring farmers.

Moreover, the fiscal benefit of the PPC regime is not confined to the direct purchase of agricultural land, since it also extends (up to specific limits) to acquiring rights of emphyteusis (enfiteusi) over agricultural land and redemption (affrancazione) of emphyteutic rights. Although this is a practice that is relatively infrequent in the modern day, it is still practiced in some parts of southern Italy where the emphyteutic form of land tenure once had strong standing.

2.3 Exemption from Municipal Property Tax and the Special VAT Regime.

Agricultural companies that meet the required qualifications also gain considerable exemptions in relation to municipal property tax (*Imposta Municipale Unica*, hereafter IMU) and from a special value-added tax regime that reduces the effective VAT burden on agricultural transactions.

The IMU exemption for agricultural land has undergone numerous legislative modifications in recent years, reflecting the broader political debate surrounding local

taxation in Italy. Under the current regime, as established by Article 1, paragraph 13, of Law no. 208 of 28 December 2015 (the stability law for 2016), agricultural land is exempt from IMU in the following cases: land located in municipalities classified as totally mountainous under the official classification of the Italian National Institute of Statistics; land located in municipalities classified as partially mountainous, provided that the land is owned and cultivated by direct farmers or IAPs registered in the agricultural social security scheme; and land owned and cultivated by direct farmers or IAPs in all municipalities, regardless of their mountainous classification, provided that the land is used for agricultural purposes.

The practical impact of this is that virtually all agricultural land actually used by qualified agricultural operators is not subject to IMU. The exemption encompasses land used on the own account by the farmer or the agricultural company, as well as, after a series of administrative clarifications, land used under agricultural lease agreements, provided that the tenant meets the qualifications. The exemption does not cover residentialized or commercialized agricultural real estate nor non-agricultural land.

The special VAT regime in agriculture is authoritatively regulated by art. 34 of the Presidential Decree no. 633 of 26 October 1972 being the "founding decree" of the Italian VAT system. Under it, farmers/producers are entitled to deduct VAT on their direct costs of production on the basis of flat-rate percentages (percentuali di compensazione) established by ministerial decree for each category of agricultural output, and which bear a reasonable relation with the average incidence of the input VAT on the cost of their production of that category (Putti, 2009).

For producers, the special VAT regime applies as follows: upon delivery, the producer will charge VAT at the rate relevant to the good (for example a four per cent rate for basic foodstuffs, ten per cent for processed food products); rather than deduct the fee actually paid on input, they will keep a share of the output VAT, the share being defined by the flat rate compensation percentage. As the flat-rate compensation percentage nears the corresponding output VAT rate, the real VAT burden becomes insignificant, as the sum will be roughly equal to the VAT for which producer is liable on their output.

With regard to many agricultural commodities mainly those relating to the livestock and dairy businesses the flat-rate percentages of compensation are fixed at levels that allow producers a net VAT benefit, an indirect subsidy to the sector. For this reason, the European Commission has scrutinized the operation of the scheme on a regular basis, since the requirements are that the flat-rate percentages should be fixed at levels not systematically higher than the actual incidence of input VAT, in order to prevent any unjustified competitive advantage.

Agricultural companies may opt for the special VAT regime provided that they satisfy the general requirements for the agricultural qualification and that their turnover does not exceed certain thresholds established by law. Companies with a turnover exceeding these thresholds, or companies that choose to do so voluntarily, may opt for the ordinary VAT regime, which permits the deduction of actual input VAT but also requires the maintenance of more detailed VAT accounting records. Thanks to the compound effect of the IMU exemption and the special VAT regime, the Italian tax regulations provide a further tax advantage to the qualified agricultural companies. By taking into consideration the cumulative effect of the above-mentioned measures, these companies can enjoy an important and durable tax saving, which considerably reduces their overall tax burden with respect to nonagricultural companies exposed to similar market factors. This is one of the ways that the Italian legislator has designed to induce professional investment in agriculture.

2.4 Access to EU Rural Development Plans and Agricultural Support Schemes.

A further important advantage of the agricultural company qualification is the access it provides to the financial support schemes established under the Common Agricultural Policy (CAP) of the European Union, and in particular under the Rural Development Plans (RDPs) co-financed by the European Agricultural Fund for Rural Development (EAFRD). These schemes represent one of the most important sources of public funding for the Italian agricultural sector, and access to them depends on

the satisfaction of specific eligibility criteria that are closely linked to the qualifications discussed in the preceding sections of this thesis.

The CAP has been continuously reformed since its inception in 1962 and today it is organized on two main pillars. While the first pillar consists of direct payments made to farmers, fully financed by the EU budget through the European Agricultural Guarantee Fund (EAGF), the second pillar comprises rural development measures. The payment from the first pillar of the CAP, which are decoupled from production from the farmer, are based on the surface of eligible land and not on the amount of the agricultural production. Every active farmer who meets the conditions of eligibility, including the obligation of keeping the land in good agricultural and environmental conditions (GAEC standards) as well as applying the statutory management requirements (SMRs), can have access to the first pillar of the CAP.

The second pillar of the CAP comprises rural development measures, co-financed by the EU through the EAFRD and by the Member States and their Regions through national and regional budgets. In Italy, the implementation of the second pillar is largely devolved to the Regions, each of which adopts its own Regional Rural Development Plan (PSR) within the framework established by the national Rural Development Programme and the applicable EU regulations. The RDPs provide funding for a wide range of measures, including investment in farm modernisation, support for organic farming, agri-environmental payments, diversification of rural economic activities, and the provision of advisory services.

Agricultural companies that are qualified as IAP benefit from preferential access to many of these measures, either through higher subsidy rates or through the reservation of specific funding envelopes for professional agricultural operators. In particular, the investment measures under the RDPs typically provide higher subsidy intensities for IAP-qualified enterprises, which may receive grants covering up to forty or fifty per cent of the eligible investment cost, compared to lower rates for non-qualified operators. These investments may relate to the construction or renovation of farm buildings, the purchase of machinery and equipment, the installation of

irrigation systems, and the development of processing and marketing facilities (De Filippis, 2012).

The access to EU funding also extends to the support schemes for quality certification and geographical indications, which are of particular importance for the Italian agricultural sector. Italy has the highest number of PDO (Protected Designation of Origin) and PGI (Protected Geographical Indication) products in the European Union, and the associated certification schemes represent a significant source of added value for agricultural producers. Agricultural companies that participate in quality certification schemes may receive additional support under the RDPs for the costs of certification, inspection, and promotional activities. (Albisinni, 2015)

It is important to note, however, that access to EU funding is subject to a complex set of regulatory procedures, which include not only specific rules for each measure, but also horizontal rules relating, for example, to state aid, public procurement procedures and financial management. The substantial administrative effort entailed in applying for and implementing EU funded projects has been identified as a significant obstacle to access of small agricultural producers. In this respect, the cooperative form discussed in section 1.4.3 of this thesis has the potential to be advantageous, as the cooperative could provide a 'single entry point' for members who wished to access EU funding.

Recently, the CAP reform for the programming period 2023-2027 was entered into force through Regulation (EU) 2021/2115, setting up a new architecture for agricultural policy within the European Union, where it is compulsory for each Member State to draw-up a CAP Strategic Plan, bringing together the interventions of the first pillar (direct payments), and those of the second pillar (rural development policies). In Italy, the CAP Strategic Plan, approved by the European Commission in 2022, provides for a considerable allocation of funds to instruments strictly connected with agricultural firms, such as eco-schemes for the implementation of sustainable farming practices, investment programs for green and digital transition, and relaunch measures of generational renewal (European Commission, 2022).

The eco-schemes are one of the newest and most significant innovations introduced with the new CAP. These voluntary schemes, funded under the first pillar, provide farmers with extra annual payments for going beyond the basic requirement of the baseline for a specific measure for environmentally friendly practices. Companies farming might receive eco-scheme payments for practice such as organic farming, integrated pest management, conservation agriculture, measures for improving biological diversity. The eco-schemes' financial incentive might be significant, and could be several hundred euros per hectare per year depending on the farming practices to be used and the intervention modalities.

Agricultural digitalization (also called precision farming or Agriculture 4.0) is yet another industry where the form of the agricultural company could be beneficial for applying for support from the EU. The CAP Strategic Plan foresees a number of investments in digital technology, such as satellite-guided equipment, remote sensing devices, data management platforms or automated monitoring devices. Such investments are generally of a size and possess a degree of technological sophistication which is easier to attain by a corporate enterprise as opposed to a small individual scale holder farm.

2.5 Incentives for Generational Renewal and Young Farmers

One of the main structural problems of the Italian agriculture is represented by the ageing population working on farms. From the statistical data supplied by the National Institute of Statistics (ISTAT), it appears that in Italy the average age of the farm managers is over 60 and the share of young farmers (less than 40 years) is substantially below the European average. This phenomenon has very negative consequences for the long-run competitiveness of the sector as it is associated with low technological levels and low investments and with successive abandonment of marginal land (ISTAT, 2010).

In accordance with such challenge, both the European Union (EU) and Italy have policies for young farmers to ease the entering of new-generation farmers in agriculture. These policies include fiscal incentives, direct aids and instruments to stimulate land ownership. All these policy instruments are drafted to support young farmers to promote a colonization of rural areas.

Farmers who are below the age of forty may also be offered one-off encouragement to set up farms by way of an incentive. Here again the intention is to guide new entrants into the industry so that they may make a good, steady, contribution. The farmers are entitled to a subsidy, if their first year of agricultural farm has started (one time grant). The grant depends on the region; it tends to range between thirty-thousand to seventy-thousand euros. The farmers must fulfill a series of conditions for their application to be entertained and the payment granted. An important condition is obtaining certain experience criteria for farmers. This must be fulfilled within three years of the time the farmers take up farming.

Farmers, under 40 years of age, who qualify under the first pillar receive the twenty-five per cent direct payment supplement for five years on the average direct entitlements value after entering the market. Long after beginning, these producers often face bigger costs per unit because large-scale efficiencies haven't kicked in just yet. Credit might also be harder to reach at that point. The added support aims to balance those early pressures.

Tax related support to young farmers in Italy is established by the national legislator through various legal instruments. An exemption from social insurance contributions is available upon entering as IAP members or directly farming for the first time; on this matter, Article 1 paragraphs 503 and 504 of Law 160/2019 of 27 th of December 2019 determined that the new farmers who are less than forty years old are entitled to relief from the above mentioned fees for two years. After that, several modifications were made.

Other than the sustainability of new entrants in the agricultural sector, there were other incentives to ensure generational renewal, like: the preferential purchase of agricultural land by tax regime PPC between the 2007 and 2013 (described in section

2.2 of this chapter), the access to cheap credits within the operating programmes of ISMEA ('the Institute of Services for the Agricultural Food Market'), the tax credit to investments in innovation and digitalization of the agricultural business. ISMEA had also a land bank (banca delle terre agricole) which was holding a register of public owned land for sale or rent, prioritizing young farmers (ISMEA, annual editions).

Renewed debate ensues as to the viability of such incentives not to check the aging of the farming population. Although young farmers are getting more start-up assistance than in the past this share still remains very low in comparison with the average number of young farmers among the whole pool of farm managers of Europe. An entry into the sector at a young age confronts a number of constraints: high land prices in many parts of Italy; scattered ownership structures such as fragmented plots that are difficult to consolidate; the excessive paperwork involved in the application process which discourages first-time applicants.

Due to the long life of farming businesses, having a relatively slow transition of power ensures a smooth operation when older members of the family retire. It ensures maturity in the business is gained slowly. Rather than a radical change, allowing others into the business on a gradual basis using a joint ownership structure enables younger members of the family to enter the business. The holding of legal authority as to decision making makes sure that the experience and trust of the older members stays intact with the family. The family relationship does not change, but roles are adapted over time accordingly.

Chapter 3: Critical Issues and Open Questions.

3.1 The Right of Agricultural Pre-emption: Exclusion of Limited Liability Companies and Its Practical Consequences

The right of agricultural pre-emption (*diritto di prelazione agraria*) is arguably the most original rule of the Italian law of agriculture. Created by Law 26 May 1965 no 590 and later on consolidated by Law 14 August 1971 no 817, it prescribes a right of pre-emption in favor of some qualified operators, to purchase agricultural land on offer by a third party, before any other interested party, at the same price and on the same conditions agreed upon during the sale negotiations. As the Italian legislator acknowledged, the pre-emption right was designed to achieve two policy objectives: the consolidation of agricultural holdings by enabling farmers to expand their cultivated area, and the prevention of speculative land acquisitions by non-agricultural investors. Under the existing legislative framework, the pre-emption rights were reserved to two categories of subjects: the direct farmer who cultivates the land offered for sale under a lease or sharecropping agreement (*mezzadria*) and the direct farmer who owns adjacent land. These categories reflected the legislative intention to favour small scale, family-based farming and to promote the formation of economically viable farm units through the progressive aggregation of contiguous parcels.

The Legislative Decree no. 228 of 2001 introduced a new instance of a pre-emption right in the form of the Professional Agricultural Entrepreneur (IAP). Its significance is that it extended the institution across the threshold of the direct farmer. The pre-emption right to the IAP was also subject to the condition that the IAP must have been registered in the social security scheme of agriculture for at least two years before the purchaser invoked the pre-emption right.

The point of greatest debate that has arisen in this field has concerned whether the pre-emption right is applicable to agricultural companies raised in the form of limited liability companies (società di capitali). According to the current jurisprudential

interpretation, as reiterated by the Court of Cassation in a succession of judgments, the most recent of which is entered by the Court of Cassation at no. 18827 of 2016, the answer is no and therefore the pre-emption right cannot be exercised by agricultural companies constituted in the form of S.r.l. or S.p.a. In fact, regarding the wording of the provision that states that the pre-emption right is construed to the direct farmer and the IAP as natural persons, the Court argued that they have therefore sought to exclude legal persons from the application of the pre-emption right, deciding to extend the right to legal persons only in partnership arrangements in which at least the vast majority of partners are direct farmers or IAPs (Prosperi, 2008).

This interpretation has been the subject of vigorous criticism by a significant portion of legal scholarship. Critics argue that the exclusion of capital companies from the pre-emption right is inconsistent with the broader legislative trend towards the recognition of corporate agriculture as a legitimate and desirable form of agricultural organisation. If the legislator has extended the IAP qualification to capital companies and has granted them access to the full range of fiscal and financial benefits associated with the agricultural status, it is argued, then the exclusion of these same companies from the pre-emption right represents an unjustifiable anomaly that undermines the coherence of the regulatory framework.

Though presumably abstract, the effects of this exclusion are evident in reality. If an agricultural S. R. L., after prolonged leasing, encounters a sale of the location it cultivates, the additional work - in soil improvements, water systems, new crops - may prove futile in effort to assert first refusal. If ownership passes to an alternative individual, operations might fall apart, despite the business qualifying as a recognised farmer. The effect of the loss is far greater if capital investment has inflated the property's value above the capacity of established contracts to repatriate the cost. Redress by legal recourse may do little for capital trussed directly to soil.

Some commentators have argued that the exclusion of capital companies from the pre-emption right may be susceptible to constitutional challenge on the grounds of unreasonable discrimination under Article 3 of the Constitution. According to this

argument, the differential treatment of partnerships and capital companies in relation to the pre-emption right lacks an objective and reasonable justification, given that both types of entity are equally capable of exercising agricultural activity in a professional and sustainable manner. However, the Constitutional Court has not yet been called upon to rule on this specific question, and the issue remains unresolved. (Prosperi, 2008)

In practice, the exclusion of capital companies from the pre-emption right has led to the adoption of various legal strategies designed to circumvent the limitation. Some agricultural operators choose to constitute their enterprises as partnerships, even where the capital company form would be more appropriate from an economic and organisational perspective, solely in order to preserve access to the pre-emption right. Others adopt complex corporate structures in which a partnership holds the agricultural land while a related capital company manages the agricultural activity, an arrangement that raises its own interpretive difficulties. These workarounds represent an inefficiency that could be avoided through appropriate legislative reform.

The comparative analysis of other European legal systems provides useful insights into possible alternative approaches. In France, the *société d'aménagement foncier et d'établissement rural* (SAFER) system operates a pre-emption mechanism at the institutional level, whereby a public agency has the right to purchase agricultural land and subsequently redistribute it to qualified farmers, including corporate farmers, on the basis of policy criteria. In Germany, the *Grundstücksverkehrsgesetz* (Land Transactions Act) subjects the transfer of agricultural land to administrative authorisation, which may be denied if the transfer would lead to an unhealthy concentration of land or to the withdrawal of the land from agricultural use. Neither system draws a distinction between the corporate forms of the agricultural operator in the manner of the Italian pre-emption regime (Jannarelli and Macario, 2019).

The Italian legislator has on several occasions been urged by agricultural associations, chambers of commerce, and academic commentators to reconsider the exclusion of capital companies from the pre-emption right. A draft bill presented in the Italian

Parliament in 2019 proposed the extension of the right to all agricultural companies satisfying the IAP requirements, regardless of their corporate form. However, the bill did not progress beyond the committee stage, and the issue remains open. The resistance to reform appears to stem in part from the concern that extending the pre-emption right to capital companies could facilitate the acquisition of agricultural land by large agri-industrial groups with substantial financial resources, to the detriment of smaller family farms (Russo, 2010).

3.2 The Single-Company Rule: Structural Rigidity and Risk of Abuse

Article 1, paragraph 3-bis, of Legislative Decree no. 99 of 2004, as amended by subsequent legislative interventions, establishes what is commonly referred to as the single-company rule (*regola della società unica*). Under this provision, a natural person who holds the IAP qualification may attribute that qualification to only one agricultural company at a time. This means that a farmer who is a partner or director of multiple agricultural companies may designate only one of those companies as the beneficiary of the IAP qualification, with the consequence that the other companies do not satisfy the subjective requirements for the agricultural company status and are therefore excluded from the associated fiscal and financial benefits (Russo, 2010).

The policy rationale behind the single-company rule is the prevention of abuse. In the absence of such a rule, a single IAP could, in principle, attribute the agricultural qualification to an unlimited number of companies, each of which would then be entitled to the full range of fiscal benefits associated with the agricultural status. This possibility would create an obvious incentive for the multiplication of corporate vehicles for the sole purpose of maximising fiscal advantages, without any corresponding increase in actual agricultural activity. The single-company rule is thus intended to ensure a genuine correspondence between the professional qualification of the individual and the agricultural activity of the company to which that qualification is attributed (Casadei, 2005).

While the preventive function of the single-company rule is legitimate, its application has given rise to significant practical difficulties. Agricultural entrepreneurs who manage diversified operations across multiple companies, for instance a vine-growing company and a separate olive-oil production company are forced to choose which company will benefit from the IAP qualification. The company that is not selected loses access to the cadastral income regime, the PPC benefits, and the other fiscal advantages associated with the agricultural status, even if it is engaged in genuinely agricultural activity managed by a qualified professional.

This rigidity is particularly problematic in the context of family farming, where it is common for different branches of the family to manage separate agricultural enterprises that are interconnected through shared resources, knowledge, and commercial relationships. The single-company rule may force artificial consolidations of activities into a single corporate vehicle, or it may require the involvement of multiple family members as IAP-qualified partners or directors across different companies, even where such arrangements do not reflect the actual management structure of the enterprises.

A further concern relates to the interaction between the single-company rule and the territorial scope of agricultural activity. An agricultural entrepreneur who operates farms in different Regions, subject to different climatic conditions, crop types, and regulatory environments, may find that the single-company rule obliges him to structure his operations in a manner that is economically suboptimal, for the sole purpose of ensuring that each company benefits from the agricultural qualification. The rule, in other words, introduces a structural rigidity that may discourage the diversification and expansion of agricultural enterprises.

Notwithstanding these difficulties, the single-company rule also presents risks of circumvention. The formal requirements of the rule can be satisfied through the strategic distribution of IAP qualifications among family members or associates, each of whom attributes the qualification to a different company. While each individual satisfies the formal requirements, the substantive policy objective of ensuring a genuine link between professional qualification and agricultural activity may be

frustrated if the individuals in question do not exercise effective management control over the companies to which they attribute their qualification.

The tension between the preventive function of the single-company rule and its restrictive effects on legitimate agricultural enterprises remains an unresolved issue in Italian agricultural law. Legislative proposals for the reform of the rule have been advanced on several occasions, including proposals to permit the attribution of the IAP qualification to multiple companies subject to an aggregate cap on the total fiscal benefits that may be claimed, but none of these proposals has been enacted into law (Russo, 2010).

3.3 Formal Versus Substantive Qualification: The Risk of Fictitious Agricultural Companies

The distinction between form and substance in the qualification of agricultural companies represents one of the most sensitive issues in contemporary Italian agricultural law. The formal requirements for the constitution of an agricultural company, as set out in Legislative Decree no. 99 of 2004, are relatively straightforward: the company must include the designation agricultural company in its corporate name and must limit its corporate purpose to the exercise of agricultural activities as defined in Article 2135 of the Civil Code. However, the satisfaction of these formal requirements does not, in itself, guarantee that the company is engaged in genuine agricultural activity.

The risk of fictitious agricultural companies (*società agricole fittizie*) arises from the substantial fiscal and financial advantages that attach to the agricultural qualification. The cadastral income regime, the PPC reliefs, the IMU exemption, the special VAT regime, and the preferential access to EU subsidies collectively represent a powerful economic incentive for the adoption of the agricultural company form, even by operators whose actual activities bear little resemblance to genuine agriculture. A company that acquires agricultural land, formally designates its corporate purpose as agricultural, and appoints a director with IAP qualifications may, in certain cases,

obtain the full range of fiscal benefits without engaging in any meaningful agricultural production.

This phenomenon is not merely hypothetical. The Italian Revenue Agency (*Agenzia delle Entrate*) has identified numerous cases of companies that have adopted the agricultural form for the primary purpose of accessing the cadastral income regime or other fiscal benefits, while conducting activities that are essentially commercial or speculative in nature. These cases typically involve companies that acquire agricultural land in areas with high development potential, formally cultivate the land to a minimal extent in order to satisfy the appearance of agricultural activity, and derive the principal economic benefit from the appreciation of the land value or from its eventual conversion to non-agricultural use. (Agenzia delle Entrate, Circolare 50/E, 2010)

The detection and prevention of fictitious agricultural qualifications present significant enforcement challenges. The formal requirements of the agricultural company are verified at the time of registration in the companies register, but the ongoing substantive compliance of the company with the agricultural qualification is subject to less systematic monitoring. The tax authorities conduct periodic inspections, but the resources available for this purpose are limited, and the criteria for distinguishing genuine agricultural activity from nominal or residual activity are not always clear-cut.

The courts have addressed the issue of fictitious agricultural qualifications in a series of decisions that have progressively refined the interpretive criteria. The general principle that emerges from the jurisprudence is that the agricultural qualification must be assessed not merely on the basis of the formal requirements but also with reference to the actual nature and extent of the activity conducted by the company. A company that satisfies the formal requirements but does not engage in genuine agricultural activity of a scope and character consistent with its declared corporate purpose may be denied the fiscal benefits associated with the agricultural qualification, on the ground that the qualification was obtained fraudulently or abusively (Cass., no. 2743/2018).

The risk of fictitious qualifications also extends to the subjective requirement of the IAP designation. As discussed in section 1.3 of this thesis, the IAP qualification is attributed to individuals who satisfy specific professional, temporal, and income requirements. However, the verification of these requirements, particularly the temporal requirement of dedicating at least fifty per cent of working time to agricultural activity, is inherently difficult in practice. An individual who holds a full-time position in a non-agricultural sector may nonetheless claim to dedicate the required proportion of his working time to agricultural activity, particularly if the agricultural enterprise in question is of relatively small scale and does not generate substantial evidence of intensive management activity.

The problem of fictitious qualifications is compounded by the decentralised nature of the verification process. The recognition of IAP status is a regional competence, and the criteria and procedures for verification vary across the different Regions. This fragmentation creates inconsistencies in the application of the qualification requirements and may, in some cases, facilitate the obtaining of IAP status by individuals who do not genuinely satisfy the substantive conditions. A harmonisation of the verification criteria at the national level has been repeatedly advocated by commentators and stakeholders, but it has not yet been achieved (Ferrucci, 2004).

The economic incentives that drive the creation of fictitious agricultural companies can be substantial. A company that acquires a large estate of agricultural land in a region with relatively low cadastral values and applies the cadastral income regime may achieve an effective tax rate that is only a fraction of the rate applicable under the ordinary corporate income tax. When this advantage is combined with the PPC benefits on the acquisition of the land and the IMU exemption, the cumulative fiscal saving may be so significant as to justify the creation of a corporate vehicle for the sole or principal purpose of accessing these benefits.

The Revenue Agency has developed a number of indicators that are used to identify potentially fictitious agricultural companies during tax audits. These indicators include, among others: a disproportionately low ratio of agricultural revenues to the value of the cultivated land; the absence of meaningful investments in agricultural

infrastructure, machinery, or inputs; the presence of directors or partners with no demonstrable agricultural experience or competence; the location of the company's registered office in an urban area remote from the cultivated land; and the absence of agricultural employees or seasonal workers. While none of these indicators is individually conclusive, their cumulative presence may trigger a more detailed investigation of the company's actual activities.

The consequences of a finding that the agricultural qualification was fictitiously obtained are severe. The company may be retrospectively reclassified as a commercial enterprise for tax purposes, with the result that it is required to pay the difference between the taxes already paid under the cadastral income regime and the taxes that would have been due under the ordinary corporate income tax, together with interest and penalties. In the most serious cases, the company's directors may also face criminal prosecution for tax fraud under the provisions of Legislative Decree no. 74 of 10 March 2000 (Putti, 2009).

3.4 Loss of Professional Status and Forfeiture of Tax Benefits: The Five-Year Rule

The fiscal and financial benefits associated with the agricultural company qualification are not unconditional entitlements but rather conditional advantages that are subject to forfeiture in the event of non-compliance with the qualifying requirements. The principal mechanism of forfeiture is the so-called five-year rule, which requires the agricultural company and its IAP-qualified members or directors to maintain the qualifying conditions for a minimum period, typically five years, from the date on which the benefit was first obtained.

The five-year rule operates in different contexts with slightly varying modalities. In the context of the PPC regime for the acquisition of agricultural land, as discussed in section 2.2 of this thesis, the five-year rule requires the purchaser to cultivate the acquired land for a continuous period of five years from the date of purchase. The transfer of the land, or the cessation of its agricultural cultivation, within this period

entails the forfeiture of the fiscal benefit and the obligation to pay the difference between the reduced taxes already paid and the ordinary taxes that would have been due, together with interest and any applicable penalties (Agenzia delle Entrate, Circolare 32/E, 2009).

The forfeiture mechanism is triggered not only by the voluntary cessation of agricultural activity but also by the loss of the qualifying status of the company or its members. If the agricultural company loses its IAP qualification during the five-year period, for instance because the IAP-designated director ceases to satisfy the professional, temporal, or income requirements, the company is deemed to have failed to maintain the qualifying conditions, and the forfeiture of the fiscal benefits follows as a consequence.

The rigidity of the five-year rule has been criticised as excessive in certain circumstances. The death or incapacity of the IAP-designated partner or director, the involuntary loss of cultivated land due to expropriation or natural disaster, and the forced restructuring of the company in response to economic difficulties are all situations in which the forfeiture of fiscal benefits may appear disproportionate to the underlying policy objectives. The legislator has introduced certain exceptions and mitigating provisions for some of these situations, but the general framework remains strict.

A particularly contentious aspect of the five-year rule concerns the consequences of corporate restructuring operations such as mergers, divisions, and transformations. If an agricultural company that has benefited from the PPC regime is absorbed into a non-agricultural company through a merger, the question arises whether the fiscal benefit is forfeited, even if the agricultural activity continues to be exercised within the merged entity. The answer depends on the interpretation of the continuity requirement: some authorities have held that the merger of an agricultural company into a non-agricultural entity constitutes a cessation of the agricultural qualification that triggers forfeiture, while others have adopted a more substantive approach that focuses on the effective continuation of the agricultural activity (Cass., no. 12568/2017). The interaction between the five-year rule and the single-company rule

discussed in section 3.2 adds a further layer of complexity. An IAP who has attributed the qualification to one company and who subsequently wishes to transfer it to another company may find that the transfer triggers the forfeiture of fiscal benefits that were contingent upon the maintenance of the IAP qualification by the original company. This interaction creates a lock-in effect that reduces the flexibility of agricultural entrepreneurs to restructure their operations in response to changing economic conditions.

The severity of the forfeiture mechanism is amplified by the calculation of the amounts due upon forfeiture. In the case of the PPC regime, the forfeited amount corresponds to the full difference between the ordinary and reduced taxes, calculated from the date of the original transaction, together with interest at the legal rate. In cases where the forfeiture is deemed to result from fraudulent conduct, additional penalties may be imposed, potentially amounting to a percentage of the forfeited tax. The cumulative financial impact of forfeiture can be substantial, particularly for companies that have conducted multiple land acquisitions under the PPC regime over a period of years.

The policy tension underlying the five-year rule is between the need to prevent the abusive exploitation of fiscal benefits and the desirability of providing a stable and predictable regulatory environment that encourages long-term investment in agriculture. A balance between these two objectives requires a forfeiture mechanism that is effective in deterring abuse but sufficiently flexible to accommodate legitimate changes in the circumstances of the agricultural enterprise. The current framework, in the view of many commentators, tilts too far in the direction of rigidity, with the result that genuine agricultural operators may be penalised for events that are beyond their control or that do not reflect any intention to exploit the fiscal benefits improperly (Putti, 2009).

3.5 Regulatory Fragmentation and the Absence of a Unified Legislative Framework

The final critical issue to be examined in this chapter is the broader structural problem of regulatory fragmentation that characterises the Italian legal framework governing agricultural companies. Unlike certain other legal systems that have adopted consolidated agricultural codes providing a comprehensive and systematic treatment of agricultural law, the Italian system distributes the regulation of agricultural companies across a multiplicity of legislative instruments, ministerial decrees, regional laws, and administrative circulars that have been enacted over a period of more than seventy years (Tamponi, 2008).

The principal legislative instruments that govern the agricultural company include, at a minimum, the following: the Civil Code of 1942, which provides the general definition of the agricultural entrepreneur under Article 2135; Legislative Decree no. 228 of 2001, which reformed the definition of agricultural activity; Legislative Decree no. 99 of 2004, which introduced the IAP qualification and the agricultural company form; Law no. 296 of 2006, which extended the cadastral income regime to agricultural companies; the successive annual budget laws and decree laws that have modified the fiscal treatment of agricultural operators; Law no. 96 of 2006 on agritourism; the regional laws implementing the national framework on the IAP qualification; and the numerous ministerial decrees and circulars that provide interpretive guidance on the application of these provisions.

This legislative dispersion creates significant challenges for legal certainty and accessibility. An agricultural entrepreneur seeking to understand the full range of obligations and benefits associated with the agricultural company form must consult multiple legislative sources, many of which are subject to frequent amendment, and must also take into account the applicable regional legislation, which may vary significantly depending on the Region in which the enterprise is located. The complexity of the regulatory environment represents a significant barrier to entry for new agricultural entrepreneurs, particularly young farmers who lack the accumulated experience and professional networks of established operators.

The fragmentation of the regulatory framework also generates inconsistencies and gaps in the application of the law. As discussed in the preceding sections of this chapter, the interaction between different legislative instruments can produce unintended consequences, such as the exclusion of capital companies from the pre-emption right despite their full recognition as agricultural operators in all other respects. These inconsistencies reflect the piecemeal nature of the legislative process, in which individual provisions have been enacted in response to specific policy concerns without adequate consideration of their systemic implications.

A further dimension of regulatory fragmentation relates to the vertical distribution of competences between the State and the Regions. Under the Italian constitutional framework, agriculture falls within the residual competence of the Regions pursuant to Article 117, paragraph 4, of the Constitution, as amended by the constitutional reform of 2001. This means that the Regions have primary legislative competence in agricultural matters, subject only to the fundamental principles established by state legislation and the exclusive state competences listed in Article 117, paragraph 2 (which include, inter alia, competition, taxation, and the legal system) (Corte Cost., no. 181/2006).

The resulting allocation of competences is complex and, in some respects, ambiguous. The definition of the agricultural entrepreneur and the general conditions for the agricultural company qualification fall within the exclusive competence of the State, as they pertain to the civil legal system. The fiscal regime of agricultural companies is similarly a state competence, as taxation is reserved to the State under Article 117, paragraph 2, letter e). However, the recognition of IAP status, the implementation of rural development measures, and the regulation of specific agricultural activities such as agritourism fall within regional competence, with the result that the conditions for access to many of the benefits discussed in Chapter 2 of this thesis vary from Region to Region.

This vertical fragmentation has given rise to significant disparities in the treatment of agricultural companies across different Regions. The criteria for the recognition of IAP status, the procedures for verification of the qualifying requirements, the levels

of support available under the Regional Rural Development Plans, and the regulation of connected activities such as agritourism all differ, in some cases substantially, from one Region to another. These disparities can create competitive distortions within the national agricultural market and may discourage the cross-regional expansion of agricultural enterprises (Corte Cost., no. 181/2006).

The absence of a unified legislative framework has been identified by numerous commentators, stakeholders, and institutional actors as a significant obstacle to the effective governance of the agricultural sector. Proposals for the adoption of a consolidated agricultural code (*codice agricolo*) have been advanced on several occasions, most notably in the context of the parliamentary debates surrounding the reform of the CAP and the modernisation of Italian agricultural policy. Such a code would integrate the scattered legislative provisions into a single, coherent instrument, eliminating redundancies and contradictions and providing a clear and accessible reference for agricultural operators, legal practitioners, and administrative authorities (Tamponi, 2008).

However, the prospects for the adoption of a unified agricultural code remain uncertain. The complexity of the subject matter, the multiplicity of institutional actors with interests in the sector, and the sensitivity of the relationship between state and regional competences all represent significant obstacles to legislative consolidation. In the interim, the Italian agricultural company continues to operate within a regulatory environment that, while offering substantial benefits, also demands a high degree of legal expertise and administrative diligence for its effective navigation.

The experience of other European countries offers instructive comparisons. France adopted its *Code rural et de la pêche maritime* in 1955, which has been progressively updated and expanded to provide a comprehensive legislative reference for all aspects of agricultural regulation. The French agricultural code integrates provisions on the status of the agricultural entrepreneur, corporate farming, land transactions, environmental obligations, and rural development into a single, systematically organised instrument that is accessible to practitioners and operators alike. Similarly, Spain has adopted a series of consolidated laws on agricultural modernisation that,

while not constituting a single code, provide a more systematic treatment of the sector than the Italian approach (Jannarelli and Macario, 2019).

The digital dimension of regulatory accessibility has become increasingly important in recent years. The proliferation of online databases, such as Normattiva for Italian legislation and EUR-Lex for European Union law, has facilitated access to individual legislative texts. However, the availability of raw legislative texts does not compensate for the absence of a systematic consolidation that would enable the reader to understand the interrelationships between different provisions and to identify the currently applicable rules without consulting multiple sources and cross-referencing successive amendments.

A related problem concerns the temporal dimension of regulatory change. The fiscal regime applicable to agricultural companies has been modified, in some cases substantially, by virtually every annual budget law enacted in recent years. These frequent modifications create a moving target for agricultural operators, who must continuously update their understanding of the applicable rules and, in some cases, revise their business plans and corporate structures in response to legislative changes. The resulting uncertainty is antithetical to the long-term planning horizon that characterises agricultural investment, where decisions on land acquisition, crop selection, and infrastructure development are taken with a multi-year perspective.

In conclusion, the regulatory fragmentation that characterises the Italian framework for agricultural companies is not merely a theoretical concern but a practical obstacle that affects the efficiency, accessibility, and coherence of the legal system. The adoption of a consolidated agricultural code, while ambitious, would represent a significant contribution to the modernisation of Italian agricultural governance and would enhance the capacity of agricultural companies to operate within a clear, stable, and predictable regulatory environment (Tamponi, 2008).

Conclusion

The present thesis has provided a comprehensive examination of the agricultural company within the Italian legal system, analysing its legislative foundations, the benefits and incentives that characterise it, and the critical issues that condition its practical operation. The analysis has revealed a regulatory framework that, while offering substantial advantages to professional agricultural operators, is marked by significant tensions and unresolved questions that merit consideration in the perspective of future legislative reform.

The first chapter traced the evolution of the concept of the agricultural entrepreneur from the narrow, land-centric definition of the 1942 Civil Code to the broader, biology-centric formulation introduced by Legislative Decree no. 228 of 2001. This reform, together with the introduction of the Professional Agricultural Entrepreneur under Legislative Decree no. 99 of 2004, fundamentally modernised the Italian legal framework, enabling it to accommodate the multifunctional reality of contemporary agriculture. The analysis of the eligible corporate forms demonstrated that the agricultural company qualification can be attributed to a wide range of organisational structures, from the traditional *società semplice* to the modern S.R.L. and the established cooperative form (Germanò, 2016).

The second chapter examined the extensive system of fiscal and financial incentives available to agricultural companies, including the cadastral income taxation regime, the small farming property regime, the IMU exemption, the special VAT regime, access to EU rural development funding, and the specific incentives for young farmers. These benefits collectively constitute a powerful support structure that significantly reduces the fiscal burden on agricultural enterprises and facilitates investment in the modernisation and development of the sector. The analysis demonstrated that the cumulative effect of these incentives is substantial, potentially representing a decisive factor in the economic viability of agricultural enterprises operating in competitive market conditions.

The third chapter addressed the principal critical issues that affect the regulatory framework. The exclusion of limited liability companies from the agricultural pre-emption right, the structural rigidity of the single-company rule, the persistent risk of fictitious agricultural qualifications, the severity of the forfeiture mechanisms, and the pervasive problem of regulatory fragmentation all represent areas in which the current legislative framework falls short of the standards of coherence, proportionality, and accessibility that should characterise a modern legal system.

Several conclusions may be drawn from this analysis. First, the Italian legislator has successfully created a framework that recognises the economic, social, and environmental importance of professional agriculture and provides meaningful incentives for investment in the sector. The extension of the agricultural qualification to corporate forms and the broadening of the definition of agricultural activity represent genuine achievements that have facilitated the modernisation of Italian agriculture.

Second, the benefits associated with the agricultural company qualification, while substantial, carry with them risks of abuse that the current enforcement mechanisms are not fully equipped to address. The phenomenon of fictitious agricultural companies, while difficult to quantify precisely, undermines the integrity of the incentive system and diverts public resources from genuinely professional agricultural operators. A strengthening of the verification and monitoring mechanisms, accompanied by a harmonisation of the criteria for IAP recognition across the Regions, would contribute to the effectiveness of the system (Russo, 2010).

Third, the regulatory fragmentation that characterises the current framework represents not merely an inconvenience but a genuine obstacle to the development of the sector. The absence of a unified legislative reference increases transaction costs, creates barriers to entry, and generates legal uncertainties that may discourage investment. The adoption of a consolidated agricultural code, while politically and technically challenging, would represent a significant step towards a more rational and accessible regulatory environment.

Fourth, the exclusion of capital companies from the agricultural pre-emption right and the rigidity of the single-company rule both reflect an approach that has not fully adapted to the increasing importance of corporate forms in modern agriculture. A legislative revision that extends the pre-emption right to all agricultural companies satisfying the IAP requirements, and that introduces greater flexibility in the attribution of the IAP qualification across multiple companies, would improve the coherence of the system and reduce the incentive for the adoption of inefficient corporate structures.

Looking forward, the Italian agricultural sector faces a series of challenges that will inevitably shape the future evolution of the regulatory framework. Climate change, technological innovation, the digital transformation of agriculture, and the increasing demands of consumers for sustainable and traceable food production all require a legal framework that is capable of adapting to rapidly changing circumstances. The agricultural company, as a legal institution, must be equipped to serve as a vehicle for innovation and investment, rather than merely as a mechanism for the distribution of fiscal benefits.

In this perspective, the path towards a more coherent, proportionate, and forward-looking regulatory framework passes through a combination of legislative consolidation, institutional harmonisation, and substantive reform. The Italian agricultural company has the potential to serve as a powerful instrument for the professionalisation and modernisation of the sector, but the realisation of this potential requires a legislative commitment to addressing the critical issues identified in this thesis with the same determination and vision that characterised the reforms of 2001 and 2004.

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