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RELEVANT
BUSINESS MATTERS

REVIEW OF CASE LAW TAX

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Introduction

We highlight the most relevant rulings of the Court of Cassation and lower courts published during the fourth quarter of 2025 on the topics outlined below, through a summary of the principles of law set out in each ruling.

These are principles and guidelines for interpreting the provisions of the law, the application of which requires examination of the specific case in each instance. For this reason, we are available for any clarification or further information, both with regard to the arguments expressly dealt with and to issues not mentioned in this edition of the review.

Conversion of agricultural land into building land - Failure to notify the owner of the new building permission - Irrelevance - Obligation to declare - Exclusion

Cass. 7.10.2025 n. 26921

The Court of Cassation has provided some clarifications on the subject of ICI (also valid for IMU purposes) with reference to agricultural land that becomes building land following a change in the municipality's general urban planning instrument.

The ruling highlights, first of all, that for the property to be classified as a 'building area' for ICI/IMU purposes, it is sufficient that there is a provision to that effect in the municipality's general urban planning instrument. On the other hand, it is irrelevant that the municipality failed to notify the owner of the area (IMU taxpayer) of the new building permission, as required by Article 31(20) of Law 289/2002. According to the Court of Cassation, this failure to notify does not preclude the property from being considered a 'building area' for IMU purposes under the provisions of the municipality's PRG, nor does it preclude the application of penalties and interest in the event of recovery.

The ruling also specifies that, for land that has become a building area, the taxpayer is not required to submit an ICI/IMU declaration, given that the municipality is already aware of the provisions of its general urban planning instrument.

Direct taxes - IRES - Capital losses, contingent liabilities and losses

Losses on receivables from settlement agreements - Deductibility - Conditions

Cass. 9.10.2025 n. 27096

In the judgment under review, the Supreme Court recognises that the settlement reached with the debtor allows the creditor to deduct the resulting loss, without limits or distinctions depending on the circumstances that caused it.

Therefore, the positive assessment of the deductibility of the loss is based on the consideration of objective facts, which make the taxpayer's decision to settle for an amount lower than the original credit reasonable and justified.

In this context, it is not necessary for the creditor to prove that it has taken positive steps to obtain a judicial declaration of the debtor's insolvency, as it is sufficient that the losses are documented in a certain and precise manner.

Contingent asset – Fictitious liability – Does not exist

Cass. civ. sez. V, 16.10.2025 sentenza n. 27592

With regard to corporate income tax, extraordinary income, pursuant to Article 88(1) of the TUIR, requires the occurrence of an event in a financial year subsequent to that in which it was recorded, capable of extinguishing with certainty the cost or debt recorded. It does not occur simply by recording a debt among liabilities that has not yet been settled in subsequent financial years. Therefore, the recording of a liability in the financial statements, whether by mistake or because it is fictitious, does not result in the recording of a contingent asset in the financial year in which the error is corrected or the fictitious nature is declared or ascertained. On the contrary, the adjustment must be allocated to the financial year in which the negative component was recorded by mistake or falsely.

Concessions - Tax concessions - Tax credit for investments in research and development - Certification for credit - Tax audit initiated - Effects

C.G.T. I Brescia 23.10.2025 n. 789/1/25

Article 23(3) of Decree Law 73/2022 provides that the effect of tax certification, which, within the limits imposed by law, prevents the tax authorities from disallowing the tax credit for research and development, does not apply if the report on findings has been notified.

However, the aforementioned certification, even if obtained after the start of the inspection activities, is an element that must be taken into consideration for the purposes of the tax credit entitlement, given that it comes from a technician authorised by the Ministry of Economic Development (MISE) with

the technical skills necessary to assess the nature of the activities in relation to which the benefit is requested.

VAT – Intra-Community supplies – Evidence

Cass. civ. sez. V, 30.10.2024 ordinanza n. 28081

In order to prove that the goods transferred to a taxable person in another Member State have been the subject of an intra-Community supply, any means of evidence may be offered - and must be assessed by the tax authorities - if the supplier is unable to provide the evidence required by Article 45-bis of EU Regulation 282/2011.

Among the essential requirements for benefiting from the non-taxable regime for intra-Community supplies, Article 138 of Directive 2006/112/EC requires that the goods supplied be dispatched or transported outside the Member State of the vendor to another EU territory. However, the rule does not make the granting of non-taxability conditional on the transferor 'being in possession of specific evidence'.

To this end, Article 45a of Regulation No 282/2011 is helpful, as it establishes certain related presumptions.

However, this provision "does not exhaustively list the evidence required to prove the existence of an intra-Community supply." On the other hand, if sellers were unable to rely on additional and different elements, those who do not have the documentation required by the law would be deprived of the favourable regime even if the intra-Community supply had 'actually taken place'. Thus, the income from the shareholding constitutes his personal income, regardless of the failure to account for the revenues and the methods used by the company to generate them.

Penalties – Untruthful declaration – Undue compensation – Non-cumulability

Cass. civ. sez. V, 5.11.2025 ordinanza n. 29292

The penalty for undue compensation cannot be considered absorbed by the penalty for false declaration, as the two penalties punish distinct conduct.

In fact, 'it is one thing to draw up an untrue declaration, but it is quite another to offset the tax credit deriving from the untrue declaration and found to be non-existent'.

Issuance of a second assessment – Same year – Admitted

Cass. civ. sez. V, 10.11.2025 ordinanza n. 29604

The Revenue Agency may, within the limitation period, amend defects of legitimacy in a tax assessment by notifying a further one.

However, the second act must mention the cancellation of the first, also due to the prohibition of double taxation.

IMU – Exemption – Commercial properties – Disclosure in tax return

Cass. civ. sez. V, 16.11.2025 ordinanza n. 30219

Buildings constructed and intended for sale by the construction company (so-called commercial properties) are exempt from IMU, as long as they remain intended for sale and are not leased, pursuant to Article 2(2) of Decree Law 102/2013 (in force for the years in question; similarly, Article 1(751) of Law 160/2019, which provides for exemption from 1 January 2022).

In order to be granted exemption from IMU pursuant to Article 2(2) of Decree Law 102/2013, a specific indication must be made in the IMU declaration, under penalty of forfeiture of the benefit, pursuant to Article 2(5-bis) of Decree Law 102/2013.

The Court of Cassation reiterates that the IMU declaration must be submitted, under penalty of forfeiture of the relief for commercial properties, even if the municipality is already aware of the circumstances giving rise to the IMU exemption.

Properties - First home benefits - Conditions for benefits - Property characteristics - Cadastral category - Irrelevance of urban planning designation

Cass. 25.11.2025 n. 30921

In the ruling under review, the Supreme Court clarifies that, for the purposes of applying the 4% VAT rate provided for in No. 21 of Table A, Part II, attached to Presidential Decree 633/72 for the sale of dwellings with the characteristics of a 'first home' (referred to in Note II-bis to Article 1 of the Tariff, Part I, attached to Presidential Decree 131/86), the cadastral classification of the property at the time of the deed is relevant, 'the urban planning designation of the land' on which it is built being irrelevant.

Therefore, in the case in question, the Court upheld the taxpayer's appeal against the judgment on the merits which, confirming the Revenue Agency's argument, had held that the 4% rate could not be applied to the building, classified in the cadastral register as A/2, as it was located 'on land situated in an area

Uncollected rent - Taxability - Business income

Cass. civ. sez. V, 26.11.2025 ordinanza n. 30985

With regard to business income, revenue from rent must be considered as earned, pursuant to Article 109(2)(b) of the TUIR, on the date on which it accrues.

Until the contract is terminated, rental fees cannot be classified as positive components whose existence or amount is uncertain, regardless of whether they have actually been paid.

Judicial functions - Insolvency proceedings prior to Legislative Decree 14/2019 - Bankruptcy

Declaration of bankruptcy - Overdue debts - Instalment payment of tax debts - Exclusion

Cass. 27.11.2025 n. 31073

The novative effect of the instalment payment of tax debts is excluded for the purposes of calculating 'overdue and unpaid debts' for the declaration of bankruptcy.

The acceptance of the instalment payment request by the Revenue Agency-Collection does not exclude that, for the purposes of calculating the minimum debt exposure provided for in Article 15(9) of Royal Decree 267/42, the entire amount of the tax debt entered in the register must be taken into account as an overdue and unpaid debt.

Such acceptance, pursuant to Article 1231 of the Italian Civil Code, does not entail any novation, either of the title or of the object of the obligation, but merely concerns the possibility of paying the amount due through partial and periodic instalments, with the Agency retaining the right to take enforcement action in the event of failure to comply with the instalment plan granted, for the immediate recovery of the entire remaining amount (Cass. No. 4201/2025).

Double taxation agreements – Withholding tax on dividends – Exemption – Beneficial owner

Cass. civ. sez. V, 12.12.2025 ordinanza n. 32467

The Court of Cassation returns to the beneficial owner clause referred to in Article 27-bis, paragraph 5, of Presidential Decree 600/73, regarding the failure to apply, pursuant to Article 10, § 2, letter a) of the Italy-Denmark Convention, withholding tax on dividends paid in 2011 by the Italian subsidiary to its Danish shareholder, which in turn is owned by the US parent company.

Unlike the conclusion reached in Order No. 32149/2025 (concerning 2008), in the new order, the Supreme Court denied that the Danish sub-holding company was the beneficial owner or the actual owner, identifying instead the US parent company as such, with the consequent application of the 5% withholding tax pursuant to Article 10 of the Italy-US Convention.

The Danish company did not have material and legal availability of the dividends received by the Italian subsidiary ("dominion test"), as these were pooled in a common fund; furthermore, the Danish company did not actually carry out any economic activity, not even that typical of a so-called "pure" sub-holding company, and, lastly, the effective management of the European division originated from the US company.

Partnerships – Tax credits – Allocation to partners

Cass. civ. sez. V, 16.12.2025 sentenza n. 32848

With regard to tax credits accrued by a partnership, by virtue of the principle of transparency referred to in Article 5 of the TUIR (Consolidated Income Tax Law), it is permissible to allocate such credits, in whole or in part, to the partners in proportion to their shares, as this does not constitute a transfer in the strict sense but only a particular form of use of the credits.

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