



RELEVANT
BUSINESS MATTERS

CASE LAW REVIEW TAX

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Introduction

We highlight the most significant rulings of the Court of Cassation published during the first quarter of 2026 regarding the topics outlined below, through a summary of the legal principles set out in each judgment.

These are principles and guidelines for the interpretation of legal provisions, the application of which requires, in each case, an examination of the specific circumstances. For this reason, we are available to provide any clarification or further information, both in relation to the arguments expressly addressed and regarding issues not mentioned in this edition of the review.

Registration tax - General principles - Interpretation of deeds Reclassification of the lease agreement - Establishment of a surface right - Extra-textual elements

Cass. civ. Sez. V, 20.1.2026 n. 1151

The Court of Cassation, by Order No. 1151 of 20 January 2026, ruled that the Revenue Agency was entitled, for the purposes of registration tax, in interpreting a contract described by the parties as a 'lease of agricultural land, establishment of a surface right and sale', based solely on the content of the deed itself, reclassified it as the establishment of a surface right. In the present case, a deed containing three legal transactions (lease of agricultural land, establishment of a surface right and easement, and sale of a plot) had been submitted for registration - and taxed as a lease agreement. The Revenue Agency had reclassified the deed as the establishment of a surface right, also taking into account the fact that the true purpose pursued by the surface right holder was to construct a photovoltaic plant. The Regional Tax Commission had, however, deemed the reclassification to be unlawful, as it was contrary to Article 20 of Presidential Decree 131/86. The Court of Cassation quashed the appeal court's decision, holding that, in the present case, the reclassification was based exclusively on elements 'inferred from the deed, considered in the context of the various contractual transactions summarised therein' and was therefore lawful even in the light of Article 20 of Presidential Decree 131/86.

Substitute self-protection - New deed

Cass. civ. sez. V, 21.1.2026 ordinanza n. 1284

Where the tax authorities have made an error in specifying the penalties and neither the limitation period for the assessment of the individual tax has expired nor has a final judgment been handed down, they may lawfully annul the defective tax assessment on the grounds of both formal and substantive defects and issue, in its place, a new assessment imposing a higher penalty.

This is because the requirement of 'subsequent discovery of new facts' does not apply to the measure issued as a substitute self-protective measure, even if it results in a higher tax liability.

Company law - Limited liability companies - Management - Directors' liability Joint and several liability of shareholders - Conditions

Cass. civ., Sez. V, ord. 21.1.2026 n. 1358

In the order under review, the Court of Cassation held that, pursuant to Article 2476(8) of the Civil Code, a non-director shareholder of a limited liability company is not jointly and severally liable with the director for any act of '*mala gestio*' attributable to their status as 'owner' of the company, but only for conduct which, at the same time:

- can be classified as 'management actions';
- influence the directors in the management act that was decided upon, implemented and subsequently proved to be harmful.

With particular reference to the subjective element, the Supreme Court specifies that a shareholder may be jointly and severally liable with the director for damages caused by the latter to the company, the shareholders or third parties through acts of '*mala gestio*' only to the extent that the shareholder has decided, knowingly and consciously, to interfere, through his own conduct, in the management of the company, in concert with the formal directors.

Direct taxes - General provisions - Application of tax to non-residents Royalties - Conventional withholding tax - Concept of beneficial owner - Evidence

Cass. civ. Sez. V, 25.1.2026 n. 1635

In the decision under review, the Supreme Court of Cassation reiterates that the general clause of international tax law relating to the status of "beneficial owner" is intended to prevent individuals from abusing tax treaties through *treaty shopping* practices with the aim of securing treaty protection for taxpayers who would otherwise not have been entitled to it or who would have been subject to a less favourable tax treatment.

Treaty shopping involves exploiting differences in the treaties concluded between various nations by inserting a person resident in a third country (conduit) into the flow of income between the source state and that of the beneficial owner.

The introduction of the clause in question in Article 10 of the OECD Model allows the taxing rights of the source state (in this case Italy) to be limited only where the actual recipient of the dividends (beneficial owner) is resident in the other contracting state.

That said, the Supreme Court confirms that determining the status of "beneficial owner" for the purposes of applying the 5% withholding tax, as provided for in Article 12 of the Italy-Germany

Convention, on royalties paid by an Italian company to its German subsidiary for the use of the group's trademark and *know-how* requires a three-step test:

- the "*substantive business activity test*", designed to verify that the receiving company carries out an actual economic activity and is not an artificial arrangement;
- the '*dominion test*', which assesses the company's ability to freely dispose of the income received, without any obligation to pass the income stream on to a third party, which occurs when the company acts as an intermediary;
- the '*business purpose test*', which verifies the economic reasons for the receiving company's interposition in the revenue stream (in the case under analysis, this was demonstrated by the fact that the non-resident company retained a significant portion of the dividends for itself, without any obligation to transfer them to third parties).

In the present case, according to the Supreme Court, the trial judges had not adequately carried out the so-called '*dominion test*', merely ruling out the German company's status as an intermediary on the grounds that it employed around 360 staff and had made substantial investments in its activities as a manufacturer and distributor on the German market. According to the Supreme Court, however, the actual existence of an entity and its concrete operations do not preclude its role as an intermediary in the receipt of royalties intended for a third party resident in another State (other than OECD contracting States).

Direct taxes - Common provisions - Credit for taxes paid abroad

Tax consolidation - Return omitting foreign income - Entitlement to the credit

Cass. civ. Sez. V, sent. 26.1.2026 n. 1651

In the judgment under review, the Supreme Court of Cassation recognised the entitlement to a deduction for foreign taxes even for a company that generated foreign income but did not report it in section GN for the purposes of its transfer to the tax consolidation scheme and, similarly, failed to indicate in the same section the tax surpluses that gave rise to the credit.

In the Court of Cassation's view, in fact:

- the wording of Article 165 of the TUIR does not provide for forfeiture linked to irregularities in the tax return;
- even in cases where the failure to report foreign income in the tax return is deemed relevant for these purposes, this would be superseded by the Convention binding Italy to the other State, which does not provide for restrictions linked to reporting obligations;
- the refund application submitted to recover the tax credit provides the Revenue Agency with the information needed to assess the conditions under which the tax credit is due and the method of quantifying it.

Tax proceedings – Expert report – Indirect evidence

Cass. civ. sez. V, 28.1.2026 ordinanza n. 1994

In tax proceedings, an extrajudicial expert report, including one of an estimative nature, constitutes a defence submission of a technical nature and therefore has no probative value but only circumstantial value.

In other words, ‘an extrajudicial expert report, even if sworn, does not constitute full proof, but has the value of a mere defence submission of a technical nature’.

Tax-paying capacity – Presumptive recognition of costs – Inductive assessment

Cass. civ. sez. V, 29.1.2026 ordinanza n. 1974

With regard to the assessment of income, any inductive assessment, whether analytical-inductive or purely inductive, must recognise the flat-rate costs presumed to have been incurred in generating the income attributed to the taxpayer, so that the mechanism for determining income based on presumptions complies as closely as possible with the principle of ability to pay.

This principle “requires the Tax Authorities, and in their absence the court, not to tax the higher presumed revenues gross of the associated costs, but to proceed with the determination of the latter, even on an inductive or flat-rate basis, in order to ensure compliance with the constitutional principle of ability to pay”.

Limited partnership – Tax liability of the general partner

Cass. civ. sez. V, 5.2.2026 ordinanza n. 2470

The limited partner of a limited partnership is liable for the partnership’s debts only to the extent of the capital contributed, pursuant to Article 2313 of the Civil Code.

This rule also applies in the tax sphere, to the company’s tax liabilities such as stamp duty.

The aforementioned Article 2313 of the Italian Civil Code, “by limiting the limited partner’s liability for the company’s obligations to the capital contribution, does not authorise the company’s creditors, including the tax authorities, to take direct action against him, as this provision is limited to regulating internal relations within the company”.

Conversely, “once the company has been wound up, the limited partner may be held liable within the limits of the liquidation share pursuant to Article 2324 of the Civil Code”.

Voluntary correction – Undue payments – Refund

Cass. civ. sez. V, 14.2.2026 sentenza n. 3346

When a taxpayer avails themselves of voluntary disclosure, they must rectify the breach and pay the taxes, statutory interest and reduced penalties.

If, having paid the sums, the taxpayer considers that they have not committed any infringement:

- they cannot claim a refund of the sums paid as penalties unless they can demonstrate that they made a fundamental and recognisable error;
- they may claim a refund of the taxes and interest, as this is not a negotiated declaration but a declaration of knowledge.

Assessment - Classification of income - Powers of the court

Cass. civ. sez. V, 16.2.2026 ordinanza n. 3395

Any erroneous or imprecise classification of income contained in the tax assessment notice does not in itself render the notice of assessment null and void, but merely imposes a duty on the court to proceed with the correct legal classification of the relevant facts for the purposes of identifying the taxable event on the basis of the findings of the proceedings.

It is therefore sufficient for the tax authorities to identify the facts constituting the tax claim, as it is then the judge's task to identify, where contested, the correct income category on the basis of the evidence gathered during the proceedings.

Fictitious interposition - Company income attributed to shareholders - Conditions

Cass. civ. sez. V, 19.2.2026 ordinanza n. 3728

Non-existent company costs and revenues are attributed to the company's shareholders (natural persons) where the company is considered an intermediary entity.

The burden of proof regarding the control of the intermediary company by the controlling party rests with the tax authorities and "does not relate to the constituent elements of the intermediary arrangement; what matters is that the person against whom the assessment is directed is the actual owner of the income through the intermediary".

This is because the purpose of the rule is to prevent the actual holder from evading tax by concealing their identity as a taxpayer from the tax authorities.

Notification of full acceptance of the refund - Subsequent partial payment of the amounts

Cass. civ. sez. V, 24.3.2026 sentenza n. 7050

Following a taxpayer's claim for a refund, the mere partial payment of the amounts constitutes, albeit implicitly, an express refusal regarding the remaining portion, which must be challenged within sixty days of the partial payment itself.

However, if, following a formal notification of full acceptance of the refund, only a portion is paid out, the time limits for challenging the express refusal commence from the moment the taxpayer becomes aware that, contrary to what was announced, there has been a partial refusal.

Trust – Deed of Endowment – Application of Gift Tax – Exemption

Cass. civ. sez. V, 25.3.2026 ordinanza n. 7161

For the purposes of applying gift tax, it is essential that there be an actual and effective, stable and definitive transfer of assets. Such a transfer cannot be identified at the time of the trust's establishment and its deed of endowment, which are entirely incapable of expressing a genuine transfer of wealth, which would be indicative of taxable capacity and, therefore, subject to tax. Such a transfer of wealth is only intended to materialise upon the implementation of the contractual programme inherent in the purpose of the trust, with the asset allocations – possibly staggered over time – provided for therein.

The same principle must also be applied in the present case, which concerned a trust having a 'substantially managerial purpose' and characterised by the specific provision for possible asset allocations, during the life of the trust, in favour of the beneficiaries. It remains true, even in this case, that the only benefit present at the time of the trust's creation and endowment is the mere segregation with a view to a 'specific financial outcome', the subsequent achievement of which may, where applicable, constitute the basis for the application of gift tax.

Informal notice – Appealability – Failure to appeal

Cass. civ. sez. V, 25.3.2026 ordinanza n. 7226

A friendly notice issued following a formal check of the tax return is a decision that may be challenged, but only on an optional basis.

Where the taxpayer does not lodge an appeal against such a notice, this does not prejudice the right to defend the merits of the case against the subsequent tax demand.

Value Added Tax – Carrying out multiple activities by the same person

Option for separate application of tax – deduction of VAT relating to goods used for mixed purposes

Cass. civ., Sez. V, sent. 31.3.2026, n. 7899

The case examined by the Supreme Court concerns the rules governing and the determination of the right to deduct VAT on costs relating to goods used for mixed purposes in the conduct of two activities, one subject to VAT (leasing activity) and the other exempt (the bank's financial activity), for which the company opted to keep separate accounts.

The Supreme Court reiterates (on the basis of general principles of national and EU law, as interpreted by the relevant case law) that the mixed use of assets, instrumental to distinct economic activities (sometimes subject to VAT exemption, sometimes subject to VAT), consequently affects the deductibility of the tax paid on costs incurred for the exercise of those activities. This is a necessary

consequence of the principle of neutrality, and it is governed by the rule of partial, or if you will, 'split' relevance of the transaction, according to the pro-rata mechanism, which is essentially regulated by Articles 19-bis and 36 of Presidential Decree No. 633 of 1972.

In a nutshell, the Supreme Court was called upon to rule on the criterion to be used, in a situation such as the one outlined, to determine the deductible VAT on costs relating to goods used for mixed purposes, without violating the principle of tax neutrality.

In reiterating that "the standard criterion for determining the pro-rata share remains that of the total turnover for each of the activities carried out with separate accounts, which generally corresponds to turnover in the broadest sense of the term", it also acknowledges that it is possible to identify a more precise criterion for determining turnover, the correctness of which must be assessed by the trial court, without prejudice to the mandatory nature of the principle of tax neutrality.

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