CIRCULAR – CASE LAW REVIEW 19/2026

31/07/2026

RELEVANT
BUSINESS MATTERS

CASE LAW REVIEW
TAX

EDITED BY
LUIGI MELLONI
ELIANA RIZZI
ALBERTO VICENDONE

TAX LEGAL AFC ADVISORY
VIA AVOGADRO, 12/A – 10121 TURIN – ITALY T. +39 011 55 67 222 – INFO@RLVT.IT

WWW.RLVT.IT

Introduction

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

These are principles and guidelines for the interpretation of statutory provisions; their application must in all cases be assessed on a case-by-case basis. For this reason, we are available to provide any clarification or further details, both in relation to the arguments expressly addressed and regarding issues not mentioned in this edition of the review.

Substitute self-defence – New ruling
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 judgement been handed down, they may lawfully annul the flawed 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 a measure issued as a substitute under the tax authority's own powers, even if it results in a higher tax liability.

Limited partnership – Tax liability of the limited 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, in accordance with Article 2313 of the Civil Code. This rule also applies in the tax sphere, to the partnership's tax liabilities such as registration tax.
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 made, does not authorise the company's creditors, including the tax authorities, to take direct action against the limited partner, as this provision is limited to governing internal relations within the company".
Conversely, "once the company has been struck off the register, 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 the voluntary disclosure scheme, they must rectify the breach and pay the taxes, statutory interest and reduced penalties.

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

- they may not 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 based on knowledge.

Tax 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 carry out the correct legal classification of the factual elements relevant 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; it is then the judge's task to determine, where contested, the correct category of income 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 regarded as 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 holder of the income through an intermediary".

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

Notification of full approval 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 formal notification of full approval of the refund, only part of it is paid out, the time limits for challenging the express refusal begin to run from the moment the taxpayer becomes aware that, contrary to what was announced, there has been a partial refusal.

Trust – Deed of Settlement – 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 recognised at the time of the trust's establishment and the execution of its deed of endowment, which are entirely incapable of constituting a genuine transfer of wealth – which would indicate the capacity to pay tax and, therefore, be taxable. Such a transfer of wealth is only set to materialise upon the implementation of the contractual programme inherent in the purpose of the trust, through the allocations of assets – which may be staggered over time – provided for therein.

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

Informal notice – Appealability – Failure to lodge an 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 raise a defence on the merits against the subsequent tax demand.

Relationship between criminal and tax proceedings – Dual track – Final criminal judgment of acquittal
Corte Costituzionale 13-4-2026, n. 50

In the judgment under review, the Constitutional Court declared unfounded the questions of constitutional legitimacy raised in relation to Article *21-bis* of Legislative Decree No. 74 of 2000 – introduced by Article 1 comma 1, lett. m) of Legislative Decree 87/2024 – which confers the force of res judicata in tax proceedings on an irrevocable criminal acquittal handed down following a trial using the formulations *'the offence does not* exist' or *'the defendant did not commit it'*. Whilst confirming the legitimacy of the legislature's decision to set aside the principle of dual proceedings in favour of a taxpayer acquitted in criminal proceedings – thereby recognising that a final criminal acquittal always has the force of res judicata in tax proceedings – the Constitutional Court has, however, excluded such effect where:

- the tax proceedings concern cases based on typical legal presumptions, unless the criminal acquittal was handed down following a finding that the offence did not exist;
- the criminal acquittal was handed down solely because the evidence was inadmissible in the criminal proceedings, even though it is admissible in the tax proceedings as it was obtained in accordance with tax rules.

Returnees – Italian citizens – Period spent abroad – Requirements
Cass. civ. sez. V, 15.4.2026 ordinanza n. 9597

The case concerns an Italian citizen, who was never registered with the AIRE, who returned to Italy in 2017 after working in China for a period exceeding 24 months, and who submitted an application for a refund following the introduction of the so-called 'AIRE amnesty' (Article 16 co.5-ter of Legislative Decree 147/2015), believing he met the requirements to qualify for the relief provided for in Article 16 co. 2 of Legislative Decree 147/2015 (EU citizenship, holding a university degree and having worked abroad for 24 months with conventional residence for the same period).

In confirming the refusal to grant a refund, the Court of Cassation noted that Article 16 co.1 of Legislative Decree 147/2015, in force at the time of the events, required, for the purposes of the relief, a minimum period of prior residence abroad of five years, and considered the classification of the individual as one of the persons referred to in paragraph 2 to be unfounded.

In particular, the Supreme Court appears to question whether Italian citizens can be included amongst the EU citizens entitled to the benefit provided for in paragraph 2, given that, if so, this would result in the implicit repeal of the requirement for prior residence abroad set out in Article 16 co. 1 lett.a) of Legislative Decree 147/2015. Conversely, according to the Court of Cassation, a person (in this case, an Italian citizen) who has returned from China, even if in possession of a degree and meeting the other requirements set out in Article paragraph 2, would not be eligible for the tax relief as the requirement for five years' residence abroad has not been met.

Capital gains – Tax cost of shareholdings – Payments into an account for a future capital increase – Irrelevance
Cass. civ. sez. V, 15.4.2026 ordinanza n. 9629

The present case concerns a company that had resolved to participate in the capital increase of its investee by waiving a claim it held against the latter.

It should be noted that payments made by a shareholder to the company in anticipation of a future capital increase, conditional upon the adoption of the relevant capital increase resolution within a specified period, in the event that the resolution is not adopted, give rise to an obligation on the part of the company to repay the amount paid by the shareholder for that purpose, since in such a case the payment constitutes a potential capital increase, intended to become effective only following the adoption of the capital increase resolution.

A payment on account of a future capital increase refers to sums of money provided by shareholders to the company which are not definitively incorporated into the company's assets, as they are subject to a specific restriction on their use. Therefore, should the capital increase not take place, the shareholder will be entitled to a refund of the amount paid, as the justifying cause for the transfer of assets made by them to the company has ceased to exist, constituting a claim for the recovery of an undue payment.

This circumstance leads the courts to regard such a payment as irrelevant for the purposes of determining the tax cost of the shareholding being disposed of as part of a business and which, in the present case, benefits from the PEX regime (Article 87 of the TUIR).

Relevance – Intra-group services – Evidence
Cass. civ. sez. V, 21.4.2026 ordinanza n. 10456

According to the Supreme Court, with regard to business relevance under Article 109 of the TUIR, neither a mere formal indication of the fixed percentage of costs contained in a framework agreement valid for several financial years, nor the mere existence of signed consultancy contracts, nor the absence of qualified staff at the client company, can be deemed sufficient for the purposes of deducting the cost of intra-group consultancy.

Instead, it is held that proof is required of the specific costs incurred in relation to the transactions actually carried out during the relevant tax period (in this regard, see also Supreme Court judgment No. 3750 of 13 February 2025).

Consequently, the production of the contract relating to the services provided and the invoicing of the fees are not considered sufficient; rather, the specific elements necessary to determine the actual or potential benefit derived by the subsidiary receiving the service must also be clearly demonstrated.

Tax proceedings – Nullity of the judgment – Public hearing
Cass. civ. sez. V, 24.4.2026 ordinanza n. 11011
In tax proceedings on the merits, the hearing of the appeal in chambers, rather than at a public hearing, following a request by one of the parties pursuant to Article 33 of Legislative Decree 546/92, constitutes a procedural nullity that renders the subsequent judgment void on the grounds of a breach of the right to a fair hearing, as it is not necessary for the party to allege or prove the existence of any specific prejudice suffered as a result of the failure to hold the said public hearing.

Sponsorship costs – Jurisdiction
Cass. civ. sez. V, 29.4.2026 ordinanza n. 11789
The cost incurred in connection with a motor racing sponsorship contract forms part of income, pursuant to Article 109 co. 2 of the TUIR, in the tax year in which the sponsored race (in this case, the Lisbon–Dakar rally) concludes, regardless of whether the due date for the relevant payment was set in the previous financial year.
In the present case (in which, moreover, the sponsorship contract covered three races and the relevant consideration had been divided into instalments accordingly), the Supreme Court:
- upheld the appeal by the Italian Revenue Agency, according to which, for the purposes of allocating the cost over time, what mattered was not the moment when the race gained 'media coverage', but rather the moment when it concluded with the arrival of the cars (and, therefore, the sponsorship service – in this case, the promotion of the appellant's brand – could be considered completed); and,
- quashed the judgment of the Regional Tax Court, which had, on the contrary, held that it was correct to allocate the cost to the tax period preceding that in which the race had concluded, on the assumption that 'both the contractual relationship and its performance' were attributable to that period, 'which must not be confused with the end of the advertising effect linked to the completion of the last sponsored race'.

Direct taxes – IRES – General rules on business income – Relevance
Contractual penalties – Deductibility – Conditions
Cass. civ., sez V, ord. 3.5.2026 n. 12400
In the ruling under review, the Supreme Court held that, although contractual penalties, agreed pursuant to Article 1382 of the Civil Code, are normally deductible from business income as a cost

inherent to the business, this principle does not apply absolutely. Deductibility may, in fact, be disallowed if the tax authorities provide a solid body of evidence, based on simple, serious, precise and consistent presumptions, from which the manifest uneconomic nature and unreasonableness of the economic transaction as a whole emerges. In such circumstances, the glaring disproportion or economic illogicality of the agreement serves as an indicative factor of the cost's lack of relevance to the business. In such cases, it is the taxpayer who must rebut the presumption and provide suitable evidence to demonstrate the economic rationality and consistency of their management decisions with the business activity.

Tax assessment – Withholding tax – Interest and other capital income
Interest on shareholder loans – Application of domestic rules in lieu of contractual provisions – Conditions
Cass. civ., sez. V, Ord. 10.5.2026 n. 13519

In the judgment under review, the Supreme Court held that if domestic legislation provides for a more favourable rate of withholding tax for non-residents than that set out in the corresponding provisions of double taxation treaties, the withholding tax must be applied in accordance with domestic legislation.

In the specific case, the 12.50% withholding tax under Article 26(5) of Presidential Decree 600/73, in force at the time of the events (2009), was deemed applicable to interest on loans paid to the shareholder resident in Belgium, as this rate was lower than the 15% rate provided for in Article 11 of the Italy-Belgium Double Taxation Convention for income of the same nature.

The second-instance decision was therefore deemed to be incorrect, as it held that Article 169 of the TUIR (under which the provisions of the TUIR itself apply in derogation from the provisions of the treaty, if more favourable to the taxpayer) did not apply to the position of the withholding agent.

Registration tax – Taxable base
Annex to the main dwelling – Deed of sale – Registration tax – Price or value – Physical distance between the annex and the main property – Irrelevance
Cass. civ., sez. V, Ord. 10.5.2026 n. 13553

In the judgment under review, the Supreme Court held that *"with regard to registration tax, the classification of a property as an appurtenance to the main residence requires a comprehensive assessment of all the elements of the case, as it is necessary to ascertain the existence of a lasting link whereby the ancillary property is intended to serve or adorn the main property, in the light of both objective and subjective factors, since mere formal or cadastral data is not* sufficient"; furthermore, *"the physical distance between the main property and the property alleged to be an appurtenance does not constitute a decisive factor for the purposes of excluding the appurtenance relationship, provided it is* *not unreasonable; it must be assessed in conjunction with other relevant factors – such as the functional and intended use of the properties – in accordance with a comprehensive assessment criterion and the principles governing indirect taxation*".

In the present case, the Supreme Court quashed the appeal judgment and remanded the case, as the appeal court – in relation to the sale of a plot of land described by the purchaser as an appurtenance to the main residence already in his ownership – had denied the applicability of the preferential regime for determining the registration tax due, citing the distance (500 metres) between the plot of land and the main residence as excessive and, therefore, on the exclusion of the 'appurtenance' status.

Tax assessment – Administrative tax penalties – Offsetting of non-existent tax credits
Tax credit non-transferable to third parties by law – Non-existence
Cass. civ., sez. V, Ord. 15.5.2026 n. 14425

In the judgment under review, the Supreme Court held that a credit set off in the face of a statutory prohibition on the transfer of that credit must be classified as a non-existent credit and not as one to which the taxpayer is not entitled (with the consequence that penalties may be imposed at a higher rate and the Revenue Agency has a longer period of time in which to exercise its taxing powers and thus issue the notice aimed at recovering the amount).

In particular, according to the Supreme Court, a claim is deemed non-existent not only when the prerequisite for the claim itself is lacking, but also when the claim is utilised by a party other than the one entitled to the set-off.

IRES – IRAP – Transfer Pricing and the Burden of Proof
Transfer pricing – Methods for determining arm's length value – Criteria for adoption
Cass civ., sez. V, ord. 22-5-2026, 15698

With regard to transfer pricing, the OECD methods (CUP, cost-plus, resale price, TNMM, profit split) are not ranked in a hierarchical order; rather, the principle of 'the method most appropriate to the specific case' applies; however, where the comparable uncontrolled price (CUP) method is applicable with the same degree of reliability as other methods, it must be preferred (Article 4 co. 3 of the Ministerial Decree of 14 May 2018). It follows that, should the trial judge endorse the tax authority's decision to use the TNMM in place of the CUP proposed by the taxpayer, the judge must provide specific reasons: why the CUP is not practically applicable or is less reliable in the present case; and why the TNMM is, by contrast, suitable, taking into account the identification of comparable companies, the adjustments made and the differences in functions, risks and markets.

Registration tax – General principles – Interpretation of documents
Total disposal of shareholdings – Reclassification as a transfer of a business – Exclusion
Cass. civ., sez. V, Ord. 13.6.2026 n. 19706

In the judgment under review, concerning a case in which the total transfer of shareholdings was reclassified by the Revenue Agency as a transfer of a business pursuant to Article 20 of Presidential Decree 131/1986, and consequently the proportional registration tax was recovered, the Supreme Court set out the following principles of law:

- for the purposes of the correct application of Article 20 of Presidential Decree 131/86, *"the process of classifying the intrinsic content of the deed must be carried out by considering, on the basis of an independent analysis, its intrinsic nature and the legal effects produced by the deed itself, and not the economic effects that may also arise from* it";
- *"The transfer of the entire shareholding does not give rise to the legal effects characteristic of a business transfer, differing from it in terms of subject matter and governing provisions, as it involves not the transfer of an organised entity but rather a specific status (that of a shareholder) and is subject by law to a fixed-rate registration tax, not least due to EU obligations*".

In another ruling issued on the same day (Civil Court of Cassation, Section V, Order No. 19709 of 13 June 2026), the Supreme Court, in accordance with its established position and with the rationale underlying the amendment to the aforementioned Article 20 introduced by Law 205/2017, reiterated that where the adoption of a legal transaction can be justified on grounds other than the mere achievement of tax savings, the burden of proof rests with the tax authorities *"both as regards the evasive scheme and the methods of manipulation and alteration of standard contractual arrangements, considered unreasonable in normal market logic and pursued solely to achieve that tax* outcome"; by contrast, the burden rests with the taxpayer to "demonstrate the existence of alternative or concurrent economic reasons justifying transactions structured in that way".

In particular, according to the Supreme Court, the abusive nature of a transaction must be ruled out where a non-marginal co-existence of non-tax-related reasons can be identified.

Usufruct – Bare ownership – Depreciation – Value
Cass. civ. sez. V, 14.6.2026 ordinanza n. 19776

With regard to a case in which the taxpayer company had transferred bare ownership of a property, whilst retaining the right of usufruct for 12 years, the Supreme Court held that the value of the usufruct (relevant for calculating the corresponding annual depreciation allowance deductible for IRES and IRAP purposes) should not be determined according to the calculation criteria laid down for registration tax purposes, but rather on the basis of the difference between the purchase cost of the property and the consideration received for the transfer of bare ownership.

Furthermore, given that the depreciation allowances for usufruct rights "are deductible in an amount corresponding to the period of use provided for in the contract" (Article 103 co.2 of the TUIR), the value of the usufruct had to be allocated on the basis of its duration (in this case, 12 years), as provided for in the contract of sale.

Write-down of shareholding – Composition with creditors – Not deductible
Cass. civ. sez. V, 16.6.2026 ordinanza n. 20202

The Court of Cassation ruled that the write-down of a shareholding in a company admitted to the composition-with-creditors procedure was not deductible, as no realisation had taken place in the present case.

In the judges' view, the reference to Article 101 co. 5 of the TUIR (concerning losses on receivables) made in the taxpayer's appeal – proposing a broad interpretation of the provision aimed at treating the write-down of the shareholding as a loss on receivables, and therefore deductible – is not relevant. This is because the analogous application of favourable tax provisions, such as that concerning the deductibility of losses, is precluded. The case in question, however, concerns a negative item arising from a valuation process in respect of which non-deductibility is expressly prescribed (Articles 94 and 110 co.1 lett. d) of the TUIR).

CONTACT

LUIGI MELLONI
LUIGI.MELLONI@RLVT.IT

ELIANA RIZZI
ELIANA.RIZZI@RLVT.IT

ALBERTO VICENDONE
ALBERTO.VICENDONE@RLVT.IT

RELEVANT
BUSINESS MATTERS

RLVT - SOCIETÀ TRA PROFESSIONISTI A R.L.
VIA AVOGADRO, 12/A – 10121 TURIN – ITALY T. +39 011 55 67 222 – INFO@RLVT.IT