



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 third 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.

Company law – Dissolution and liquidation – Liquidation – Striking off of the company Liability of shareholders under Article 36 of Presidential Decree 602/73 – Striking off of the company

Cass. 30.6.2026 n. 22415

In the judgment under review, the Supreme Court ruled on the issue of shareholders' liability for tax debts of a company struck off the Companies Register, clarifying the relationship between liability under Article 2495 of the Civil Code and that provided for in Article 36 of Presidential Decree 602/73.

The latter provision constitutes a specific and independent form of liability, of a tax nature, which does not arise from succession to the company's debts, but arises ipso jure on the part of the shareholders, liquidators and directors.

Furthermore, three principles are identified regarding liability under Article 36 of Presidential Decree 602/73.

The first is that proof of the collection of sums on the basis of the liquidation accounts constitutes a condition for the tax authorities' action and does not, however, relate to the shareholder's standing to be sued.

The second stipulates that the liability in question must be asserted by means of a separate and reasoned assessment notice, as it cannot be raised for the first time in proceedings challenging the tax assessment.

The third broadens the concept of the tax authorities' interest in bringing proceedings, specifying that this is not limited solely to the collection of sums arising from the final liquidation balance sheet, but may be supplemented by other circumstances, such as the existence of assets and rights transferred to the shareholders, even if not included in the balance sheet, or the enforcement of guarantees.

Finality of the assessment – Effects

Cass. civ. sez. V, 9.7.2026, ordinanza n. 22976

In proceedings brought by a shareholder challenging the assessment of income from shareholdings relating to a limited company with a restricted shareholder base, the finality of the notice issued against the company does not preclude a challenge – including on the merits – to the income assessed against the company, where such finality does not result from a court ruling finding the assessment to be well-founded on the merits, but rather from the failure to challenge the tax assessment or from procedural defects in the challenge brought by the company, as in such a case the requirement of res judicata does not apply.

A shareholder who has not participated in the proceedings brought by the company may, therefore, challenge not only the presumption of distribution of off-balance-sheet profits, but also the actual existence of the higher corporate income assessed.

Criminal law – Paracriminal liability of legal persons

Limitation period – Autonomy of the liability of the legal person

Cass. pen. 14.7.2026 n. 26378

Judgment No. 26378 of 14 July 2026 of the Criminal Court of Cassation reviews the specific rules governing the limitation period in the context of the liability of legal persons under Legislative Decree No. 231/2001, focusing in particular on the different consequences of the offence having been extinguished due to the expiry of the limitation period with regard to the liability of natural persons and that of legal persons.

The expiry of the limitation period for the predicate offence has a twofold systemic significance: on the one hand, it acts as a ground for the extinction of the natural person's criminal liability; on the other hand, it may be relevant as a condition preventing the bringing of proceedings against the organisation, but only where it has already taken effect prior to the administrative offence being formally charged. Once the administrative offence has been duly charged, two separate limitation regimes coexist: that relating to the offence attributed to the natural person and that concerning the liability of the organisation. It follows that any extinction of the predicate offence due to the expiry of the limitation period, which occurs whilst proceedings are pending, does not result in the organisation's liability ceasing to apply.

Property – Tenancies – Civil law aspects – Other properties (Law 392/78)

Termination of a commercial tenancy – Failure to pay compensation for loss of goodwill –

Right to retain possession of the premises – Enforceability against the third-party successful bidder – Exclusion

Cass. 15.7.2026 n. 23235

In the judgment under review, the Supreme Court of Cassation held that a tenant whose commercial tenancy had terminated prior to the enforcement sale of the property previously subject to the

tenancy, cannot exercise a right of retention over the property against the successful bidder (and therefore after the enforcement sale), where the original landlord has not paid the tenant compensation for loss of business goodwill. In such a case, the former tenant may satisfy their claim from the assets of the former landlord (the debtor subject to enforcement) and, where applicable, also from the proceeds of the sale of the property previously occupied, subject to obtaining an enforceable title relating to the compensation due from the original landlord, and provided that the property has been returned.

Tax consolidation – Transfer of excess interest expense – Implied conduct – Relevance
Cass. civ. sez. V, 22.7.2026, ordinanza n. 23825

Where a company participates in the national tax consolidation scheme, Article 96 of the TUIR provides that any excess of non-deductible interest expense and similar charges incurred by a company may be set off against the group's total income if, and to the extent that, other companies participating in the consolidation scheme report, for the same tax period:

- a sufficient gross operating profit (ROL) that has not been fully utilised for the deduction;
- a surplus of interest income and financial income relevant for the purposes of offsetting against interest expense.

In the view of the Court of Cassation, the provision does not require any specific formalities in the event of an error in the tax return and does not, therefore, result in the loss of the deduction, provided that the documents nevertheless demonstrate the intention to utilise this relief within the national tax consolidation scheme.

Furthermore, the direct transfer to the consolidating entity of the consolidated entity's surplus ROL must in any event be regarded as conclusive conduct capable of standing in for the failure to declare it in the return submitted by the consolidated entity, within the limits of the significance attributed to conclusive conduct for tax purposes under Article 1(1) of Presidential Decree No. 442 of 10 November 1997.

Offset credit arising from an omitted tax return – Penalties
Cass. civ. sez. V, 23.7.2026, ordinanza n. 23911

A taxpayer who offsets an existing credit arising from an omitted tax return cannot be penalised.

The aforementioned set-off obviously does not concern a non-existent credit, nor one to which the taxpayer is not entitled, as it consists of 'a formal breach concerning the means of disclosure and representation of the credit itself'.

Furthermore, to reason otherwise would amount to allowing a duplication of penalties, given that the taxpayer's conduct is already punishable for failure to file a tax return.

Transfer of revalued shareholdings – Company set up to acquire a property – Abuse of rights – Exclusion

Cass. civ. sez. V, 27.7.2026, ordinanza n. 24077

The incorporation of a company for the sole purpose of acquiring a property and disposing of it through the sale of company shareholdings previously revalued under Article 5 of Law 448/2001 does not constitute an abuse of rights under Article 10-bis of Law 212/2000.

It is noted that the appeal court judges failed to take into account the fact that the tender notices and contracts entered into provided solely for the option to participate in the transaction through one or more companies: consequently, the shareholders would not have been able to purchase the property individually.

Furthermore, it is considered that no account was taken of the fact that one could ‘validly invoke the freedom recognised by the legal system to choose between different contractual arrangements, where the practical manner in which the power recognised in this regard to each individual is exercised results in an altered use of the formal arrangement to pursue objectives that are additional to and different from those permitted’.

The incorporation of a company to carry out the transaction is also justified by the need to undertake complex preparatory activities necessary for the successful outcome of the commercial transaction.

Written evidence – Necessity – Relevance

Cass. civ. sez. V, 3.8.2026, ordinanza n. 24407

The written evidence referred to in Article 7(4) of Legislative Decree No. 546/92, as amended by Law No. 130/2022, is subject to an assessment of necessity and not merely of relevance, as is otherwise provided for in civil proceedings.

It is therefore not sufficient for the items of evidence to be abstractly capable of supporting the defence’s arguments; rather, the party must submit and demonstrate that the evidence is indispensable for the purposes of the decision.

This distinction in the rules of evidence compared with civil proceedings is constitutionally legitimate, as there is no principle requiring uniformity of procedural rules across different types of proceedings; the legislature is perfectly entitled to differentiate them on the basis of a rational choice linked to the type of proceedings and the substantive issues raised in court (Constitutional Court, 21 January 2000, No. 18).

Tax collection – Tax refunds

Alternative VAT registration – Registration tax refund – Effective date

Cass. 18.9.2026 n. 25549

Pursuant to Article 77 of Presidential Decree No. 131/86, the limitation period within which a refund of stamp duty must be claimed begins to run from the date of payment or, if later, from the date on which the right to a refund arose.

In the judgment under review, the Supreme Court states that, in cases of the VAT-registration tax alternative, if the deed was originally subject to proportional registration tax by choice of the parties, the limitation period begins to run from the time of payment, even if the taxpayer is subsequently served with a tax assessment notice – settled by mutual agreement – stating that the registered deed was in fact subject to VAT.

Documents subject to optional appeal – Subsequent service of a document subject to independent appeal

Cass. civ. sez. V, 19.9.2026, ordinanza n. 25575

The taxpayer may, without any obligation, lodge an appeal against a document not included in the list set out in Article 19 of Legislative Decree 546/92 (in this case, a TARI payment reminder) followed by a subsequent document that is independently appealable (assessment notice, payment demand).

However, in the event of subsequent service of the challengeable act, if that act is challenged, the proceedings against the act that may be challenged at the taxpayer's discretion become devoid of their subject matter.

Relevance – Transfer – Burden of proof

Cass. civ. sez. V, 26.9.2026, ordinanza n. 25837

The principle of the relevance of costs – which can be inferred from the concept of business income and not from Article 109(5) of the TUIR – implies that the cost must be attributable to the conduct of the business activity, even indirectly, potentially or in terms of future projections. This assessment is qualitative, not quantitative, and does not require proof of a specific or immediate correlation between the incurrence of the cost and the business's receipt of revenue (Court of Cassation, 12 September 2023, No. 26368; Court of Cassation, 9 July 2025, No. 18713; Court of Cassation, 23 April 2026, No. 10840). In the event of objections raised on this point by the tax authorities, the burden of proof regarding the requirement of business relevance rests with the taxpayer, who must document the taxable income accrued, and therefore the existence and nature of the cost, the relevant supporting evidence and its actual allocation to production, as a business activity (see, amongst others, Court of Cassation 19 May 2025 No. 13202, Court of Cassation, 28 May 2025, No. 14222; Court of Cassation, 18 June 2026, No. 20762).

The Supreme Court therefore held that, in the present case, the regional court had correctly ruled out the business-related nature of the costs relating to travel undertaken by the company's director (who carried out consultancy work in the information technology sector), on the basis that the documentation produced by the taxpayer, which bore the burden of proof, was not sufficient to demonstrate that they had been incurred for the purpose of seeking clients or conducting negotiations that had not been successful due to the political and military crisis affecting the area to which the director had travelled.

VAT – General provisions – Deduction**Illegal supply of labour – Non-deductibility of VAT****Cass. 1.10.2026 n. 26027**

contracts and the supply of labour, held that, where the tax authorities contest the authenticity of the contract pursuant to Article 29 of Legislative Decree No. 276/2003, the tax court must verify in practice the existence of the characteristic elements of the contract (organisation of resources by the contractor, effective exercise of managerial authority over workers, assumption of business risk), as it cannot consider sufficient, for the purposes of recognising the tax effects (VAT deduction and IRAP deduction), the mere formal validity of the contract, compliance with social security contributions or certification of the employment relationship, nor the mere absence of evidence that the client was aware of any fraud committed by the contractor.

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