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Written Witness Evidence in Tax Proceedings and Its Operational Limits

By Order no. 24407 of 3 August 2026, the Italian Supreme Court of Cassation, Civil Division, delineates the strict prerequisites of indispensability and the statutory admissibility boundaries governing Article 7, paragraph 4, of Legislative Decree no. 546/1992.

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Current Legal Framework as of 9 November 2026: the admission of written witness testimony in tax adjudication requires strict indispensability in relation to material facts that cannot otherwise be established, thereby confirming the essentially documentary nature of Italian tax procedure.

ABSTRACT

Order no. 24407/2026 of the Italian Supreme Court of Cassation, Civil Division, consolidates the operational boundaries of Article 7, paragraph 4, of Legislative Decree no. 546/1992, as amended by Law no. 130/2022. The admission of **written witness evidence in tax proceedings** differs structurally from the ordinary civil standard of evidentiary relevance, presupposing a judicial finding of **strict evidentiary indispensability** concerning factual circumstances that cannot otherwise be proven through accounting records or written documents. The Supreme Court reaffirms the unassailability of official audit reports endowed with **privileged evidentiary value under Article 2700 of the Civil Code**, upholds full compliance with Articles 24 and 111 of the Italian Constitution and Article 6 ECHR in light of the documentary structure of tax litigation, and excludes **appellate review on points of law** where the lower court's factual assessment rests on a coherent body of documentary evidence.

Key Takeaways

- **Criterion of necessity:** unlike ordinary civil proceedings—where relevant and admissible evidence must be admitted as a matter of course—in tax litigation the court "may" authorise written testimony solely where it proves indispensable to ascertain decisive facts incapable of documentary verification.
- **Multilevel procedural fairness:** the documentary specificity of judicial review over tax assessments complies with Articles 24 and 111 of the Italian Constitution as well as Article 6 ECHR, since constitutional and Convention standards impose no requirement of uniform evidentiary rules across distinct jurisdictional models.
- **Objective evidentiary bars:** witness testimony remains strictly precluded with respect to facts recorded by a public official with privileged evidentiary force under Article 2700 of the Italian Civil Code, while the general contractual restrictions set out in Articles 2721–2725 of the Civil Code apply in full.
- **Scope of Supreme Court review:** a refusal to admit witness testimony grounded in existing documentary records cannot be challenged before the Supreme Court of Cassation, and an unjustified objection to an accelerated disposal proposal under Article 380-bis of the Code of Civil Procedure exposes the appellant to statutory sanctions for abusive litigation.

CASE DOSSIER

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SUBJECT AREA
Tax Law & Tax Litigation

LEADING DECISION
Italian Supreme Court of Cassation, Civil Division, Order of 3 August 2026, no. 24407 — Admission of written witness evidence und

Legal Principle / Editorial Headnote

The admission of written witness evidence in tax litigation is strictly conditional upon its indispensability for adjudicating the dispute, presupposing the objective impossibility of otherwise obtaining proof of decisive material facts that are not covered by privileged public-instrument faith.

01. THE REFORMED EVIDENTIARY FRAMEWORK AND WRITTEN WITNESS EVIDENCE IN TAX PROCEEDINGS

By Order no. 24407 of 3 August 2026, the **Italian Supreme Court of Cassation, Civil Division** clarifies the operational boundaries of the evidentiary mechanism introduced by the 2022 reform of Italian tax justice. The statutory framework governing **written witness evidence in tax proceedings**, enshrined in Article 7, paragraph 4, of Legislative Decree no. 546 of 31 December 1992 following Law no. 130 of 31 August 2022, repealed the long-standing absolute prohibition against **witness testimony** that had historically characterised Italian tax litigation. Nevertheless, the legislature carefully circumscribed access to this evidentiary tool, requiring the lower court adjudicating the merits to verify its strict necessity for resolving the dispute[1].

The underlying dispute originated from a notice of tax assessment served upon a limited liability company to recover direct corporate taxes and value-added tax (VAT) for the 2015 tax year. The Italian Tax Administration challenged the unlawful deduction of input VAT and corporate expenses arising from **invoices for non-existent transactions**, issued by several purported supplier companies lacking genuine business substance, capital equipment, and employed staff. Both at first instance and on appeal before the Tax Court of Second Instance (*Corte di Giustizia Tributaria*) of

Campania, the taxpayer company's challenge was dismissed. The regional tax judges held that the status of the suppliers as **conduit or shell companies** had been convincingly established on the basis of formal tax audit reports drawn up by the Tax Police (*Guardia di Finanza*) and the Customs Agency.

During the lower-instance proceedings, counsel for the taxpayer company had formally applied for the admission of **written witness testimony** pursuant to the amended Article 7 of Legislative Decree no. 546/1992, formulating specific evidentiary articles aimed at proving the actual operational existence of the supplier entities and the material performance of the underlying commercial supplies. The appellate tax court rejected the evidentiary request, finding the presumptive and documentary evidence adduced by the Tax Administration to be fully sufficient and unequivocal. That refusal formed the core of the subsequent appeal before the Supreme Court of Cassation, whereby the taxpayer alleged the nullity of the appellate judgment for merely apparent reasoning, the omitted examination of a decisive disputed fact, and a breach of the statutory rules governing the **burden of proof**.

The ruling of the Supreme Court carries considerable systemic weight because it defines the autonomous architecture of fact-finding in tax adjudication as opposed to ordinary civil litigation. Repealing the blanket statutory ban did not bring about full assimilation between the two procedural models. Within the tax assessment review system, witness testimony does not constitute an unrestricted evidentiary right at the free disposal of the parties tied merely to factual relevance. Rather, it operates as a subsidiary and strictly conditional remedy, shaped around the morphology of a judicial process conceived and structured to unfold in a predominantly **written and documentary** form. The Supreme Court's review focuses precisely on this structural asymmetry across procedural regimes, reaffirming the rationality of the selective policy choices enacted by the legislature.

02. THE DIVIDING LINE BETWEEN CIVIL RELEVANCE AND EVIDENTIARY INDISPENSABILITY

2.1 — Operational Standards Between Strict Necessity and Non-Superfluity

The conceptual cornerstone of the decision lies in the sharp demarcation between the standard of evidentiary admission in ordinary civil proceedings and that governing tax litigation. Under the Italian Code of Civil Procedure, judicial screening of party-proffered evidence rests on the twin pillars of **admissibility and relevance**. The relevance test functions essentially in negative terms as a check on the **non-superfluity of the evidence** in relation to the disputed facts pleaded by the parties. Whenever proposed witness articles address pertinent factual allegations that have not yet been proven through documentary records (*per tabulas*), the examining judge “admits” the requested evidence. The statutory use of the indicative mood expresses a binding **judicial duty to admit** relevant evidence, removing the procedural order from purely discretionary assessments of expediency.

By contrast, Article 7, paragraph 4, of Legislative Decree no. 546/1992 adopts an antithetical wording centred on a permissive modal verb: the tax court “may admit” written witness testimony where it deems such proof **necessary for the purposes of the decision**. As underscored by the Italian Supreme Court of Cassation, Civil Division, in Order no. 24407/2026, necessity by no means coincides with ordinary civil relevance. Instead, it postulates a heightened threshold of **indispensability of witness evidence**, which arises solely where a decisive historical fact cannot otherwise be ascertained through accounting ledgers, invoices, or documentary records already produced in the case file[1].

Such rigorous scrutiny reflects the enduring dialectic between chamber proceedings and documentary adjudication that has shaped Italian tax justice since its modern institutional inception. Consequently, the burden of pleading borne by the requesting party is not discharged merely by drafting specific, non-generic witness questions. Counsel must concretely

substantiate why written witness verification represents the sole viable avenue for reconstructing the disputed historical event. Failing such a demonstration, the tax court legitimately rejects the evidentiary motion without infringing the taxpayer's right of defence.

> Witness testimony in tax litigation does not follow the ordinary civil regime of factual pertinence: its admission presupposes the radical impossibility of verifying the disputed historical fact through accounting records or written documents.

2.2 — Objective Statutory Bars and the Privileged Evidentiary Force of Audit Reports

Alongside the positive prerequisite of strict indispensability, the statutory tax provision erects an insurmountable negative bar. The rule categorically precludes taking witness testimony whenever the tax claim rests on official reports or public instruments endowed with **privileged evidentiary value** (*fede privilegiata*), unless the witness inquiry concerns historical circumstances distinct from those formally attested by the public official. Article 2700 of the Italian Civil Code applies in full: privileged public-instrument faith covers the provenance of the document from the public official who drafted it, as well as the declarations made and the material acts that the official attests to having performed personally or witnessed in his or her presence.

It follows that on-site inspection findings recording the absence of employees, the lack of operational business premises, or the failure to produce statutory accounting books cannot be rebutted by witness statements unless the party initiates formal proceedings to challenge the authenticity of a public instrument (*querela di falso*). Furthermore, witness evidence in tax proceedings must be taken exclusively in the written manner prescribed by Article 257-bis of the Italian Code of Civil Procedure—namely through a standardised written form completed and signed by the witness with an authenticated signature—thereby excluding oral examination at a hearing unless specifically ordered by the judicial panel.

The Supreme Court further clarifies that tax witness testimony remains fully subject to the general substantive restrictions laid down in the Italian Civil Code, with particular reference to Articles 2721–2725 of the Civil Code. Witness proof is therefore inadmissible to establish additional or contrary terms alleged to have been agreed prior to or contemporaneously with the execution of a written contract, as well as in relation to contracts for which written form is mandated by statute either for validity (*ad substantiam*) or for evidentiary purposes (*ad probationem*). The resulting legal framework establishes a tightly guarded evidentiary regime, which may be summarised through a systematic comparison of the two procedural models:

Evidentiary Parameter	Ordinary Civil Proceedings	Reformed Tax Proceedings
Standard of admission	Relevance and non-superfluity of pleaded facts	Strict indispensability for adjudication (*extrema ratio*)
Judicial power	Mandatory duty to admit relevant evidence ("admits")	Residual discretionary authority ("may admit")
Mode of taking testimony	Oral examination as the rule; written form only by party agreement	Mandatory written testimony under Article 257-bis of the Code of Civil Procedure
Public instruments with privileged faith	General limits pursuant to Article 2700 of the Civil Code	Express statutory ban regarding facts attested by a public official

03. CONSTITUTIONAL COMPATIBILITY AND EUROPEAN CONVENTION COORDINATES OF DOCUMENTARY TAX PROCEDURE

3.1 — The Principle of Non-Mandatory Uniformity Across Procedural Models

The analytical reconstruction developed by the Supreme Court panel directly addresses compatibility with constitutional guarantees. Counsel for the taxpayer company alleged a violation of Articles 24 and 111 of the Italian Constitution, arguing that refusing to admit written testimony on exculpatory factual chapters deprived the private party of its **right to adduce rebuttal evidence** and undermined equality of arms. The Italian Supreme Court of Cassation, Civil Division, dismisses this objection by relying on the settled doctrine of the Italian Constitutional Court regarding the **differentiation of procedural regimes**. Under the Italian constitutional order, there is no overarching mandate requiring identical evidentiary rules across every branch of jurisdiction.

As held by the Italian Constitutional Court ever since Judgment no. 18 of 2000, distinct procedural systems may rationally diverge in light of the institutional design of the adjudicating body and the substantive legal positions brought before the court. Tax litigation concerns the judicial challenge to an **authoritative administrative assessment act**, enacted in the exercise of the State's sovereign taxing power aimed at apportioning public expenditure pursuant to Article 53 of the Italian Constitution. Within this sphere, taxpayer conduct is legally standardised and governed by strict formal obligations, starting with mandatory bookkeeping and invoicing rules. That distinctive substantive matrix justifies preserving a **predominantly documentary procedure**, within which witness examination constitutes a strictly regulated exception rather than an expansive general rule.

The constitutional legitimacy of statutory evidentiary restrictions is further confirmed by the fair balance struck between the public interest in the prompt and accurate collection of tax revenue and the individual's right to effective judicial protection. Excluding oral testimony—or subjecting written testimony to a strict test of indispensability—does not impair the **inviolable core of the right of defence**, provided that the taxpayer enjoys an unrestricted opportunity to submit every documentary item capable of refuting the tax claim, alongside defensive briefs and party-appointed technical expert reports.

3.2 — European Court of Human Rights Case Law and the Prohibition of Excessive Formalism

At the supranational level, Order no. 24407/2026 coordinates domestic tax legislation with the principles established by the European Court of Human Rights (ECtHR) under Article 6, paragraph 1, ECHR. In its landmark Grand Chamber judgment in *Ferrazzini v. Italy* of 12 July 2001, the Strasbourg Court reaffirmed that ordinary tax assessment disputes fall outside the autonomous Convention notion of *civil rights and obligations*, leaving Contracting States sovereign authority to regulate tax collection. Notwithstanding the well-known dissenting opinion and the progressive extension of fair-trial safeguards to **punitive administrative tax penalties**, rules governing the admissibility of evidence remain primarily a matter for domestic law, provided that the proceedings taken as a whole satisfy the requirements of fairness.

Nevertheless, the Convention standard of procedural fairness imposes an essential substantive safeguard: the **prohibition of excessive formalism** in access to a court. As held by the Italian Supreme Court of Cassation, Civil Division, in the contemporaneous Order no. 1779 of 26 January 2026 concerning electronic service of process in tax proceedings, procedural rules must never operate as a disproportionate barrier preventing examination of the substantive merits of a claim[2]. Domestic courts must refrain from overly formalistic interpretations, ensuring that procedural powers and evidentiary objections are assessed in accordance with reasonableness and proportionality.

This principle aligns closely with the broader framework governing evidentiary preclusions in tax proceedings and the ECHR previously examined in this Journal. Convention compliance of Article 7, paragraph 4, of Legislative Decree no. 546/1992 stems first and foremost from the bilateral symmetry of the instrument: written witness testimony is equally available to the taxpayer and to the Tax Administration. Moreover, written third-party statements gathered by tax auditors and reproduced in audit reports retain merely **circumstantial evidentiary weight**, entirely equivalent to that of out-of-court third-party statements filed by private defence counsel, thereby preserving dialectical parity between the litigants.

Procedural Fairness and Witness Testimony in Tax Litigation

The absence of an unconditional right to oral witness testimony does not infringe Article 6 ECHR: mandatory written deposition under Article 257-bis of the Code of Civil Procedure combined with the judicial test of indispensability secures a fair balance between equality of arms and the documentary nature of tax assessment review.

3.3 — The Evidentiary Interplay Between Simple Presumptions and the Taxpayer's Burden

Any request for written witness evidence must also be coordinated with the newly inserted Article 7, paragraph 5-bis, of Legislative Decree no. 546/1992, enacted simultaneously by Law no. 130/2022. That provision stipulates that the Tax Administration bears the burden of proving in court the infringements alleged in the contested assessment notice, requiring the tax court to annul the tax recovery whenever supporting proof is lacking, contradictory, or insufficient. The normative import of paragraph 5-bis was clarified by the Supreme Court of Cassation, Civil Division, in Order no. 4057 of 23 February 2026, which highlighted its essentially declaratory and clarificatory nature[3].

The Supreme Court reaffirms that paragraph 5-bis neither alters the general Civil Code rules allocating the burden of proof nor precludes reliance on **simple factual presumptions** pursuant to Article 2729 of the Italian Civil Code. Where the Revenue Agency challenges the deduction of invoices for non-existent transactions, the tax office bears the initial

burden of demonstrating—including through serious, precise, and concordant presumptions—the fictitious character of the issuer or of the underlying supply. Once the Administration discharges that threshold through cross-checked audit findings gathered by the Tax Police, the evidentiary burden shifts onto the taxpayer, who must prove the actual performance and business nexus of the invoiced commercial operations.

Within this evidentiary architecture, rebuttal witness testimony cannot serve as a procedural shortcut to compensate for a complete lack of financial and documentary traceability. Where the taxpayer fails to produce written contracts, transport documents, delivery notes, or traceable bank payment records, a bare motion to examine witnesses to confirm that supplies took place cannot pass the statutory filter of indispensability. The Administration's presumptive framework therefore stands unshaken, depriving the requested witness testimony of any concrete decisional utility.

04. PRACTICAL IMPLICATIONS AND SCOPE OF APPELLATE REVIEW BEFORE THE SUPREME COURT OF CASSATION

From the standpoint of litigation practice, the Supreme Court's ruling compels tax counsel to rethink fundamentally how **evidentiary motions** are drafted. In tax adjudication, it is wholly insufficient to formulate witness chapters that are merely pertinent in the abstract or capable of corroborating the taxpayer's narrative. Any party applying for **written witness evidence in tax proceedings** bears a specific procedural burden to plead and demonstrate its **strict necessity** for adjudicating the case[1]. Defensive pleadings must analytically explain why documentary proof of the disputed fact could not objectively be obtained, specifying the concrete reasons why written witness deposition represents the sole available means to rebut the Revenue Agency's presumptive case.

From a perspective of operational **distinguishing**, it must be emphasised that written witness testimony does not apply indiscriminately across the entire spectrum of tax disputes. Witness proof remains inapplicable and radically barred whenever the dispute concerns contractual stipulations contrary to the content of private writings, or where substantive law requires written form for validity (*ad substantiam*) or for proof (*ad probationem tantum*). Unlike formal contractual arrangements, witness testimony finds legitimate room solely in relation to **material historical facts**—such as the physical transit of goods, the actual presence of workers on a construction site, or the occurrence of supervening natural impediments—provided they do not contradict facts attested with privileged public-instrument faith by auditing officers under Article 2700 of the Civil Code.

With regard to the **scope of Supreme Court review on points of law**, Order no. 24407/2026 erects a firm boundary before the Court of Cassation. Whether written witness testimony is necessary in a given dispute constitutes a discretionary factual assessment reserved to the lower tax courts. That evaluation is entirely immune from review on points of law, provided that the appellate tax panel grounded its conclusion on an examination of the documentary evidence contained in the case file. An unsuccessful litigant can neither allege nullity for merely apparent reasoning under Article 360, first paragraph, no. 4, of the Code of Civil Procedure where the court's logical reasoning remains intelligible, nor invoke the omitted examination of a decisive disputed fact under Article 360, first paragraph, no. 5, of the Code of Civil Procedure, inasmuch as declining to admit an evidentiary means does not equate to overlooking the underlying disputed historical fact.

A further practical warning emerges from the stringent procedural consequences attached to appellate persistence before the Supreme Court. Pursuing an appeal in Cassation against a refusal to admit witness testimony in the face of an accelerated disposal proposal issued under Article 380-bis of the Code of Civil Procedure exposes the appellant to severe financial sanctions. Under settled Supreme Court precedent, declining to accept the reporting judge's proposal—followed by a conforming dismissal by the panel—integrates a statutory instance of abuse of process, which in the case at

hand resulted in pecuniary awards for abusive litigation pursuant to Article 96, paragraphs 3 and 4, of the Code of Civil Procedure. Such punitive rigor requires tax counsel to conduct a sober prognostic assessment before pursuing an appeal on points of law against evidentiary rulings thoroughly reasoned on the documentary record.

References & Authorities Cited

Statutory Provisions

- Article 7 of Legislative Decree no. 546 of 31 December 1992 — Fact-finding powers of the Tax Courts and statutory regime governing written witness evidence.
- Law no. 130 of 31 August 2022 — Reform provisions governing Italian tax justice and tax court proceedings.
- Article 257-bis of the Italian Code of Civil Procedure — Procedure for taking written witness testimony.
- Articles 2697, 2700, and 2721–2729 of the Italian Civil Code — Burden of proof, privileged evidentiary value of public instruments, substantive limits on witness testimony, and simple presumptions.
- Articles 24 and 111 of the Constitution of the Italian Republic — Inviolable right of defence and constitutional guarantees of due process and fair trial.

Case Law Cited

1. **Italian Supreme Court of Cassation, Civil Division, Order of 3 August 2026, no. 24407** — Admission of written witness evidence under Article 7, paragraph 4, of Legislative Decree no. 546/1992 requires strict indispensability for adjudicating the dispute, is barred with respect to facts covered by privileged public-instrument faith, and is immune from Supreme Court review where the lower court's refusal rests on existing documentary records. Outcome: appeal dismissed. Para.: Grounds 1–2.
2. **Italian Supreme Court of Cassation, Civil Division, Order of 26 January 2026, no. 1779** — When applying procedural rules, domestic courts must avoid excessive formalism incompatible with effective access to a court under Article 6 ECHR, holding electronic filing of scanned PDF copies of certified e-mail (PEC) delivery receipts admissible where not formally contested. Outcome: appeal upheld in part; judgment quashed and remanded. Para.: Ground 1.
3. **Italian Supreme Court of Cassation, Civil Division, Order of 23 February 2026, no. 4057** — Article 7, paragraph 5-bis, of Legislative Decree no. 546/1992 is essentially clarificatory in nature and neither precludes tax assessments grounded in simple factual presumptions nor relieves the taxpayer of the burden of proving the substantive prerequisites for claiming tax credits or exemptions. Outcome: appeal dismissed. Para.: Grounds 1–3.

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