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Joint Liability of Legal Representatives for Tax Debts of Unincorporated Entities

The Italian Supreme Court of Cassation, Civil Division, defines the boundaries of personal and joint liability borne by legal representatives for tax debts incurred by unincorporated associations.

AV Andrea Vesci Tax Law & Tax Assessment & Collection 13 November 2026 Reading time 15 min

Current Legal Framework as of 10 November 2026: The case law of the Italian Supreme Court of Cassation consolidates the nature of the personal liability borne by the president of an unincorporated association under Article 38 of the Italian Civil Code as an accessory guarantee *ex lege*, clarifying that a succession in office does not exempt an incoming representative from the duties to audit and rectify tax returns in respect of pre-existing tax liabilities.

ABSTRACT

The delineation of **joint and several liability for tax debts** incurred by unincorporated associations constitutes one of the most demanding testing grounds in Italian tax litigation. The Italian Supreme Court of Cassation has reaffirmed that personal liability under Article 38 of the Italian Civil Code operates as a **statutory accessory guarantee akin to suretyship**, resting on a rebuttable presumption of managerial direction for tax liabilities arising during the term of appointment. Upon a succession in office, an **incoming legal representative** who signs and files an inaccurate income tax return improperly claiming preferential tax regimes becomes jointly and severally liable for the taxes evaded by the entity, unless diligent compliance with tax rectification and payment duties is established or **rigorous documentary proof of complete managerial non-involvement** and financial exclusion is adduced.

Key Takeaways

- **Accessory statutory guarantee *ex lege*:** The personal obligation of the legal representative under Article 38 of the Italian Civil Code for the association's tax debts is accessory yet non-subsidiary vis-à-vis the common fund, operating on a joint and several basis without any *beneficium excussionis*.
- **Presumption of management for tax liabilities:** Unlike contractual obligations, where concrete transactional conduct is decisive, for tax debts arising *ex lege* effective direction of the entity is presumed from holding formal office during the relevant tax period.
- **Liability of the incoming president:** Lack of involvement in prior management does not exonerate an incoming legal representative who signs and submits an inaccurate tax return without making the required rectifications or paying the taxes due.
- **Burden of proving non-involvement:** Rebutting joint tax liability requires documentary proof (*per tabulas*) of the complete absence of managerial delegations, banking powers, and external representation, or proof of exact compliance with incumbent tax obligations.

CASE DOSSIER

JURISDICTION
Italy (Civil Law)

SUBJECT AREA
Tax Law & Tax Assessment & Collection

LEADING DECISION
Italian Supreme Court of Cassation, Civil Division, Order of 12 January 2026, no. 685 — Joint and several liability of the legal

Legal Principle / Editorial Headnote

With regard to unincorporated associations and amateur sports associations, the personal and joint liability of the legal representative for the entity's tax obligations under Article 38 of the Italian Civil Code constitutes an accessory yet non-subsidiary statutory guarantee ex lege, grounded in the presumption of overall managerial direction throughout the term of appointment. Where a succession in office occurs, the incoming representative is not exempt from joint liability for pre-existing tax debts merely by reason of not having participated in prior management, since that representative bears an affirmative duty to file a truthful income tax return, rectify past errors, and remit the taxes due; immunity from liability may be attained solely by furnishing rigorous proof of diligent compliance with statutory fiscal duties or demonstrated, comprehensive exclusion from the administration, bank accounts, and operational life of the entity.

01. FACTUAL BACKGROUND AND TAXABLE PREREQUISITES IN UNINCORPORATED ASSOCIATIONS

The operational dynamics of collective entities lacking legal personality raise substantial doctrinal issues regarding the **joint liability of the legal representative for tax debts** arising from the overall management of the organization. Within the Third Sector and among **amateur sports associations**, the frequent commingling of non-profit statutory purposes with economically significant activities triggers searching audits by the tax administration aimed at challenging the improper enjoyment of preferential flat-rate tax regimes and reclassifying revenues as ordinary business income. Whenever the disallowance of tax-relief prerequisites leads to the assessment and recovery of substantial taxable bases for direct income taxes and value-added tax (VAT), the Revenue Agency routinely enforces statutory asset

guarantees against individuals who formally held the office of president, raising decisive questions as to the scope of Article 38 of the Italian Civil Code.

> **The crux of subjective attribution:** In unincorporated associative structures, the absence of public statutory registration concerning the common fund justifies the personal and joint liability of those who have acted in the name and on behalf of the entity; yet applying this rule to tax liabilities requires a careful balance between actual managerial involvement and the execution of formal tax compliance acts.

1.1 — Disallowance of Tax Reliefs and the Underlying Tax Debt

The dispute culminating in **Order no. 685 of 12 January 2026 of the Italian Supreme Court of Cassation, Civil Division**[1] originated from a comprehensive tax audit conducted against an amateur sports association, which concluded with the disallowance of the **preferential flat-rate tax regime** governed by Law no. 398 of 16 December 1991. The auditing office ascertained the essentially commercial nature of the activities carried out, finding that both the subjective and objective non-profit prerequisites were lacking and consequently reclassifying the association's receipts as **commercial business income** for the 2009 tax year. That upward adjustment generated substantial additional corporate income tax (IRES), regional production tax (IRAP), and VAT liabilities, alongside heavy **administrative tax penalties**.

The notice of tax assessment had been served not only upon the association as principal debtor, but also upon the individual taxpayer in his capacity as **jointly and severally liable legal representative** pursuant to Article 38 of the Italian Civil Code. Before the lower tax courts, counsel for the president emphasized that he had assumed executive office solely during the final month of the relevant tax year, arguing that a thirty-day tenure could not substantiate meaningful involvement in the entity's management capable of justifying the shifting of tax liabilities accrued over the entire financial year. Both the court of first instance and the Tax Court of Second Instance (*Corte di Giustizia Tributaria*) upheld that defence, holding that the mere **filing of the annual tax return** constituted the fulfilment of an institutional duty insufficient to establish joint and several liability absent actual participation in creating the abusive associative screen.

The annulment of the tax claim by the lower courts revealed, however, an interpretive friction with settled Supreme Court jurisprudence governing the **tax obligations of unincorporated entities**. Making an administrator's liability conditional upon proof of a fraudulent conspiracy or participation in devising the abusive structure conflates criminal tax offences or carousel fraud with the **civil-law asset guarantee** established by the legal order to protect creditors' claims, where the primary objective is safeguarding public revenue against the absence of full patrimonial autonomy.

1.2 — Succession in the Presidency and Execution of the Tax Return

The issue of **succession in executive office** represents one of the most sensitive junctures in the governance of associations. When an individual succeeds to the presidency of an organization toward the close of the financial year or during the following year, that officer is called upon to oversee the decisive phase of **tax computation and reporting** for the preceding tax period. Within such a setting, the formal act of signing and electronically filing the unified tax return (*Modello Unico*) is no mere clerical or bureaucratic formality, but embodies the quintessential exercise of the **entity's tax representation** vis-à-vis the financial administration.

Case law has progressively clarified that whoever assumes legal representation of an unincorporated association inherits not only active contracting powers, but also **mandatory supervisory duties** over the regularity of tax compliance. Submitting an income tax return that improperly reiterates elections for a preferential tax regime lacking its statutory

prerequisites entrenches an **inaccurate accounting representation** before the Treasury, preventing the tax authorities from timely collecting the ordinary taxes owed on disguised commercial operations.

It follows that a defensive plea resting on the brevity of the mandate or on having taken office after the underlying transactions cannot be assessed in the abstract. An incoming president wishing to shield personal assets from adverse liability bears the burden of conducting a **preventive accounting review**, proceeding where necessary to file an amended or corrective return and remit the taxes due, or—should other members obstruct such corrective action—formally recording immediate dissociation and resignation from office. Failure to undertake those affirmative steps converts formal office into a **ground for attributing joint and several liability** for the association's entire tax debt.

02. JOINT LIABILITY OF THE LEGAL REPRESENTATIVE FOR TAX DEBTS

The doctrinal classification of personal liability under Article 38 of the Italian Civil Code presupposes a clear conceptual divide between the ordinary rules governing contractual debts and the distinctive regime applicable to tax obligations arising *ex lege*. In the sphere of private-law contractual obligations, protecting the legitimate reliance of third-party creditors requires holding liable the specific individual who acted in the entity's name, necessitating precise identification of the relevant transactional commitment. In tax law, by contrast, the obligation arises automatically upon the occurrence of the **statutory taxable event** ***per relationem***, independently of any contractual stipulation, and falls squarely within the duties of good-faith fiscal compliance incumbent upon the entity's governing officers.

2.1 — Statutory Accessory Guarantee Akin to Suretyship

Consistent jurisprudence of the Italian Supreme Court of Cassation characterizes the administrator of an unincorporated association not as the bearer of a primary or original tax debt of their own, but rather as the obligor under a **statutory guarantee obligation** ***ex lege*** that is structurally accessory to the association's principal liability. This guarantee displays marked functional analogies with the causal structure of suretyship governed by Article 1936 of the Italian Civil Code, while differing from it by virtue of its mandatory statutory—rather than consensual—origin. To offset the absence of public statutory registration and capital maintenance rules for the common fund, the legal system establishes a bond of passive joint and several liability safeguarding public revenue.

A feature of paramount practical significance lies in the non-subsidiary nature of this joint bond. Absent a specific statutory exception, tax collection proceedings afford no *beneficium excussionis* in favour of the administrator: the Revenue Agency and the collection agent are entitled to demand full payment indistinguishably from the **common fund of the association** or from the personal estate of whoever held legal representation. That attribute endows tax enforcement with heightened effectiveness, exposing the president to immediate enforcement against movable and immovable personal assets without any prior requirement to liquidate the association's property.

At the same time, the accessory character of the bond explains why events extinguishing or modifying the entity's principal tax debt inevitably affect the guarantor's position. Should the notice of assessment served upon the association be annulled on substantive grounds or should the tax claim prove unfounded, the legal basis for joint and several liability falls away. Concurrently, the joint co-obligor retains the full right to raise all defences concerning the validity of the underlying tax assessment, thereby preserving personal patrimonial integrity against claims devoid of economic or legal foundation.

The joint obligation of the legal representative does not enforce a personal primary debt, but operates as an accessory guarantee ex lege wherein the presumption of managerial direction prevails over a bare plea of non-involvement unaccompanied by diligent fulfilment of fiscal duties.

2.2 — The Presumption of Managerial Direction for Statutory Tax Liabilities

The distinction between contractual transactions and statutory tax liabilities directly shapes the allocation of the burden of proof. As reaffirmed by the **Italian Supreme Court of Cassation, Civil Division, in Order no. 2504 of 5 February 2026**[2], tax debts do not require affirmative proof by the Revenue Agency that the officer conducted specific contractual negotiations. By virtue of the institutional office held, the law presumes that the individual vested with legal representation exercised **powers of direction and administration** over the association's overall management throughout the term of appointment, participating in the strategic and operational choices from which the tax liability stems.

That presumption rests on statutory rules identifying the president as the primary bearer of **instrumental tax compliance duties**: from maintaining accounting records to filing tax returns and remitting assessed taxes. The Supreme Court has made clear that no convenient severance is permissible between formal title to office and actual handling of financial flows. Whoever agrees to serve as legal representative of an entity assumes the role of guarantor of compliance with tax obligations, with the consequence that merely pleading **lack of involvement in day-to-day management** does not suffice in itself to sever the bond of joint and several liability with the association.

Order no. 2504 of 2026 further reinforces this rule by stressing that the duty of fiscal truthfulness requires the representative not only to prepare returns reflecting accurate data, but also to submit the **necessary supplemental or corrective tax returns** upon discovering past errors or irregularities. Failing to exercise that corrective power constitutes a breach of affirmative duties owed to the Treasury, consolidating the **joint liability of the legal representative for tax debts** even where concrete financial movements were delegated to or concentrated in the hands of other members or a treasurer who did not act externally in the entity's name.

2.3 — Rebuttal Proof of Complete Operational and Banking Non-Involvement

Strict though the presumption of managerial direction may be, it does not amount to irrebuttable strict liability or pure liability by status. In **Order no. 17487 of 2 June 2026, the Italian Supreme Court of Cassation, Civil Division**[3] delineated with precision the boundaries of the exculpatory rebuttal proof capable of overcoming the presumption of joint liability arising from formal office. The case concerned a purely titular president of an amateur sports association against whom the tax office had sought recovery of annual taxes solely on the basis of statutory appointment and signatures affixed to tax returns.

The taxpayer successfully overcame the tax assessment by furnishing an irrefutable body of documentary evidence: the **complete absence of bank signatory authority** or operational access over current accounts held in the entity's name, bank certificates attesting that financial management was vested exclusively in the vice-president, a formal written declaration by the actual *dominus* assuming full and exclusive responsibility, and press reports consistently identifying the latter as the sole spokesperson and decision-maker of the sports club. The Supreme Court held the factual findings of the lower judges—who had characterized the taxpayer as a mere **figurehead devoid of managerial involvement**—to be logical and immune from review.

Comparing these rulings brings into focus the governing standard of the subject: non-involvement cannot simply be alleged or argued through generic defensive assertions, but demands **documentary proof *per tabulas*** demonstrating the president's total exclusion from the managerial, decision-making, and banking circuit of the entity, in accordance with the general evidentiary rules of Article 2697 of the Italian Civil Code. Only where the administrator proves having been a purely formal screen, wholly shut out from monetary flows and contractual arrangements due to the exclusive conduct of the *de facto* manager, does the presumption of joint tax liability yield to the principle of substantive effectiveness.

03. TAX COLLECTION, PROCEDURAL SAFEGUARDS, AND OPERATIONAL IMPLICATIONS FOR ENTITIES

Enforced collection of tax claims asserted against unincorporated associations provides the arena in which the procedural safeguards of the jointly liable co-obligor are tested. The enforcement prerogatives of the tax administration must be reconciled with the inviolability of the constitutional right of defence enshrined in Article 24 of the Italian Constitution, ensuring that the guarantee obligation borne by the legal representative never degenerates into a procedural bar preventing challenges to the lawfulness of the underlying tax debt.

3.1 — Service of the Tax Payment Notice and Challenge to Underlying Assessments

An issue of considerable operational importance concerns the procedural sequence required to enforce a tax claim against a jointly and severally liable co-obligor. In **Order no. 4955 of 5 March 2026 of the Italian Supreme Court of Cassation, Civil Division**[4], the Court reaffirmed the lawfulness of serving a **tax payment notice (*cartella di pagamento*) directly upon the legal representative** without prior service of a separate notice of tax assessment issued in that individual's personal name. The taxing authority discharges its procedural duty by issuing the assessment notice against the unincorporated association as principal debtor, and may subsequently pursue the jointly liable co-obligor directly at the stage of enforcing the tax roll (*ruolo*) entered against the entity.

This prerogative of the financial administration entails no curtailment of the representative's rights of defence. Indeed, the jointly liable co-obligor enjoys full standing to **challenge the tax payment notice** by contesting not only defects specific to the collection stage, but also the substantive merits of the tax claim embodied in the underlying notice of assessment never served upon them personally. In judicial proceedings, the administrator may plead the unfoundedness of the tax audit, the non-existence of the taxable events, or the occurrence of extinguishing causes, while relying on evidentiary rules and documentary safeguards akin to those developed with respect to the burden of proof in tax court proceedings in order to refute the Revenue Agency's reconstructions.

Conversely, where the president has already received lawful service of the notice of assessment in their institutional capacity as an organ of the entity and has participated in the litigation brought by the association, any attempt to allege a breach of personal adversarial due process appears specious. The **joint liability of the legal representative for tax debts** rests upon full awareness of the tax challenges levelled against the organization, precluding the administrator from hiding behind the formal duality of capacities so as to paralyse collection of a tax definitively upheld by final judgment.

3.2 — Compliance Guidelines and Preventive Safeguards for the Incoming President

The stringency of Supreme Court case law requires adopting a rigorous risk-prevention protocol whenever an individual prepares to assume representative office in associative entities lacking full patrimonial autonomy. **Legal counsel and tax advisers** should assist the incoming president from the outset of appointment discussions, structuring a fiscal *due diligence* procedure designed to verify the accuracy of prior tax returns and the proper tax classification of cash flows.

Upon any succession in office, acceptance of the mandate should be preceded by obtaining general ledger accounts and bank statements covering all tax periods not yet barred by statutory forfeiture or limitation.

From the standpoint of **case-law distinguishing**, it bears emphasizing that the presumption of liability does not apply indiscriminately to every internal figure within the organization. Unlike the person vested with legal representation and statutorily required to file tax returns, an ordinary member lacking delegated powers bears no personal liability for annual taxes unless they actively participated in revenue-generating managerial acts. Similarly, a distinct factual configuration arises where the representative proves in court that the tax liability stemmed from criminal misappropriation or fraudulent conduct by the treasurer concealed from the presidency, provided the president promptly reported the offences to the judicial authorities and initiated appropriate actions for damages.

As regards defensive strategy in tax litigation, counsel bears the burden of timely raising the following pleas and objections:

- **Temporal allocation of the obligation:** pleading the inapplicability of joint liability for tax periods during which the mandate had not yet commenced, save where omitted or inaccurate tax returns were filed during the representative's own term of office;
- **Complete absence of banking powers:** filing official certificates issued by credit institutions proving that the appellant lacked signatory authority and access to the association's treasury and accounts;
- **Fulfilment of corrective reporting duties:** demonstrating that the incoming president remedied accounting irregularities by filing a supplemental return or executing timely voluntary statutory regularisation (*ravvedimento operoso*);
- **Statutory forfeiture and limitation period of the claim:** verifying the timeliness of service of the tax payment notice or assessment notice against the mandatory statutory forfeiture / time-bar (*decadenza*) and limitation period (*prescrizione*) governing assessment and collection against jointly liable co-obligors.

04. CONCLUSIONS AND PRACTICAL PROSPECTS

The doctrinal framework shaped by recent rulings of the Italian Supreme Court of Cassation exhibits coherent systematic unity and clear operational standards. Characterizing the **joint liability of the legal representative for tax debts** under Article 38 of the Italian Civil Code as an accessory statutory guarantee obligation *ex lege* strikes a measured balance between safeguarding public tax revenue and upholding principles of substantive justice. The presumption of managerial direction deters opportunistic and evasive arrangements, preventing administrators from escaping fiscal accountability through bare assertions of disinterest in the concrete management of the organization.

At the same time, firm recognition of documentary rebuttal proof demonstrating complete operational exclusion protects individuals placed in purely titular roles, averting the risk of strict-liability distortions alien to Italian civil law. The burden of proof rests upon the taxpayer under the general rules of Article 2697 of the Italian Civil Code, requiring thorough documentary record-keeping of the association's internal governance to substantiate any judicial challenge.

For officers and advisers of Third Sector organizations and amateur sports associations, Supreme Court jurisprudence delivers an unmistakable warning: accepting the office of president demands continuous and timely oversight of

accounting and tax compliance, since signing tax returns constitutes an act of primary economic consequence capable of directly affecting personal assets.

References & Authorities Cited

Statutory Provisions

- Article 38 of the Italian Civil Code — Patrimonial liability of the common fund and personal, joint and several liability of persons who have acted in the name and on behalf of an unincorporated association.
- Article 2697 of the Italian Civil Code — General allocation of the burden of proof regarding constitutive facts as well as impeding, modifying, or extinguishing facts.
- Article 1936 of the Italian Civil Code — Definition and general legal regime governing the obligation of suretyship (*fideiussione*) for the protection of creditors.
- Article 24 of the Italian Constitution — Inviolability of the right of defence at every stage and instance of judicial proceedings.
- Law no. 398 of 16 December 1991 — Preferential flat-rate tax regime and fiscal reliefs for amateur sports associations and assimilated non-profit organizations.
- Legislative Decree no. 546 of 31 December 1992 — Provisions governing tax court proceedings and judicial protection of taxpayers.
- Presidential Decree no. 602 of 29 September 1973 — Provisions on the collection of income taxes and the formation of tax rolls.

Case Law Cited

1. **Italian Supreme Court of Cassation, Civil Division, Order of 12 January 2026, no. 685** — Joint and several liability of the legal representative under Article 38 of the Italian Civil Code for tax obligations operates as an accessory statutory guarantee *ex lege*; succession in office does not exempt an incoming president who files an inaccurate tax return without making rectifications or paying the taxes due. Outcome: upheld; judgment quashed and remanded to the Tax Court of Second Instance of Marche. Para.: reasons for the decision.
2. **Italian Supreme Court of Cassation, Civil Division, Order of 5 February 2026, no. 2504** — With respect to an unincorporated association's tax debts, managerial direction by the legal representative is presumed from the office held, precluding the administrator from invoking mere lack of concrete operational involvement to escape joint and several liability. Outcome: upheld in part; judgment quashed and remanded to the Tax Court of Second Instance of Lombardy. Para.: reasons for the decision.

3. **Italian Supreme Court of Cassation, Civil Division, Order of 2 June 2026, no. 17487** — Admits rebuttal of the presumption of joint tax liability borne by a purely titular president where documentary evidence (*per tabulas*) proves the complete absence of banking, operational, and accounting powers, exclusively concentrated in a separate *de facto* manager. Outcome: main appeal and cross-appeal dismissed. Para.: reasons for the decision.

4. **Italian Supreme Court of Cassation, Civil Division, Order of 5 March 2026, no. 4955** — Upholds the lawfulness of serving a tax payment notice directly upon the jointly liable legal representative even absent prior issuance or service in their personal name of the underlying notice of assessment addressed to the entity, while preserving the guarantor's right to challenge the substantive merits of the underlying tax claim. Outcome: dismissed. Para.: reasons for the decision.

AV

Andrea Vesci

AUTHOR • METODO GIURIDICO

Accounting Expert and Statutory Auditor

Focuses on corporate advisory, compliance models under Legislative Decree No. 231/2001, and internal control systems. For Metodo Giuridico he examines the intersections between corporate governance, adequate organisational structures, and corporate liability.