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Tax Default in Improper Bankruptcy: Supreme Court Excludes Automatic Criminal Liability

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ABSTRACT
Prolonged tax and social security defaults do not trigger automatic criminal liability for improper fraudulent bankruptcy through wilful misconduct, requiring strict proof of causation and selective corporate management. This case note examines Italian Supreme Court (Criminal) judgment No. 38377/2026, which upheld the acquittal of a sole director who stepped down six years before bankruptcy adjudication. Reviewing Article 223 of the former Bankruptcy Law and Article 329 of the Corporate Crisis Code, the study separates the self-financing motive from concrete foreseeability of insolvency, assesses how tax liabilities must be apportioned across successive directors, and examines appellate acquittal reasoning standards under Articles 533 and 603 of the Code of Criminal Procedure alongside corporate handover accounting controls.

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Tax Default in Improper Bankruptcy: Supreme Court Excludes Automatic Criminal Liability

Failure to pay taxes and social security contributions in a bankrupt company under Italian Supreme Court of Cassation (Criminal Division) Judgment no. 38377 of 3 November 2026

CASE DOSSIER

COURT
Italian Supreme Court of Cassation (Criminal Division)

DECISION
Judgment no. 38377 of 3 November 2026

KEY PROVISIONS
Royal Decree no. 267 of 16 March 1942, Article 223 • Legislative Decree no. 14 of 12 January 2019, Article 329 • Code of Criminal Procedure, Article 533

HOLDING
dismissed the Prosecutor General's appeal, upholding the acquittal

JEL: K14, K22 • EuroVoc: 574, 3951 • Reading 10 min

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LEGAL PRINCIPLE / EDITORIAL HEADNOTE

In improper bankruptcy through wilful operations, prolonged tax debt constitutes the offence only where it expresses a selective management choice, coupled with concrete foreseeability of insolvency and liabilities attributable to the director.

KEY TAKEAWAYS

01 No Automatic Liability
Multi-year failure to pay taxes and social security contributions amounts to a wilful operation only if it reflects selective and unlawful management choices.

02 Self-Financing Motive
Tax expense savings describe the psychological impulse and serve as circumstantial evidence of intent, without adding elements extraneous to the statutory provision.

03 Breakdown by Mandate
Where several directors succeed one another, the prosecution must quantify the share of tax liabilities attributable to the contested management period.

04 Appellate Acquittal Reform
Overturning a conviction on appeal rests on the absence of certainty of guilt under Article 533 of the Code of Criminal Procedure and on a specific logical refutation.

ABSTRACT

Tax default in improper bankruptcy does not trigger automatic punishment for tax evasion, requiring strict proof of **selective management choices** and a causal link to financial collapse. This case note examines Judgment no. 38377/2026 of the Italian Supreme Court of Cassation, Criminal Division, which upheld the acquittal of a sole director who resigned six years before bankruptcy adjudication. Reviewing Article 223 of the Bankruptcy Law and Article 329 of the Corporate Crisis and Insolvency Code, the study distinguishes the **self-financing motive** from the **concrete foreseeability of insolvency**, verifies the criteria for apportioning the share of tax liabilities attributable to each management mandate, and examines the requirements of **heightened reasoning for appellate acquittals** under Articles 533 and 603 of the Code of Criminal Procedure alongside corporate internal control safeguards.

COMPARATIVE & EUROPEAN LEGAL FRAMING

Institutional & EU Nexus: Within Italy's codified *Civil Law* framework, the Criminal Division of the Supreme Court of Cassation ensures uniform statutory interpretation across corporate insolvency offences (*bancarotta impropria* under Article 223 of the Bankruptcy Law and Article 329 of the Corporate Crisis Code). Grounding criminal culpability in personal responsibility under Article 27 of the Italian Constitution aligns domestic insolvency enforcement with European principles governing culpability and proof beyond reasonable doubt. **Comparative Common Law Lens:** Common Law systems separate civil liability for directors' fiduciary breaches or wrongful trading in the vicinity of insolvency from criminal liability for fraudulent trading or deliberate asset depletion. Italian criminal law reflects this divide by preventing ordinary tax defaults from triggering strict criminal liability absent selective corporate misconduct and concrete foreseeability of collapse (*dissesto*).

01. INTRODUCTION: ITALIAN SUPREME COURT OF CASSATION JUDGMENT NO. 38377/2026

In managing a company facing a liquidity crisis, the boundary between financial strain and criminal liability often turns on how tax debts are handled. By Judgment no. 38377 of 3 November 2026, the Italian Supreme Court of Cassation, Criminal Division[1], establishes a clear barrier against any **automatic criminal sanction**. On a systematic level, **tax default in improper bankruptcy** requires separating ordinary business failure from selective and unlawful management conduct.

§ 2 The judgment directly affects **corporate governance** and internal control systems. The succession of several directors over a long corporate lifespan creates complex issues of **accounting attribution** for liabilities. When bankruptcy adjudication occurs years after a director leaves office, summing the entire debt entered on the statement of liabilities does not establish criminal intent.

§ 3 This study first examines the factual background and the wording of the substantive statutory provisions. It then verifies the weight of motive, **concrete foreseeability**, and percentage breakdown of the debt. Finally, the analysis outlines the accounting audit safeguards required during corporate **handovers of office**.

02. CORPORATE BACKGROUND AND STATUTORY EXEGESIS

2.1 — Managerial Succession, Tax Debt, and Grounds of Appeal

§ 4 The bankrupt company operated in third-party road haulage and had been incorporated on 19 May 1983 by two partners holding shares of 95 per cent and 5 per cent. On 10 February 2010, the entity converted into a limited liability company (*società a responsabilità limitata*), with the majority shareholder serving as managing partner. The business then entered **voluntary liquidation** on 17 February 2017 and was declared bankrupt on 12 April 2017[1]. However, the defendant had stepped down as sole director on **10 March 2011**, more than six years before the bankruptcy adjudication. Over the following six years, three other directors succeeded one another, two of whom settled their criminal charges through negotiated sentences (*applicazione della pena*). At the opening of insolvency proceedings, liabilities totalled **EUR 3,291,668.00**, consisting of approximately EUR 2,600,000.00 in tax debts in addition to road traffic fines.

§ 5 On 5 March 2026, the Naples Court of Appeal overturned the first-instance conviction entered under Article 223, paragraph 2, no. 2, of the Bankruptcy Law, acquitting the former director. The appellate judges ruled out proof of a **deliberate and systematic choice** aimed at worsening corporate liabilities. Moreover, the **tax collection notices** (*cartelle di pagamento*) served on the company showed an increase in exposure starting from 2017 for prior tax years. The evidentiary record therefore prevented attributing the wilful insolvency uniformly to the management period that ended in 2011.

§ 6 The Prosecutor General at the Naples Court of Appeal challenged the acquittal on three grounds. The first ground alleges an error of law because the appellate court made the offence conditional upon proof of a self-financing mechanism and purposive mental representation of insolvency. The second ground complains of illogical reasoning in excluding the voluntariness of **multi-year tax omissions**. Lastly, the third ground alleges misrepresentation of the official receiver's report under Article 33 of the

Bankruptcy Law and of the tax notices, along with breach of the **heightened reasoning standard for appellate acquittals**.

2.2 — Textual Analysis of Article 223 of the Bankruptcy Law and Coordination with Article 329 CCII

§ 7 On a textual level, Article 223, paragraph 1, of the Bankruptcy Law extends the penalties for ordinary fraudulent bankruptcy to "directors, general managers, statutory auditors, and liquidators of companies declared bankrupt". Paragraph 2, no. 2, further punishes any such person who has "caused with wilful intent or as a result of wilful operations the bankruptcy of the company". The provision thus separates two distinct criminal offences. Under the first limb, mental representation and volition directly encompass the financial collapse. In **wilful operations** (*operazioni dolose*), by contrast, the final event lies outside the scope of direct intent.

§ 8 Subjective attribution therefore focuses on the **antecedent management conduct** leading to collapse. What is required is the wilful commission of abusive or disloyal acts contrary to the corporate interest, combined with the concrete foreseeability of insolvency. As observed by the Metodo Giuridico Editorial Board in its analysis of improper bankruptcy through wilful operations and tax debts[D1], invoking **general intent** does not relax the causal rigour demanded by statute. Where several directors alternate in office, the specific contribution of each must indeed be measured.

§ 9 The structure of the offence remains unchanged in Article 329, paragraph 2, letter b), CCII. The provision sanctions corporate officers of businesses placed in judicial liquidation when they "have caused with wilful intent or as a result of wilful operations the financial collapse of the company". According to Italian Supreme Court of Cassation, Criminal Division, Judgment no. 28178/2025[2], the new wording does not innovate upon the prior statute. Rather, the legislature codified the interpretation identifying the criminal event with **substantive economic collapse** (*dissesto*) rather than the formal bankruptcy declaration.

§ 10 From a corporate accounting standpoint, a **wilful operation** presupposes greater structural complexity than an isolated asset diversion. It requires a plurality of coordinated acts or a systematic omission capable of generating an **unjustified depletion of corporate net worth**. Accounting audit reviews must therefore distinguish mere entrepreneurial error from the repeated breach of managerial duties.

03. TAX DEFAULT IN IMPROPER BANKRUPTCY BETWEEN MOTIVE AND FORESEEABILITY

3.1 — Selective Management Choices, Self-Financing, and Distinction from Intent

§ 11 In dismissing the first ground of appeal, Italian Supreme Court of Cassation, Criminal Division, Judgment no. 38377/2026[1] clarifies that Article 223, paragraph 2, no. 2, of the Bankruptcy Law does not punish tax evasion as such. Instead, it punishes the aggravation of insolvency stemming from **selective management choices** designed for systematic omission. The reference to self-financing in the appellate judgment does not introduce a requirement foreign to the statute. It describes the **psychological motive** behind the conduct, which is useful as circumstantial evidence of intent while remaining distinct from its constituent elements.

§ 12 Other rulings confirm when tax expense savings become a wilful operation within corporate cash flows. In Italian Supreme Court of Cassation, Criminal Division, Judgment no. 35595/2026[3], the tax

debt reached EUR 3,029,615.00, equal to 80 per cent of total liabilities, alongside fictitious accounting entries of EUR 893,000.00 and an admission by the defendant. The short-term liquidity gain thus triggered an **exponential growth of debt** due to penalties and interest. Similarly, Italian Supreme Court of Cassation, Criminal Division, Judgment no. 5704/2026[4] upheld a conviction involving EUR 2,276,671.00 in public debts. The director paid suppliers and employees while sacrificing the tax authorities, and neither the construction sector crisis nor **belated instalment requests** negated intent.

> ***Tax omission does not automatically constitute a wilful operation: tax savings remain mere circumstantial evidence of motive unless they demonstrate selective management causally linked to corporate insolvency.***

§ 13 A second revealing indicator concerns continuing to trade after the **depletion of share capital**. In Italian Supreme Court of Cassation, Criminal Division, Judgment no. 14832/2026[5], non-payment of taxes between 2016 and 2021 was coupled with accounting artifices to conceal losses already accrued in 2016. The conviction reached both the de facto director and the **formal directors**, since they participated actively in management and bore fiscal duties.

§ 14 A different boundary was established in Italian Supreme Court of Cassation, Criminal Division, Judgment no. 7261/2025[6]. In that case, the defendant took office in 2010 in a company already inactive since 2009 after transferring its sole business unit. Since he had injected personal funds of approximately EUR 600,000.00 in the absence of operating revenues, the prosecution could not presume **unlawful self-financing** without examining possible reclassification as simple bankruptcy.

3.2 — Concrete Foreseeability of Insolvency and Case-Law Overview

§ 15 Regarding the mental link between tax omissions and financial collapse, a marked doctrinal and lexical tension emerges in Supreme Court case law. Certain rulings describe the offence as having a **preterintentional structure**, settling for an **abstract foreseeability** of the final event. Italian Supreme Court of Cassation, Criminal Division, Judgment no. 37843/2025[7] follows this line when upholding an appellate conviction on debts exceeding EUR 1,600,000.00. Conversely, Italian Supreme Court of Cassation, Criminal Division, Judgment no. 28178/2025[2] and Judgment no. 38377/2026 require **concrete foreseeability** of insolvency.

§ 16 This step prevents automatic presumptions incompatible with **personal criminal culpability** enshrined in Article 27 of the Constitution. In rejecting the second ground of appeal, the Court applies the concrete standard to the long lifespan of the bankrupt company, founded in 1983. A business model that proves unsustainable *ex post* does not demonstrate an **original fraudulent scheme**. The subjective soundness of corporate operations must be assessed against **real operating margins** and financial records contemporaneous with the mandate.

JUDGMENT / AUTHORITY	JUDICIAL APPROACH	CORE LEGAL PRINCIPLE
Italian Supreme Court of Cassation, Criminal Division, no. 38377/2026	Acquittal / Guarantee	Excludes automatic tax liability; requires selective choices, concrete foreseeability, and liability share attributable to the outgoing director.
Italian Supreme Court of Cassation, Criminal Division, no. 7261/2025	Aligned / Quashed	Separates pre-existing debts from those accrued during the mandate, testing the link between self-financing and inactivity.
Italian Supreme Court of Cassation, Criminal Division, no. 28178/2025	Distinguishing / Conviction	Convicts director stepping down six years prior because his mandate covered the entire operating phase; continuity with Article 329 CCII.
Italian Supreme Court of Cassation, Criminal Division, no. 35595/2026	Conviction / Inadmissible	Tax debt at 80 per cent admitted as self-financing and false financial statements compound statutory penalties.
Italian Supreme Court of Cassation, Criminal Division, no. 5704/2026	Partial Conviction	Selective payments to suppliers over tax authorities establish intent; market crisis and late instalment plans are irrelevant.
Italian Supreme Court of Cassation, Criminal Division, no. 14832/2026	Conviction / Upheld	Tax omissions from 2016 to 2021 after capital loss, accounting artifices, and active management by formal directors.
Italian Supreme Court of Cassation, Criminal Division, no. 37843/2025	Conviction / Conflict	Upholds appellate conviction based on abstract foreseeability and deems the mandate-period complaint generic.

3.3 — When Tax Debt Can Be Imputed to the Outgoing Director: Criteria and Burden of Proof

§ 17 Tax default is attributable to a director who stepped down before bankruptcy only if the prosecution meets the **burden of proof** regarding the percentage share of debt accrued during that mandate. In addition, the record must establish selective management choices, a **causal link** to insolvency, and concrete foreseeability of collapse.

§ 18 Comparing Judgment no. 38377/2026 with Judgment no. 28178/2025 establishes a crucial **operational *distinguishing*** rule concerning the time gap preceding bankruptcy. In both disputes, the director had resigned six years before the adjudication order. In the 2025 precedent, the conviction stood because the fifteen-year mandate covered the entire **operating phase** of the enterprise, followed solely by liquidators. In the case decided in 2026, by contrast, active successor directors took office after March 2011, and two of them resolved the criminal proceedings through negotiated pleas.

§ 19 An **analytical breakdown of liabilities** thus becomes the core of judicial fact-finding. In Judgment no. 38377/2026, no exact figure existed for the portion of debt attributable to fiscal years closed by 2011, out of EUR 2,600,000.00 in tax liabilities and EUR 3,291,668.00 overall. On the contrary, tax collection notices documented an increase in liabilities starting in 2017 for earlier years. No

unitary presumption applies to tax default in improper bankruptcy without **accounting separation** among original taxes, subsequent omissions, and penalties accrued after resignation.

§ 20 Grey areas also surface in comparison with Judgment no. 37843/2025 and Judgment no. 7261/2025. In the former ruling, the defendant appointed in 2008 pleaded the pre-existence of debt in generic terms, leading to inadmissibility of the ground. In the latter, the director assumed office in an already inactive entity. Under the 2026 ruling, a prosecutor appealing an acquittal must present an **accrual-basis reconstruction** of tax exposures at trial. In this way, the defence prevents corporate legal continuity from turning into personal criminal liability for the outgoing officer.

§ 21 From a documentary perspective, this standard mandates a **fiscal-year-by-fiscal-year audit** of tax and social security positions. Reconciling filed tax returns, payment forms, tax-roll extracts, and **handover minutes** isolates individual responsibilities with precision. An outgoing director can thereby demonstrate which portion of the debt was genuinely referable to his management mandate.

ACCRUAL-BASIS BREAKDOWN OF TAX LIABILITIES IN MANAGEMENT TRANSITIONS

During handovers between directors, liability for bankruptcy caused by wilful operations requires accounting separation of tax liabilities accrued during the single mandate from debts incurred under successors and penalty charges accrued after resignation.

04. APPELLATE ACQUITTAL REFORM, EVIDENTIARY STANDARD, AND ACCOUNTING GOVERNANCE SAFEGUARDS

§ 22 On the third ground of appeal, Italian Supreme Court of Cassation, Criminal Division, Judgment no. 38377/2026[1] defines the standard for **heightened reasoning in appellate acquittals**. The statutory benchmark rests on Article 533, paragraph 1, of the Code of Criminal Procedure, which permits conviction only "if the defendant is proved guilty of the offence charged beyond any reasonable doubt". Acquittal does not demand certainty of innocence, but merely the absence of certainty of guilt. Overturning a first-instance conviction therefore does not require superior persuasive force. A reading of equal or even lower plausibility suffices, provided it rationally refutes the arguments of the trial court.

§ 23 This reveals a clear **procedural asymmetry** compared with an appellate reversal in the opposite direction. The evidentiary renewal required by Article 603, paragraph 3-bis, of the Code of Criminal Procedure applies "In the event of an appeal by the public prosecutor against an acquittal judgment on grounds relating to the assessment of testimonial evidence". Such a reversal into conviction occurred in Judgment no. 37843/2025[7]. By contrast, when an appellate court acquits upon reviewing unrenewed documentary evidence, such as the Article 33 receiver's report and tax notices, no duty of evidentiary renewal operates. Nor can the prosecution challenge a differing accounting interpretation of the records as **misrepresentation of evidence**.

§ 24 Under critical scrutiny, the ruling consistently upholds the **culpability principle**, yet leaves open an operational question regarding subsequent concurrent causes. The Court rightly censures the omitted percentage quantification of tax liabilities accrued up to 2011. In this author's view, however, the judgment does not specify what **materiality threshold** of initial exposure triggers concurrent liability under Article 41 of the Criminal Code during subsequent mandates. Comparison with Judgment no.

28178/2025[2], focused on worsening an ongoing crisis, shows that the boundary turns on **documentary audit findings**.

§ 25 Through the lens of **corporate governance** and internal control, the judgment lays down immediate practical rules for directors, statutory auditors, and legal auditors. Every resignation from office calls for an **extraordinary interim balance sheet** updated to the date of departure. It is also necessary to attach an analytical reconciliation schedule of tax and social security payables broken down by fiscal year, alongside formal handover minutes for accounting records. Documenting cash flows, fulfilled filings, and instalment applications provides the most effective safeguard to isolate individual liabilities in any future review.

05. CONCLUSIONS

§ 26 Italian Supreme Court of Cassation, Criminal Division, Judgment no. 38377/2026[1] systematically reaffirms **personal criminal liability** in corporate crisis proceedings. Tax default in improper bankruptcy permits no automatic presumptions tied merely to the total tax debt balance at bankruptcy. Proof is required of **selective management choices**, concrete foreseeability of insolvency, and the exact share attributable to the individual director's mandate.

§ 27 Bridging the Bankruptcy Law and the Corporate Crisis Code, the decision elevates the preventive function of **adequate accounting structures**. Reconciling tax liabilities on an annual basis, particularly during management transitions, protects corporate transparency and ensures accurate attribution of liability.

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Table of Authorities & References Cited

I. STATUTORY PROVISIONS

Royal Decree no. 267 of 16 March 1942, Article 223 – Improper corporate fraudulent bankruptcy and bankruptcy caused by wilful operations.

Legislative Decree no. 14 of 12 January 2019, Article 329 – Regulation of improper fraudulent bankruptcy under the Corporate Crisis and Insolvency Code.

Code of Criminal Procedure, Article 533 – Conviction of the defendant beyond any reasonable doubt.

Code of Criminal Procedure, Article 603 – Renewal of evidentiary taking at trial on appeal.

II. CASE LAW CITED

[1] **Italian Supreme Court of Cassation (Criminal Division), Judgment no. 38377 of 3 November 2026** OUTCOME: dismissed the Prosecutor General's appeal, upholding the acquittal. PARA.: excludes automatic criminal liability for tax debts, distinguishes the self-financing motive from intent, and requires concrete foreseeability as well as a percentage breakdown of liabilities attributable to the outgoing director.

[2] **Italian Supreme Court of Cassation (Criminal Division), Judgment no. 28178 of 31 July 2025** OUTCOME: dismissed the appeal and ordered the appellant to pay legal costs. PARA.: affirms statutory continuity with Article 329 CCII, requires concrete foreseeability of insolvency under Article 27 of the Constitution, and imputes the debt to a director who stepped down six years earlier because his mandate covered the entire operational phase.

[3] **Italian Supreme Court of Cassation (Criminal Division), Judgment no. 35595 of 7 October 2026** OUTCOME: declared the appeal inadmissible and ordered the appellant to pay legal costs and a financial penalty. PARA.: confirms the relevance of systematic non-payment of taxes amounting to 80 per cent of liabilities as a self-financing choice combined with false accounting.

[4] **Italian Supreme Court of Cassation (Criminal Division), Judgment no. 5704 of 11 February 2026** OUTCOME: quashed and remanded in part solely regarding documentary fraudulent bankruptcy and dismissed the remainder of the appeal. PARA.: classifies selective payment of suppliers and employees to the detriment of tax authorities as a wilful operation, excluding any interrupting effect of sector crisis or belated instalment requests.

[5] **Italian Supreme Court of Cassation (Criminal Division), Judgment no. 14832 of 23 April 2026** OUTCOME: dismissed the appeals and ordered the appellants to pay legal costs. PARA.: upholds liability for tax-related wilful operations where trading continues after share capital depletion through accounting artifices and active participation by formal directors.

[6] **Italian Supreme Court of Cassation (Criminal Division), Judgment no. 7261 of 21 February 2025** OUTCOME: quashed the contested judgment and remanded for a new appellate trial. PARA.: requires distinguishing pre-existing tax liabilities from those accrued during the mandate and reasoning on the compatibility between alleged self-financing and productive inactivity of the company.

[7] **Italian Supreme Court of Cassation (Criminal Division), Judgment no. 37843 of 20 November 2025** OUTCOME: dismissed the appeal and ordered the appellant to pay legal costs. PARA.: upholds the appellate conviction overturning an acquittal by invoking abstract foreseeability of insolvency and deeming the complaint regarding debt pre-dating the office to be generic.

III. LEGAL SCHOLARSHIP CITED

[D1] Metodo Giuridico Editorial Board, Bancarotta da operazioni dolose e debiti fiscali: il dolo generico [Improper Bankruptcy through Wilful Operations and Tax Debts: General Intent]. 22 October 2026. Analysis of the mens rea requirement in systematic tax defaults.

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